

2020/0154(COD)

COLUMN TABLE FOR INTERINSTITUTIONAL NEGOTIATIONS – WORKING DOCUMENT

Proposal for a regulation of the European Parliament and of the Council
(COM(2020)0337 – C9-0209/2020 – 2020/0154(COD))

Date of the trilogue: 30.11.2020

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>	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> GREEN
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

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		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>	<i>Having regard to the opinion of the European Central Bank,</i> GREY
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 ² ,	Having regard to the opinion of the European Economic and Social	Having regard to the opinion of the European Economic and Social Committee ⁴ ,

² OJ C , , p. .

⁴ OJ C , , p. .

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

¹ OJ C , , p. .

³ OJ C , , p. .

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		<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)</p>	<p>the euro. The unavailability of foreign currency spot exchange rates <u>spot foreign exchange benchmarks</u> to calculate the pay-outs due under currency forwards and swaps <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 paragraphs 4a and 4b <u>paragraph 5</u> of Article 51 of Regulation (EU) 2016/1011 of the European Parliament and of the Council⁶, the use of spot foreign exchange rates <u>spot</u></p>	<p>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 <i>paragraph 5</i> of Article 51 of Regulation (EU) 2016/1011 of the European Parliament and</p>	<p>The unavailability of foreign currency spot exchange rates <u>spot foreign exchange benchmarks</u> to calculate the pay-outs due under currency forwards and swaps <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 Regulation (EU) 2016/1011 of the European Parliament and of the Council⁸, the use of spot foreign exchange rates <u>spot foreign exchange benchmarks</u> provided by a third country</p>

⁶ 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).

⁸ 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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		2016/1011 of the European Parliament and of the Council ⁵ , the use of spot foreign exchange rates provided by a third country administrator other than a central bank will no longer be possible.	<u>foreign exchange benchmarks</u> provided by a third country administrator other than a central bank will no longer be possible.	of the Council ⁷ , the use of spot foreign exchange rates provided by a third country administrator other than a central bank will no longer be possible.	administrator other than a central bank will no longer be possible. GREY
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)	(2) In order to enable companies in the Union to continue their business activities while mitigating foreign exchange risk, <u>certain spot exchange rates spot foreign exchange benchmarks referred used-to</u> in financial instruments to calculate contractual pay-outs <u>that are designated by the Commission in accordance with certain criteria</u> should be	(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, <u>certain spot exchange rates spot foreign exchange benchmarks referred used-to</u> in financial instruments to calculate contractual pay-outs <u>that are designated by the Commission in accordance with certain criteria</u> should be excluded

⁵ 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).

⁷ 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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		2016/1011.	excluded from the scope of Regulation (EU) 2016/1011.		from the scope of Regulation (EU) 2016/1011. GREY
14	Recital 3	(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	(3) In order to designate certain third country spot <u>exchange rates spot foreign exchange benchmarks</u> 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 spot <u>foreign exchange benchmarks</u> for non-convertible currencies when that the spot exchange rate spot foreign exchange benchmark <u>that the spot exchange rate spot foreign exchange benchmark</u> is used for calculating the pay-outs that arise under non-deliverable currency forwards or swaps <u>foreign spot exchange</u>	(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	(3) In order to designate certain third country spot <u>exchange rates spot foreign exchange benchmarks</u> 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 spot <u>foreign exchange benchmarks</u> for non-convertible currencies when that the spot exchange rate spot foreign exchange benchmark <u>that the spot exchange rate spot foreign exchange benchmark</u> is used for calculating the pay-outs that arise under non-deliverable currency forwards or swaps <u>foreign spot exchange</u>

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		<p>swaps. It is of particular importance that the Commission carry out 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</p>	<p><u>derivative contracts.</u> It is of particular importance that the Commission carry out 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>the Commission carry out 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</p>	<p><u>derivative contracts.</u> It is of particular importance that the Commission carry out 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. GREY</p>

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		have access to meetings of Commission expert groups dealing with the preparation of delegated acts.		acts.	
15	Recital 3a (new)			<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</i>	(3a) At the time of adoption of Regulation (EU) 2016/1011, the expectation was that by the end of 2021 third countries would adopt similar legislative regimes for financial benchmark and that the use in the Union by supervised entities of benchmarks administered in a third country would be ensured by equivalence decisions taken by the Commission or by recognition or endorsement granted by competent authorities. Nonetheless, limited progress was made in that regard. Considering the disparity in scope between

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				<p><i>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. Nonetheless, little progress was made in that regard. 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</i></p>	<p>the regulatory regime for financial benchmarks in the Union and in third countries, and to ensure the smooth functioning of the market and the availability of third country benchmarks for use in the Union after the end of the transitional period on 31 December 2021, the Commission should present a report on the review, by 15 June 2023, of the current provisions on the scope with particular regard to its effect on the use in the Union of third country benchmarks. In particular, the Commission should analyse the consequences of the far-reaching scope of such Regulation for EU administrators and users of benchmarks also with respect to the continued use of benchmarks administered in</p>

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				<p><i>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) 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>	<p>third countries. The Commission should assess in particular whether there is a need to amend Regulation (EU) 2016/1011 in order to reduce its scope only to administrators of certain categories of benchmarks or to administrators whose benchmarks are widely used in the Union.</p> <p>(3b) Considering the need to undertake a thorough review of the scope and the provisions concerning third country benchmarks, the current transition period for third country benchmark should be extended. The Commission should have the power to further extend the transitional period by means of a delegated act if the assessment conveys evidence that the foreseen expiration</p>

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					<p>of the transitional period would be detrimental for the continued use of third country benchmarks in the Union.</p> <p>(3c) Extending the transition period for third country benchmarks could create an incentive for EU benchmark administrators to relocate their activities to a third country not to be subject to the requirements of Regulation (EU) 2016/1011. To prevent circumvention, administrators who relocate from the EU to a third country during the transition period should not benefit from access to the Union's market under the transitional provision.</p> <p>BLUE</p>
16	Recital 4	(4) The UK Financial Conduct	(4) <u>As of the end of the transition period for the</u>	(4) <i>Following the withdrawal of the United</i>	(4) <u>As of the end of the transition period for the</u>

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		<p>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 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</p>	<p><u>United Kingdom's withdrawal from the Union on 31 December 2021 2020, the interest rate benchmark London Interbank Offered Rate (LIBOR) will no longer qualify as a critical benchmark under Regulation (EU) 2016/1011.</u> The UK Financial Conduct Authority (FCA) has announced <u>that it will not persuade or compel panel banks to submit to LIBOR beyond the end of 2021 which increases the risk it will stop supporting that the production of</u> one of the most important interest rate benchmarks, the London Interbank Offered Rate (LIBOR) <u>will most likely be wound down</u> by the end of 2021. As of the end of the transition period for the United Kingdom's withdrawal from the Union</p>	<p><i>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 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</p>	<p><u>United Kingdom's withdrawal from the Union on 31 December 2020, the interest rate benchmark London Interbank Offered Rate (LIBOR) no longer qualifies as a critical benchmark under Regulation (EU) 2016/1011.</u> The UK Financial Conduct Authority (FCA) has announced <u>that it will not persuade or compel panel banks to submit to LIBOR beyond the end of 2021 which increases the risk that</u> one of the most important interest rate benchmarks, <u>will most likely be wound down</u> by the end of 2021. The <u>winding down</u> of LIBOR may <u>nevertheless</u> 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</p>

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		<p>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 LIBOR may therefore result in significant disruption in the functioning of financial markets in the Union.</p>	<p>on 31 December 2021 2020, LIBOR will no longer qualify as a critical benchmark. The cessation winding down 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, securities and derivatives that all reference LIBOR, that mature beyond 31 December 2021 and that do not have robust contractual fallback provision to cover for the cessation of publication or winding down of LIBOR in the relevant calculated currency respectively some of its tenors. Many Some of those contracts or and financial instruments as defined in Directive 2014/65/EU cannot</p>	<p>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 LIBOR may therefore result in significant disruption in the functioning of financial markets in the Union.</p>	<p>deposits, securities and derivatives that all reference LIBOR, that mature beyond 31 December 2021 and that do not have robust contractual fallback provision to cover for the cessation of publication or winding down of LIBOR in the relevant calculated currency respectively some of its tenors. Some of those contracts or and financial instruments as defined in Directive 2014/65/EU cannot be renegotiated to incorporate a contractual fallback provision prior to 31 December 2021. The cessation or winding down of LIBOR may therefore result in significant disruption in the functioning of financial markets in the Union. GREY</p>

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			<p>be renegotiated to incorporate a contractual fallback provision prior to 31 December 2021.</p> <p>The cessation or winding down of LIBOR may therefore result in significant disruption in the functioning of financial markets in the Union.</p>		
17	Recital 5	<p>(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 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,</p>	<p>(5) To be able to provide for an the orderly winding down of contracts that reference a widely used benchmark the cessation of which may result in negative consequences that produce significant disruption in the functioning of financial markets in the Union and where such contracts or financial instruments as defined in Directive 2014/65/EU cannot be renegotiated to include a contractual fallback provision by the time of that benchmark's cessation, a framework</p>	<p>(5) <i>Article 28(2) of Regulation 2016/1011 requires supervised entities other than benchmark administrators to have contingency plans in 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</i></p>	<p>(5) To be able to provide for an the orderly winding down of a widely used benchmark the cessation of which may result in negative consequences that produce significant disruption in the functioning of financial markets in the Union and where such contracts or financial instruments as defined in Directive 2014/65/EU cannot be renegotiated to include a contractual fallback provision by the time of that benchmark's cessation, a framework accompanying the cessation or the orderly winding down of such benchmarks should be laid</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		<p>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 result in negative consequences that produce significant disruption in the functioning of financial markets in the Union.</p>	<p>accompanying the cessation <u>or orderly winding down</u> of such benchmarks should be laid down. That framework should comprise a mechanism aimed at transitioning such contracts <u>or financial instruments as defined in Directive 2014/65/EU to suitable designated</u> replacement benchmarks. Replacement benchmarks should ensure avoiding contract frustration which may result in negative consequences that produce significant disruption in the functioning of financial markets in the Union.</p>	<p><i>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 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, there should be a fall-back method that</i></p>	<p>down. That framework should comprise a mechanism aimed at transitioning such contracts <u>or financial instruments as defined in Directive 2014/65/EU to designated</u> replacement benchmarks. Replacement benchmarks should ensure avoiding contract frustration which may result in negative consequences that produce significant disruption in the functioning of financial markets in the Union. GREY</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<p><i>provides for mandatory public designation of a replacement benchmark. That method</i> 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 functioning of financial markets in the Union.</p>	
17a	Recital 5a (new)				<p>Article 28(2) of Regulation 2016/1011 requires supervised entities other than benchmark administrators to have contingency plans in place in case a benchmark changes materially or ceases to be provided. If possible, those contingency plans should identify one or more potential</p>

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					<p>replacement benchmarks. <i>As shown by the experience with LIBOR, it is important that contingency plans are prepared for the case when a benchmark materially changes or ceases to be provided. Competent authorities should monitor whether this obligation is complied with and may check by random sample basis. Therefore, the supervised entities should keep their contingency plans, and any updates to them, readily available so that they can forward them to the competent authorities without delay upon request.</i>"</p> <p>BLUE</p>
18	Recital 5a (new)		<p><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,</u></p>		<p><u>(5a) The absence of a mechanism at Union level within this Regulation to organise the orderly winding down of a benchmark would likely result in diverging legislative solutions by Member States. Hence,</u></p>

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			<p><u>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 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</u></p>		<p><u>European stakeholders would be 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 extraordinary circumstances and systemic risks, it is necessary to establish a harmonised approach to deal with the cessation or winding down of certain benchmarks with systemic relevance for the Union.</u> GREY</p>

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			<u>not affected by this Regulation.</u>		
19	Recital 6	(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 cessation is no longer published. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament	(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 <u>replace all references to the benchmark in cessation or being wound down</u> be used for the winding down of in contracts <u>or financial instruments as defined in Directive 2014/65/EU</u> that have not been renegotiated by the date of the entry into force of the implementing act the benchmark in cessation is no longer published. Those powers should be exercised in accordance with Regulation	(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 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 ¹¹ . Legal	(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 <u>replace all references to that benchmark in cessation or being wound down</u> be used for the winding down of in contracts <u>or financial instruments as defined in Directive 2014/65/EU</u> that have not been renegotiated by the date of the entry into force of the implementing act the benchmark in cessation is no longer published. Those powers should be exercised in accordance with Regulation

¹¹ 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).

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		and of the Council ⁹ . 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.	(EU) No 182/2011 of the European Parliament and of the Council ¹⁰ . 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. <u>Those powers 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>	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.	(EU) No 182/2011 of the European Parliament and of the Council ¹² . 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. GREY
20	Recital 6a (new)		<u>(6a) Similar negative</u>		<u>(6a) Similar negative</u>

⁹ 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).

¹⁰ 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).

¹² 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).

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><u>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 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</u></p>		<p><u>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 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</u></p>

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			<p><u>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 affect the remaining provisions of Regulation (EU) 1011/2016.</u></p>		<p><u>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 that third country does not provide for an orderly wind down of a benchmark. This extension should not affect the remaining provisions of Regulation (EU) 1011/2016.</u> GREY</p>
20a	Recital 6b (new)				<p>(9) Use of that replacement benchmark should be allowed only for <u>The application of the replacement for a benchmark by operation of law should be</u></p>

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					<p><u>restricted to contracts or financial instruments as defined in Directive 2014/65/EU that have not been renegotiated prior to the cessation date of the benchmark concerned. Where master contracts are used, the replacement benchmark will apply only to transactions entered into prior to the relevant replacement date, even though later transactions might technically be part of the same contracts.</u> The use of the replacement benchmark designated by the Commission should therefore be restricted to contracts <u>or financial instruments as defined in Directive 2014/65/EU</u> 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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					Furthermore, considering that such implementing act is aimed at ensuring contract continuity, the designation of the replacement benchmark should not affect contracts or <u>financial instruments as defined in Directive 2014/65/EU</u> that already provide a <u>suitable</u> contractual <u>fallback</u> provision <u>which addresses the permanent cessation of a benchmark.</u> GREY
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>		<u>(6b) The adoption by the Commission of a replacement for a benchmark should not prevent parties to a contract from agreeing to apply a different replacement for that benchmark.</u> GREY
22	Recital 7	(7) Where necessary, the Commission should, at	(7) — Where necessary, the Commission should, at the appropriate moment, adopt a	(7) Where necessary, the Commission should, at the appropriate	- GREY

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		<p>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 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>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 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>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 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>	

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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 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.</p>	<p>(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 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.</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. 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.</p>	<p>(8) The Commission should exercise its implementing powers only in situations where it assesses that the cessation or winding down of a benchmark may result in negative consequences that produce significant disruption in the functioning of financial markets <i>or the real economy</i> in the Union. 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. GREY</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
24	Recital 8a (new)		<p><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 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></p>		<p><u>(8a) Contracting parties are responsible for analysing 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 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> GREY</p>
25	Recital 9	(9) Use of that replacement benchmark should be allowed only for contracts that have not been renegotiated	(9) Use of that replacement benchmark should be allowed only for <u>The application of the replacement benchmark by</u>	(9) Use of that replacement benchmark should be allowed only for contracts that have not been renegotiated prior to	- GREY (Moved to 6b line 20a)

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		<p>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. 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</p>	<p><u>operation of law should be restricted to</u> contracts <u>or financial instruments as defined in Directive 2014/65/EU</u> that have <u>not been renegotiated prior to the cessation date of the benchmark concerned.</u> <u>Where master contracts are used, the replacement benchmark will apply only to transactions entered into prior to the relevant replacement date, even though later transactions might technically be part of the same contracts.</u> The use of the replacement benchmark designated by the Commission should therefore be restricted to contracts <u>or financial instruments as defined in Directive 2014/65/EU</u> already entered into <u>by supervised entities</u> at the moment of the entry into force of the</p>	<p>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. 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
		contractual fall back provision.	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 <u>financial instruments as defined in Directive 2014/65/EU</u> that already provide a <u>suitable</u> contractual <u>fallback</u> provision <u>which addresses the permanent cessation of a benchmark.</u>		
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	(10) In <u>Before</u> exercising its implementing powers to designate a replacement benchmark, the Commission <u>should conduct a public consultation and should</u> take into account recommendations <u>by the central bank or</u> by private sector working groups operating under the auspices of the central bank responsible for	(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 the</i>	(10) In <u>Before</u> exercising its implementing powers to designate a replacement benchmark, the Commission <u>should conduct a public consultation and should</u> take into account recommendations <u>by relevant stakeholders and in particular</u> by private sector working groups operating under the auspices of <i>the public</i>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		<p>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 consultations and expert knowledge, and reflect benchmark users' agreement about the most appropriate replacement rate for the interest rate benchmark in cessation.</p>	<p>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 consultations and expert knowledge, and reflect benchmark users' agreement about the most appropriate replacement rate for the interest rate benchmark in cessation. <u>The Commission should also take into account recommendations of other relevant stakeholders, including the competent authority of the benchmark administrator and ESMA.</u></p>	<p>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 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</p>	<p>authorities or the central bank responsible for the currency in which the interest rates of the replacement benchmark are denominated. Those recommendations should be based on extensive public consultations and expert knowledge, about the most appropriate replacement rate for the interest rate benchmark in cessation. <u>The Commission should also take into account recommendations of other relevant stakeholders, including the competent authority of the benchmark administrator and ESMA.</u> GREY</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<p>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 the views expressed in them.</i></p>	
27	Recital 10a (new)		<p><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</u></p>		<p><u>(10a) Considering that the replacement of a benchmark may require 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</u></p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<u>should be empowered to lay down such corresponding conforming changes in the implementing act.</u>		<u>corresponding essential conforming changes in the implementing act.</u> GREY
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 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').	(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 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').	(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 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').	- GREY

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Recital 11b (new)		<u>(11b) 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 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>		<u>(11b) 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 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> GREY
29	Recital 11a (new)		<u>(11a) Where a Member State 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</u>		<u>(11a) Where a Member State 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</u>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><u>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>		<p><u>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> GREY</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 each other and, as a consequence, may neither represent the same underlying economic reality anymore nor lead to commercially acceptable results. Such cases could</u></p>		<p>(11b) Benchmarks and their contractually agreed fallback provision may over time significantly and unexpectedly diverge from 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</p>

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			<p><u>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 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</u></p>		<p>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 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 for a benchmark that is established by the implementing act should under certain preconditions</p>

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			<p><u>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 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.</u></p>		<p>serve as a replacement when relevant national authorities, for example macro-prudential authorities, systemic risk councils or the central banks, have 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 national relevant authorities should undertake this assessment when is is made aware of the potential unsuitability of a commonly used fallback clause by one or more potentially affected parties. This assessment should not be performed on a contract by contract basis. The national relevant authorities involved should be obliged to inform the Commission and ESMA of said assessment.</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<u>The relevant national authorities involved should be obliged to inform the Commission and ESMA of said assessment.</u>		BLUE
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)			<i>(12a) Regulation (EU) No 648/2012 of the European Parliament and of the Council¹³ is currently being amended for the purpose of providing clarity to market participants that transactions entered into or novated before the beginning of the application of the clearing or margin requirements to OTC</i>	<u>(12a) Regulation (EU) No 648/2012 of the European Parliament and of the Council is currently being amended for the purpose of providing clarity to market participants that contracts entered into or novated before the entry into application of the clearing or margin requirements to OTC derivative contracts referencing a benchmark (“legacy contracts”) will not be subject to these requirements if those</u>

¹³ 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>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 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</i></p>	<p><u>contracts are amended with regard to the benchmark they refer to and those amendments serve the sole purpose of implementing or preparing for the implementation of a replacement benchmark or introducing fall-back provisions in this regard during the transition to a new benchmark as part of a benchmark reform. Benchmark reforms in this regard result from internationally coordinated work streams and initiatives aimed at reforming benchmark rates to comply with the International Principles for Financial Benchmarks published by the International Organization of Securities Commissions (IOSCO). Regulation (EU) 2016/1011 requires supervised entities to produce and maintain robust written plans setting out the actions they would take in the event</u></p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<p><i>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 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</i></p>	<p><u>that any 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 to support action by market participants to enhance the robustness of OTC derivative contracts referencing benchmarks potentially subject to reforms, Regulation (EU) No 648/2012 should be amended to clarify that legacy contracts will not be subject to clearing or margin requirements, if those contracts are amended for the sole purpose of replacing the benchmark they refer to against the background of a benchmark reform. Thus, this exception applies only to contractual amendments necessary to implement or prepare for the implementation of a replacement benchmark due</u></p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<p><i>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 of an OTC derivatives contract for other purposes.</i></p>	<p><u>to a benchmark reform or necessary to introduce fall-back provisions in relation to a benchmark in this regard in order to enhance the robustness of the relevant contracts. Those amendments shall serve to provide clarity to market participants and do not affect the scope of the clearing and margin obligations in relation to amendments of OTC derivative contracts for other purposes or in relation to replacements or novations such as changes of counterparties.</u> GREEN</p>
33	Recital 13	(13) In view of the fact that LIBOR will no	(13) In view of the fact that LIBOR will no longer be a	(13) In view of the fact that LIBOR will no	(13) In view of the fact that LIBOR will no longer be a

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		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,	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.	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,	critical benchmark within the meaning of Regulation (EU) 2016/1011 as of 1 January 2021, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union GREY
34		HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION: GREEN
35		Article 1 Amendments to Regulation (EU) 2016/1011	Article 1 Amendments to Regulation (EU) 2016/1011	Article 1 Amendments to Regulation (EU) 2016/1011	Article 1 Amendments to Regulation (EU) 2016/1011 GREEN
36	Article 1 – point 1 – introd. part / Article 2	(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) – introd. part / Article 2		(a) <u>the following paragraph is added:</u>	<i>(-a) the following paragraph is inserted:</i>	<i>(-a) the following paragraph is inserted:</i> GREY
38	Article 1 – point 1 – point a (new) /		<u>"1a. Chapter 4a applies to:</u>	<i>"1a. Article 28a applies to:</i>	<u>"1a. Chapter 4a applies to:</u> GREY (note: LL to move,

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Article 2 – paragraph 1a (new)				chapter or title)
39	Article 1 – point 1 – point a (new) / Article 2 – paragraph 1a (new) – point a		(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>	<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>	<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> GREEN
40	Article 1 – point 1 – point a (new) / Article 2 – paragraph 1a (new) – point 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>	<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>	<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> GREEN
41	Article 1 – point 1 – point a – introd. part / Article 2 – paragraph 2	(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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
42	Article 1 – point 1 – point a / Article 2 – paragraph 2 – point (i)	“(i) a foreign exchange benchmark which has been designated by the Commission in accordance with paragraph 3.”;	"(i) a foreign spot exchange benchmark spot foreign exchange benchmark which has been designated by the Commission in accordance with paragraph 5 ";	“(i) a foreign exchange benchmark which has been designated by the Commission in accordance with paragraph 3.”;	"(i) a spot foreign exchange benchmark which has been designated by the Commission in accordance with paragraph [3]"; GREEN
43	Article 1 – point 1 – point b – introd. part / Article 2 – paragraph 3, 4	(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 / Article 2 – paragraph 3	“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 foreign spot exchange benchmarks spot 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 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 spot foreign exchange benchmarks that are administered by administrators located outside the Union where all of the following criteria are fulfilled: GREEN
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	(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	(a) the foreign exchange benchmark refers to a spot exchange rate of a third-country currency that is not freely convertible;

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		not freely convertible;		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;	(b) supervised entities use the foreign spot exchange benchmark spot foreign exchange benchmark is used on a frequent, systematic and regular basis in derivative contracts for hedging against third country currency volatility to hedge against adverse foreign exchange rate movements.	(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;	(b) <u>the spot foreign exchange benchmark is used</u> on a frequent, systematic and regular basis <u>to hedge against adverse foreign exchange rate movements.</u> GREEN
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 currency with limited convertibility referred to in point (a).	(e) 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 currency with limited convertibility referred to in point (a).	(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 currency with limited convertibility referred to in point (a).	- GREEN
48	Article 1 – point 1 – point b / Article 2 – paragraph 4		<u>4. By 31 December 2024, the Commission shall conduct a public consultation to</u>		<u>4. By 31 December 2022, the Commission shall conduct a public consultation to</u>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<u>identify spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 3.</u>		<u>identify spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 3.</u> BLUE
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 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	4. 5. By 31 December 2025, <u>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 the list as appropriate."</u> 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	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 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. Competent authorities of supervised entities that use third</i>	4. 5. By 15 June 2023, the Commission shall adopt delegated acts in accordance with Article 49 <u>of this Regulation to create a list of spot foreign exchange benchmarks that fulfil the criteria laid down in paragraph 3 of this Article. The Commission shall update the list as appropriate."</u> BLUE

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		number of derivative contracts that use that foreign exchange benchmark for hedging against third country currency volatility at least every two years.”;	derivative contracts that use that foreign exchange benchmark for hedging against third country currency volatility at least every two years.”;	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.”;	
50	Article 1 – point 1a (new) – introd. part / Article 3		<u>(1a) In Article 3, the following paragraph is inserted:</u>	<i>(1a) Article 3 is amended as follows:</i>	<i>(1a) Article 3 is amended as follows:</i> GREY
51	Article 1 – point 1a (new) / Article 3 – paragraph 1a (new)		<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>		- GREY
52	Article 1 – point 1a (new)			<i>(a) in</i>	<i>(a) in paragraph 1,</i>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	– point a – introd. part / Article 3 – paragraph 1			<i>paragraph 1, the following point is inserted:</i>	<i>the following point is inserted:</i> GREY
53	Article 1 – point 1a (new) – point a / Article 3 – paragraph 1 – point 22 a (new)			<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>	- GREY
54	Article 1 – point 1a (new) – point b – introd. part / Article 3 – paragraph 1 – point 24 – point a			<i>(b) point i of point 24(a) is amended as follows:</i>	<i>(b) point i of point 24(a) is replaced by the following:</i> GREEN
55	Article 1 – point 1a (new) – point b / Article 3 – paragraph 1 – point 24 – point a – subpoint (i)			<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</i>	<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</i>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<p><i>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 ⁽²²⁾ 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 transaction data concerning financial instruments;”</i></p>	<p><i>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 ⁽²²⁾ 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 transaction data concerning financial instruments;”</i> GREEN</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
56	Article 1 – point 1b (new) introd. part / Article 28 – paragraph 2			<i>(1b) Article 28(2) is replaced by the following:</i>	<i>(1b) Article 28(2) is replaced by the following:</i> GREEN
57	Article 1 – point 1b (new) / Article 28 – paragraph 2			<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 such benchmarks would</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 such benchmarks would be suitable alternatives. The supervised entities shall, upon request and without undue delay , provide the relevant competent authority with those plans and any updates and shall reflect them in the contractual relationship with clients. GREEN

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				<i>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>	
58	Article 1 – point 2 – introd. part / Article 23a	(2) the following Article 23a is inserted:	<u>(2) the following chapter is added:</u>	(2) the following Article is inserted:	(2) the following chapter is inserted: GREY
59	Article 1 – point 2 / Article 23a – title	<i>"Article 23a</i> Mandatory replacement of a benchmark	<u>"CHAPTER 4a</u> Replacement of a benchmark by legislation <i>Article 23a</i> <u>Mandatory replacement of a benchmark</u> <u>Replacement of a benchmark by EU legislation</u>	<i>"Article 28a</i> Mandatory replacement of a benchmark	<u>"CHAPTER 4a</u> Replacement of a benchmark by legislation <i>Article 23a</i> <u>Replacement of a benchmark by EU legislation</u> GREEN (note: LL to assess position chapter/title IVa)
59a					<i>(-1) This Article shall apply to:</i>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					<p><i>a. benchmarks designated as critical by an implementing act adopted in accordance with Article 20, paragraph 1(a) or 1(c) of this Regulation;</i></p> <p><i>b. benchmarks based on contribution <u>of input data</u> if their cessation would result in a significant disruption in the functioning of financial markets in the Union; and</i></p> <p><i>c. benchmarks administered in a third country if their cessation would result in a significant disruption in the functioning of financial markets <u>or pose a systemic risk for the financial system in the Union.</u></i></p> <p>GREEN</p>
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	<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</u>	(1) The Commission may designate <i>one or more</i> replacement benchmarks for a benchmark that will cease to be published where the cessation of <i>the</i> publication <i>of that</i>	(1) The Commission may designate one or more replacements for a benchmark provided any of the following events has occurred: GREEN

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		result in significant disruption in the functioning of financial markets in the Union and provided that any of the following events has occurred:	<u>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>	<i>benchmark</i> may result in significant <i>and adverse impacts on market integrity</i> , financial <i>stability and the real economy</i> in one <i>or more Member States</i> and provided that any of the following events has occurred:	
61	Article 1 – point 2 / Article 23a – paragraph 1 – point a	(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 cannot be restored through the exercise of any of the remedial powers	(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 cannot be restored through the exercise of any of the remedial powers referred to in Article 23. <u>In the case of a critical benchmark under points (a) and (c) of Article 20 (1) of</u>	(a) the competent authority for the administrator of that benchmark has <i>stated 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</i>	(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 cannot be restored. <u>In the case of a critical benchmark under points (a) and (c) of Article 20 (1), the above determinations shall be made by the competent authority of that critical benchmark only</u>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		referred to in Article 23;	<u>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>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>	<u>after the remedial powers set out in Article 23 have been applied exercised without leading to the restoration of the benchmark's capability to measure the underlying market or economic reality;</u> GREEN
62	Article 1 – point 2 / Article 23a – paragraph 1 – point b	(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 has ceased or will cease to provide the	(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 <u>will orderly wind down the benchmark has ceased</u> or will cease to provide the benchmark or <u>certain tenors or certain</u>	(b) the administrator of a benchmark, <i>or someone acting on behalf of the administrator</i> , has <i>stated publicly, by issuing</i> a public statement, or <i>publishing</i> information, that <i>the</i> administrator has ceased or will cease to provide the benchmark, permanently or indefinitely, provided that, at the time of the	(b) the administrator of a benchmark, <i>or someone acting 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, in which it is announced that that administrator <i>will commence the orderly winding down of the benchmark</i> has ceased or will cease to provide the benchmark or <u>certain tenors or</u>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		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;	<u>currencies in which the benchmark is calculated,</u> 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;	issuance of the statement or the publication of the information, there is no successor administrator that will continue to provide the benchmark;	<u>certain currencies in which the benchmark is calculated,</u> 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; GREEN
63	Article 1 – point 2 / Article 23a – paragraph 1 – point c	(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	(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 <u>will orderly wind down the benchmark has ceased</u> or will cease to provide that benchmark or <u>certain tenors or certain currencies</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 <i>stated publicly, by issuing</i> a <i>publishing</i> information, that the administrator of that benchmark has ceased or will cease 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 <u>will commence the orderly winding down of the benchmark</u> or will cease to provide that benchmark or <u>certain tenors or certain</u>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		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.	<u>in which the benchmark is calculated</u> 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;	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;	<u>currencies in which the benchmark is calculated</u> 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; GREEN
64	Article 1 – point 2 / Article 23a – paragraph 1 – point d (new)		<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</u>	<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>	<u>(d) the competent authority withdraws or suspends the authorization in accordance with Article 35, withdraws the recognition in accordance with Article 32(8) or ceases the endorsement in accordance with Article 33(6), 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> GREEN

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<u>that benchmark.</u>		
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 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:	(2) The replacement benchmark shall, by operation of law, replace all references to the benchmark <u>in contracts and financial instruments that are subject to Article 2(1a) of this Regulation, where all of the following conditions are fulfilled:</u>	(2) The replacement benchmark shall, by operation of law, replace all references to the benchmark in contracts <i>subject to Article 2(1a)</i> where all of the following conditions are fulfilled:	(2) For the purpose of paragraph 1, the replacement for a benchmark shall replace all references to that benchmark in contracts and financial instruments as referred to in Article 2(1a) where those financial instruments and contracts contain: GREEN
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) <u>the contracts or those</u> financial instruments; contracts and performance measurements reference the benchmark that has ceased to be published will cease or be <u>wound down,</u> on the date <u>when</u> the implementing act designating the replacement benchmark enters into force; <u>and</u>	(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) no fallback provision; GREEN
67	Article 1 –	(b) those financial	(b) <u>those contracts or</u>	(b) those financial	(b) no suitable fallback

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	point 2 / Article 23a – paragraph 2 – point b	instruments, contracts or performance measurements contain no suitable fall back provisions.	<u>financial instruments contain</u>	instruments, contracts or performance measurements contain no suitable fall back provisions.	provisions. GREEN
67a	Article 1 – point 2 / Article 23a – paragraph 3				3. For the purpose of point (b) of paragraph 2, fallback provisions shall be deemed unsuitable if: (a) they do not cover the permanent cessation of a reference benchmark; or (b) their application requires further consent from third parties that has been denied, or (c) its application no longer, or with significant difference, reflects the underlying market or the economic reality that the ceasing benchmark is intended to measure, and could have an adverse impact on financial stability. GREEN
67b	Article 1 – point 2 / Article 23a – paragraph 4				4. For the purposes of point c of paragraph 3, the following conditions have to be met: (a) the national relevant

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					<p>authority, based on a horizontal assessment of a specific type of contractual arrangement that has been performed following a motivated request of one or more of the interested parties, has established, after having consulted the relevant stakeholders, that the application of the fallback provision no longer reflect, fully or to a significant extent, the underlying market or the economic reality that the ceasing benchmark is intended to measure, and could have an adverse impact on financial stability.</p> <p>(b) following the assessment by the relevant national authority in accordance with point (a), one of the parties to the contract has objected to the contractually agreed fallback provision by 3 months before the permanent cessation of the publication of the benchmark;</p> <p>(c) the contracting parties</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					<p>have not agreed on an alternative fallback provision following the objection pursuant to point (b) by one working day before the permanent cessation of the publication of the benchmark. GREEN</p>
67c	<p>Article 1 – point 2 / Article 23a – paragraph 5</p>				<p>5. For the purposes of point (c) of paragraph 3, 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 and reach the assessment jointly. GREEN</p>
67d	<p>Article 1 – point 2 / Article 23a – paragraph 6</p>				<p>6. Member States shall designate a relevant authority, which is in the position which conducts the assessment in accordance with point (c) of paragraph 3. Member States shall inform the Commission and ESMA of the designation</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					of the relevant authorities pursuant to this paragraph by [6 months after entry into force of this Regulation]. GREEN
68	Article 1 – point 2 / Article 23a – paragraph 2 – point ba (new)		<u>(ba) no fallback provision or a fallback provision that does not cover the permanent cessation of a reference benchmark; or</u>	<i>(ba) a fallback provision shall not be deemed suitable where one of the following conditions is met:</i>	- GREEN
69	Article 1 – point 2 / Article 23a – paragraph 2 – point ba (new) – point a			<i>a) it does not cover the permanent cessation of a reference benchmark;</i>	- GREEN
70	Article 1 – point 2 / Article 23a – paragraph 2 – point ba (new) – point b			<i>b) any of the following conditions is fulfilled:</i>	- GREEN
71	Article 1 – point 2 / Article 23a – paragraph 2 – point ba (new) – point b – subpoint			<i>(i) there is no fallback rate,</i>	- GREEN

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><u>economic reality that the ceasing benchmark is intended to measure, and could have an adverse impact on financial stability;</u></p>	<p><i>underlying market or the economic reality that the ceasing benchmark is intended to measure, and could have an adverse impact on financial stability;</i></p>	
76	<p>Article 1 – point 2 / Article 23a – paragraph 2 – point bb (new) – subpoint (ii)</p>		<p><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></p>		- GREEN
77	<p>Article 1 – point 2 / Article 23a – paragraph 2 – point bb (new) – subpoint (iii)</p>		<p><u>(iii) the contracting parties 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</u></p>		- GREEN

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<u>winding down of the benchmark.</u>		
78	Article 1 – point 2 / Article 23a – paragraph 2 – subparagraph 2 (new)		<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>	<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>	- GREEN
79	Article 1 – point 2 / Article 23a – paragraph 2 – subparagraph 3 (new)		<u>Member States shall designate one or more 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</u>	<i>Member States shall designate one or more relevant authorities, which are in the position to conduct the assessment in accordance with point (c). Member States shall</i>	- GREEN

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p><u>the competent authorities pursuant to this paragraph by [6 months after entry into force of this Regulation].</u></p>	<p><i>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></p>	
80	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 1	<p>(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 the implementing act referred to in paragraph 1, the Commission shall take into account, where</p>	<p>(3) The Commission shall adopt an implementing act to designate one or more a replacement benchmarks 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 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</p>	<p>(3) The Commission shall adopt implementing acts to designate one or more replacement benchmarks 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 implementing act referred to in paragraph 1, the Commission shall take into account, where available, the</p>	<p>(3) The Commission shall adopt implementing acts to designate one or more replacements for a 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. GREEN (note: Council deletion and EP addition moved to line 86)</p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		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.	under the auspices of the central bank responsible for the currency in which the interest rates of the replacement benchmark are denominated.	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>	
81	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 2		<u>The implementing act shall include the following elements:</u>	<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> GREEN

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
82	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 2 – point (i)		<u>(i) the replacement benchmark</u>	<i>(i) the replacement for a benchmark or benchmarks;</i>	<i>(i) the replacement for a benchmark or benchmarks;</i> GREEN
83	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 2 – point (ii)		<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>	<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> GREEN
84	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph		<u>(iii) the corresponding essential conforming changes that are associated with and reasonably necessary for the</u>	<i>(iii) the corresponding essential conforming changes that are associated with and</i>	<i>(iii) the corresponding essential conforming changes that are associated with and reasonably necessary for the</i>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	2 – point (iii)		<u>use or application of a replacement benchmark;</u>	<i>reasonably necessary for the use or application of a replacement for a benchmark;</i>	<i>use or application of a replacement for a benchmark;</i> GREEN
85	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 2 – point (iv)		<u>(iv) the relevant date from which the replacement benchmark shall apply;</u>	<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> GREEN
86	Article 1 – point 2 / Article 23a – paragraph 3 – subparagraph 3		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 which the relevant benchmark which is to be wound down, or by the alternative reference rate working group operating</u>	recommendations <u>by relevant stakeholders and in particular</u> by private sector working groups operating under the auspices of <i>the public authorities or</i> the central bank	When adopting the implementing act, the Commission shall take into account, where available, 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 which the relevant benchmark which is to be wound down, or by the alternative reference rate working group in particular operating under the auspices

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<p>under the auspices of the central bank responsible for the currency in which the interest rates of the replacement benchmark are denominated. <u>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>of the public authorities or the central bank. 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. GREEN</p>
87	Article 1 – point 2 / Article 23a – paragraph 4	(4) Competent authorities of supervised entities using the benchmark designated by the Commission shall monitor whether the implementing acts adopted in accordance with paragraph 1 have minimised contract	(4) — Competent authorities of supervised 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	(4) Competent authorities of supervised 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	- GREEN

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		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.”	investments in the Union. They shall report to that effect to the Commission and to ESMA annually.”	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 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>		<u>(4a) Notwithstanding the provisions of Article 23a (4) (c), 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 instrument that is subject to Article 2(1a) have agreed to apply a different replacement benchmark before or after the entry into force of the implementing act.</u> GREEN

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88	Article 1 – point 2 / Article 23a – paragraph 4a (new)			<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>	- GREEN
89	Article 1 – point 2 / Article 23b (new) – title		<u>Article 23b – Replacement of a benchmark by national legislation</u>		<u>Article 23b – Replacement of a benchmark by national legislation</u> GREEN
90	Article 1 – point 2 / Article 23b (new) – paragraph 1		(1) <u>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</u>		(1) <u>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), provided that any of the</u>

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			<u>following events has occurred:</u>		<u>following events has occurred:</u> GREEN
91	Article 1 – point 2 / Article 23b (new) – paragraph 1 – point a		<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 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>		<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 cannot be restored. This determination shall be made by the competent authority only after the powers set out in Article 23 of this Regulation have been exercised without leading to the restoration of the benchmark’s capability to measure the underlying market or economic reality;</u> GREEN
92	Article 1 – point 2 / Article 23b (new) –		<u>(b) the administrator of a benchmark has issued a public statement, or has</u>		<u>(b) the administrator of a benchmark, or someone acting on behalf of the administrator</u>

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	paragraph 1 – point b		<p><u>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 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></p>		<p><u>has issued a public statement, or has published information, or such public statement has been made or such information has been published, in which it is announced that that administrator will <i>commence the orderly winding down of the benchmark or will cease to provide the benchmark or certain tenors 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;</i></u> GREEN</p>
93	Article 1 – point 2 /		<p><u>(c) _____ the competent authority for the</u></p>		<p><u>(c) _____ the competent authority for the</u></p>

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	Article 23b (new) – paragraph 1 – point c		<u>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 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>		<u>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 will commence the orderly winding down of the benchmark 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> GREEN
94	Article 1 – point 2 /		<u>(d) the competent authority withdraws the</u>		<u>(d) the competent authority withdraws or</u>

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	Article 23b (new) – paragraph 1 – point d		<u>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 benchmark.</u>		<u>suspends the authorization of the benchmark administrator according to Article 35, provided that, at the time of the withdrawal or suspension there is no successor administrator that will continue to provide that benchmark.</u> GREEN
95	Article 1 – point 2 / Article 23b (new) – paragraph 2		(2) <u>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>		(2) <u>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> GREEN
96	Article 1 – point 2 / Article 23b (new) – paragraph 3		(3) <u>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</u>		(3) <u>The replacement for a benchmark shall replace all references to that benchmark in contracts and financial instruments that are referred to in Article 2 (1a) where all of</u>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<u>this Regulation where all of the following conditions are fulfilled:</u>		<u>the following conditions are fulfilled:</u> GREEN
97	Article 1 – point 2 / Article 23b (new) – paragraph 3 – point a		<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>		<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> GREEN
98	Article 1 – point 2 / Article 23b (new) – paragraph 3 – point 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>		<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> GREEN
99	Article 1 – point 2 / Article 23b (new) – paragraph 4		<u>(4) The replacement benchmark designated by the Member State or competent authority in accordance with paragraph 1 shall not apply</u>		<u>(4) The replacement benchmark designated by the Member State or competent authority in accordance with paragraph 1 shall not apply</u>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			<u>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> ;		<u>where all parties or the required majority of a contract or financial instrument that is subject to Article 2(1a) have agreed to apply a different replacement benchmark before or after the entry into force of the national provision."</u> ; GREEN
100	Article 1 – point 3 (new) – introd. part / Article 29		<u>(3) in Article 29 the following paragraph is inserted:</u>	<i>(2a) In Article 29, the following paragraph is inserted:</i>	<i>(2a) In Article 29, the following paragraph is inserted:</i> GREEN
101	Article 1 – point 3 (new) / Article 29 – paragraph 1a (new)		<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 procedure set out in Chapter 4a and only applicable to those financial instruments, financial contracts and measurements of the</u>	<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 accordance with the procedure set out in Article 23a."</i>	“1a. A supervised entity may also use the replacement for a benchmark designated in accordance with the procedure in the Articles 23a or 23b in those contracts and financial instruments where references to the replacement originate from the statutory replacement.” GREEN

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			<u>performance of an investment fund which fulfil the requirements in Chapter 4a of this Regulation."</u>		
102	Article 1 – point 4 (new) – introd. part / Article 49		<u>(4) the Article 49 is amended as follows:</u>		<u>(4) the Article 49 is amended as follows:</u> GREY
103	Article 1 – point 4 (new) – point a – introd. part / Article 49		(a) the following paragraph is inserted:		(a) the following paragraph is inserted: GREY
104	Article 1 – point 4 (new) – point a / Article 49 – paragraph 2b (new)		(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].		(2b) The power to adopt delegated acts referred to in Articles 2(5) and 54(7) shall be conferred on the Commission for an indeterminate period of time from [insert date of entry into force]. GREY
105	Article 1 – point 4 (new) – point b – introd. part / Article 49 – paragraph 3		(b) paragraph 3 is replaced by the following:		(b) the following paragraph is inserted GREY
106	Article 1 – point 4 (new) – point b / Article 49 –		"3. The delegation of power referred to in <u>Articles 2(5)</u>,		"3a. The delegation of power referred to in Articles 2(5) and

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	paragraph 3		<p>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) 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.</p>		<p>54(7) 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."</p> <p>GREY</p>
107	<p>Article 1 – point 4 (new) – point c – introd. part / Article 49 – paragraph 6</p>		<p>(c) paragraph 6 is replaced by the following:</p>		<p>(c) the following paragraph is added</p> <p>GREY</p>
108	<p>Article 1 – point 4 (new) – point c / Article 49 – paragraph 6</p>		<p>"6. A delegated act adopted pursuant to <u>Article 2(5)</u>, 3(2), 13(2a), 19a(2), 19c(1), 20(6),</p>		<p>"6a. A delegated act adopted pursuant to Article 2(5), or 54(7) shall enter into force</p>

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Article 51 – paragraph 5		<p><u>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 benchmark</u></p>		<p><i>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 benchmark prior to 31 December 2023.</i></p> <p>The transitional provision foreseen in the first subparagraph shall not apply to benchmarks provided by</p>

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			<u>prior to, 31 December 2025.”;</u>		administrators who relocate from the EU to a third country during the transitional period. The national competent authority shall notify ESMA in accordance to Article 35. ESMA shall draw up a list of third country benchmarks where the transitional provision does not apply.”; BLUE
109a	Article 1 – point 6 (new) – introd. part / Article 54				<u>(6) in Article 54, paragraph 6 is replaced by the following:</u> BLUE
109b	Article 1 – point 6 (new) – introd. part / Article 54				“6. By 15 June 2023, the Commission shall submit a report to the European Parliament and to the Council on the scope of this Regulation, in particular with respect to the continued use by supervised entities of benchmarks administered in third countries and on potential shortcomings of the current framework. That

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					<p>report shall assess in particular whether there is a need to amend this Regulation in order to reduce its scope to the provision of certain categories of benchmarks or to the provision of benchmarks that are widely used in the Union. The report shall be accompanied by a legislative proposal, if appropriate.”; BLUE</p>
111	Article 1 – point 6 (new) – introd. part / Article 54		<u>(6) in Article 54, the following paragraph is added:</u>		=
112	Article 1 – point 6 (new) / Article 54 – paragraph 7 (new)		<u>“7. By 31 December 2027, the Commission shall review the functioning of the exemptions laid down in Article 2(2)(i).”.</u>		“7. The Commission shall be empowered to adopt a delegated act in accordance with Article 49 by 15 June 2023 in order to extend the transitional period referred to in Article 51(5) until 31 December 2025 at the latest, if the report referred to in paragraph 6 provides evidence that, otherwise, the use in the

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					Union of certain third country benchmarks by supervised entities would be significantly impaired.” BLUE
113				<i>Article 1a</i> <i>Amendment to Regulation (EU) No 648/2012</i>	<i>Article 1a</i> <i>Amendment to Regulation (EU) No 648/2012</i> GREEN
114	Article 1a (new) – introd. part / Article 13a			<i>Article 13a of Regulation (EU) No 648/2012 is replaced by the following:</i>	<i>Article 13a of Regulation (EU) No 648/2012 is replaced by the following:</i> GREEN
115	Article 1a (new) / Article 13a – title			<i>“Article 13a</i> <i>Replacement of interest rate benchmarks and embedding contractual fall-backs in legacy trades</i>	<i>“Article 13a</i> <i><u>Amendments to legacy contracts for the purpose of the implementation of benchmark reforms</u></i> GREEN
116	Article 1a (new) / Article 13a – paragraph 1			<i>1. Counterparties as referred to in Article 11(3) may continue to apply the risk-management procedures</i>	<u>1. Counterparties may continue to apply the risk-management procedures as referred to in Article 11(3) in place at the date of application of this Regulation</u>

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				<p><i>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 introducing fall-back provisions in relation to any benchmark referred to in the transaction.</i></p>	<p><u>in respect of OTC derivative contracts not cleared by a CCP 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 application of this Regulation, those contracts are subsequently amended, or novated for the sole purpose of replacing a reference benchmark or introducing fall-back provisions in relation to any benchmark referred to in that contract.</u> GREEN</p>

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117	Article 1a (new) / Article 13a – paragraph 2			<p><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 clearing obligation referred to in Article 4.”</i></p>	<p><u>2. Contracts 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 amended for the sole purpose of replacing a reference benchmark or introducing fall-back provisions in relation to any benchmark referred to in that contract, shall not, for that reason, become subject to the clearing obligation referred to in Article 4.'</u> GREEN</p>
117+					<p><u>3. Paragraphs 1 and 2 of this Article apply only to OTC derivative contracts that are amended or novated that</u></p>

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					<p><u>(a) are necessary to address benchmark replacements due to benchmark reforms,</u> <u>(b) do not change the economic substance or risk factor represented by the benchmark of the contract and</u> <u>(c) do not encompass other changes to that contract relating to any legal terms that do not refer to the reference benchmark and thus potentially amend the contract in a way that effectively requires its treatment as a new contract.</u> GREEN</p>
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	This Regulation shall be binding in its entirety and	This Regulation shall be binding in its entirety and	This Regulation shall be binding in its entirety and directly

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		and directly applicable in all Member States.	directly applicable in all Member States.	directly applicable in all Member States.	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