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.

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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	Proposal for a	Proposal for a	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	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	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 and amending Regulation (EU) No 648/2012	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)</i> <i>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	THE EUROPEAN	THE EUROPEAN	THE EUROPEAN
		PARLIAMENT AND	PARLIAMENT AND THE	PARLIAMENT AND	PARLIAMENT AND THE
		THE COUNCIL OF	COUNCIL OF THE	THE COUNCIL OF THE	COUNCIL OF THE

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		THE EUROPEAN	EUROPEAN UNION,	EUROPEAN UNION,	EUROPEAN UNION,
		UNION,			GREEN
5	Citation 1	Having regard to the	Having regard to the Treaty on	Having regard to the	Having regard to the Treaty on
		Treaty on the	the Functioning of the	Treaty on the Functioning	the Functioning of the European
		Functioning of the	European Union, and in	of the European Union,	Union, and in particular Article
		European Union, and in	particular Article 114 thereof,	and in particular Article	114 thereof,
		particular Article 114		114 thereof,	GREEN
		thereof,			
6	Citation 2	Having regard to the	Having regard to the proposal	Having regard to the	Having regard to the proposal
		proposal from the	from the European	proposal from the	from the European Commission,
		European Commission,	Commission,	European Commission,	GREEN
7	Citation 3	After transmission of	After transmission of the draft	After transmission of the	After transmission of the draft
		the draft legislative act	legislative act to the national	draft legislative act to the	legislative act to the national
		to the national	parliaments,	national parliaments,	parliaments,
		parliaments,			GREEN
8	Citation 3a			Having and to the	Having and to the opinion of
o	(new)			Having regard to the	Having regard to the opinion of
				opinion of the European	the European Central Bank,
9	Citation 4	TT 1 1 1		Central Bank,	GREY
9	Citation 4	Having regard to the	Having regard to the opinion of	Having regard to the	Having regard to the opinion of
		opinion of the European	the European Economic and	opinion of the European	the European Economic and
		Economic and Social	Social Committee ² ,	Economic and Social	Social Committee ⁴ ,

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

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		currency, such as the	the euro. The unavailability of	dollar or the euro. The	The unavailability of foreign
		dollar or the euro. The	foreign currency spot	unavailability of foreign	currency spot exchange rates
		unavailability of foreign	exchange rates <u>spot</u>	currency spot exchange	spot foreign exchange
		currency spot exchange	foreign exchange benchmarks	rates to calculate the pay-	benchmarks to calculate the
		rates to calculate the	to calculate the pay-outs due	outs due under currency	pay-outs due under currency
		pay-outs due under	under currency forwards and	forwards and swaps	forwards and swaps
		currency forwards and	swaps derivatives would have	would have a negative	derivatives would have a
		swaps would have a	a negative effect on companies	effect on companies in	negative effect on companies in
		negative effect on	in the Union that export to	the Union that export to	the Union that export to
		companies in the Union	emerging markets or hold	emerging markets or hold	emerging markets or hold assets
		that export to emerging	assets or liabilities in those	assets in those markets,	or liabilities in those markets,
		markets or hold assets	markets, with consequent	with consequent exposure	with consequent exposure to
		in those markets, with	exposure to fluctuations of	to fluctuations of	fluctuations of emerging market
		consequent exposure to	emerging market currencies.	emerging market	currencies. Following the
		fluctuations of	Following the expiration of the	currencies. Following the	expiration of the transitional
		emerging market	transitional period set out in	expiration of the	period set out in Regulation
		currencies. Following	paragraphs 4a and 4b	transitional period set out	(EU) 2016/1011 of the European
		the expiration of the	paragraph 5 of Article 51 of	in paragraph 5 of	Parliament and of the Council ⁸ ,
		transitional period set	Regulation (EU) 2016/1011 of	Article 51 of Regulation	the use of spot foreign
		out in paragraphs 4a	the European Parliament and of	(EU) 2016/1011 of the	exchange rates <u>spot foreign</u>
		and 4b of Article 51 of	the Council ⁶ , the use of spot	European Parliament and	exchange benchmarks
		Regulation (EU)	foreign exchange rates <u>spot</u>		provided by a third country

 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

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	foreign exchange benchmarks	of the Council ⁷ , the use of	administrator other than a
		European Parliament	provided by a third country	spot foreign exchange	central bank will no longer be
		and of the Council ⁵ , the	administrator other than a	rates provided by a third	possible.
		use of spot foreign	central bank will no longer be	country administrator	GREY
		exchange rates provided	possible.	other than a central bank	
		by a third country		will no longer be	
		administrator other than		possible.	
		a central bank will no			
		longer be possible.			
13	Recital 2	(2) In order to	(2) In order to enable	(2) In order to enable	(2) In order to enable
		enable companies in the	companies in the Union to	companies in the Union	companies in the Union to
		Union to continue their	continue their business	to continue their business	continue their business activities
		business activities while	activities while mitigating	activities while mitigating	while mitigating foreign
		mitigating foreign	foreign exchange risk, <u>certain</u>	foreign exchange risk,	exchange risk, <u>certain</u> spot
		exchange risk, spot	spot exchange rates<u> spot</u>	spot exchange rates	exchange rates spot foreign
		exchange rates referred	foreign exchange benchmarks	referred to in non-	exchange benchmarks
		to in non-deliverable	referred used to in financial	deliverable forwards or	referred used to in financial
		forwards or swaps to	instruments to calculate	swaps to calculate	instruments to calculate
		calculate contractual	contractual pay-outs that are	contractual pay-outs	contractual pay-outs that are
		pay-outs should be	designated by the	should be excluded from	designated by the Commission
		excluded from the scope	Commission in accordance	the scope of Regulation	in accordance with certain
		of Regulation (EU)	with certain criteria should be	(EU) 2016/1011.	criteria 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		from the scope of Regulation
			Regulation (EU) 2016/1011.		(EU) 2016/1011.
					GREY
14	Recital 3	(3) In order to	(3) In order to designate	(3) In order to	(3) In order to designate
		designate certain third	certain third country spot	designate certain third	certain third country spot
		country spot exchange	exchange rates<u></u> spot	country spot exchange	exchange rates spot
		rates as being excluded	foreign exchange benchmarks	rates as being excluded	foreign exchange benchmarks
		from the scope of	as being excluded from the	from the scope of	as being excluded from the
		Regulation (EU)	scope of Regulation (EU)	Regulation (EU)	scope of Regulation (EU)
		2016/1011, the power to	2016/1011, the power to adopt	2016/1011, the power to	2016/1011, the power to adopt
		adopt acts in accordance	acts in accordance with Article	adopt acts in accordance	acts in accordance with Article
		with Article 290 of the	290 of the Treaty on the	with Article 290 of the	290 of the Treaty on the
		Treaty on the	Functioning of the European	Treaty on the Functioning	Functioning of the European
		Functioning of the	Union should be delegated to	of the European Union	Union should be delegated to the
		European Union should	the Commission in respect of	should be delegated to the	Commission in respect of the
		be delegated to the	the exemption of foreign spot	Commission in respect of	exemption of foreign spot
		Commission in respect	exchange rate spot	the exemption of foreign	exchange rate spot
		of the exemption of	foreign exchange benchmarks	spot exchange rate for	foreign exchange benchmarks
		foreign spot exchange	for non-convertible currencies	non-convertible	for non-convertible currencies
		rate for non-convertible	when <u>that</u> the spot exchange	currencies when that the	when <u>that</u> the spot exchange
		currencies when that the	rate spot foreign exchange	spot exchange rate is used	rate spot foreign exchange
		spot exchange rate is	benchmark is used for	for calculating the pay-	benchmark is used for
		used for calculating the	calculating the pay-outs that	outs that arise under non-	calculating the pay-outs that
		pay-outs that arise	arise under non-deliverable	deliverable currency	arise under non-deliverable
		under non-deliverable	currency forwards or swaps	forwards or swaps. It is of	currency forwards or swaps
		currency forwards or	<u>foreign spot <u>e</u>xchange</u>	particular importance that	<u>foreign spot exchange</u>

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		have access to meetings of Commission expert groups dealing with the preparation of delegated acts.		acts.	
15	Recital 3a (new)			(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	(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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				by this Regulation and	the regulatory regime for
				that the use by Union	financial benchmarks in the
				market participants of	Union and in third countries,
				benchmarks	and to ensure the smooth
				administered in a	functioning of the market and
				country outside the	the availability of third
				Union would be ensured	country benchmarks for use
				by equivalence or	in the Union after the end of
				endorsement decisions	the transitional period on 31
				taken by the	December 2021, the
				Commission, thus	Commission should present a
				safeguarding legal	report on the review, by 15
				certainty. Nonetheless,	June 2023, of the current
				little progress was made	provisions on the scope with
				in that regard.	particular regard to its effect
				Considering the disparity	on the use in the Union of
				and intensity that exists	third country benchmarks. In
				between the regulation of	particular, the Commission
				financial benchmarks for	should analyse the
				use in the Union and in	consequences of the far-
				third countries, and to	reaching scope of such
				ensure the smooth	Regulation for EU
				function of the market	administrators and users of
				and the availability of	benchmarks also with respect
				third country	to the continued use of
				benchmarks for use in	benchmarks administered in

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				the Union after the end	third countries. The
				of December 2021, the	Commission should assess in
				Commission should	particular whether there is a
				review, by 30 June 2021,	need to amend Regulation
				the current provisions on	(EU) 2016/1011 in order to
				third country regime of	reduce its scope only to
				Regulation (EU)	administrators of certain
				2016/1011 by means of a	categories of benchmarks or
				delegated act to	to administrators whose
				overcome current	benchmarks are widely used
				obstacles and be given, if	in the Union.
				appropriate, additional	
				powers on the	(3b) Considering the need to
				endorsement of third	undertake a thorough review
				countries benchmarks or	of the scope and the
				family of benchmarks.	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

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					of the transitional period
					would be detrimental for the
					continued use of third
					country benchmarks in the
					Union.
					(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.
					BLUE
16	Recital 4	(4) The UK	(4) <u>As of the end of the</u>	(4) <i>Following the</i>	(4) <u>As of the end of the</u>
		Financial Conduct	transition period for the	withdrawal of the United	transition period for the

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		Authority (FCA) has	United Kingdom's	Kingdom from the	United Kingdom's withdrawal
		announced it will stop	withdrawal from the Union	European Union, the	from the Union on
		supporting the	<u>on 31 December 2021 2020,</u>	London Interbank	31 December 2020, the interest
		production of one of the	the interest rate benchmark	Offered Rate (LIBOR)	rate benchmark London
		most important interest	London Interbank Offered	will cease to qualify as a	Interbank Offered Rate
		rate benchmarks, the	Rate (LIBOR) will no longer	critical benchmark as of	(LIBOR) no longer qualifies as
		London Interbank	qualify as a critical	the end of the transition	a critical benchmark under
		Offered Rate (LIBOR)	benchmark under Regulation	period on 31 December	<u>Regulation (EU) 2016/1011</u> .
		by the end of 2021. As	(EU) 2016/1011. The UK	2020. In addition, the UK	The UK Financial Conduct
		of the end of the	Financial Conduct Authority	Financial Conduct	Authority (FCA) has announced
		transition period for the	(FCA) has announced <u>that it</u>	Authority (FCA) has	that it will not persuade or
		United Kingdom's	will not persuade or compel	announced it will stop	compel panel banks to submit
		withdrawal from the	panel banks to submit to	encouraging or	to LIBOR beyond the end of
		Union on 31 December	LIBOR beyond the end of	compelling banks to	2021 which increases the risk
		2021, LIBOR will no	2021 which increases the risk	contribute to LIBOR	that one of the most important
		longer qualify as a	it will stop supporting <u>that</u>	thereby creating a	interest rate benchmarks, will
		critical benchmark. The	the production of one of the	substantial risk of	<u>most likely be wound down</u> by
		cessation of LIBOR	most important interest rate	cessation of one of the	the end of 2021. The winding
		may nevertheless result	benchmarks, the London	most important interest	down of LIBOR may
		in negative	Interbank Offered Rate	rate benchmarks, by the	nevertheless result in negative
		consequences that	(LIBOR) will most likely be	end of 2021. The	consequences that produce
		produce significant	wound down by the end of	cessation of LIBOR may	significant disruption in the
		disruption in the	2021. As of the end of the	nevertheless result in	functioning of financial markets
		functioning of financial	transition period for the	negative consequences	in the Union. In the Union there
		markets in the Union. In	United Kingdom's	that produce significant	is a stock of contracts in the
		the Union there is a	withdrawal from the Union	disruption in the	areas of debt, loans, term

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

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			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.		
17	Recital 5	(5) To be able to	(5) To be able to provide	(5) Article 28(2) of	(5) To be able to provide for
		provide for an orderly	for an <u>the</u> orderly <u>winding</u>	Regulation 2016/1011	an the orderly winding down of
		wind down of contracts	down of contracts that	requires supervised	a widely used benchmark the
		that reference a widely	reference a widely used	entities other than	cessation <u>of which</u> may result in
		used benchmark the	benchmark the cessation <u>of</u>	benchmark	negative consequences that
		cessation of which may	which may result in negative	administrators to have	produce significant disruption in
		result in negative	consequences that produce	contingency plans in	the functioning of financial
		consequences that	significant disruption in the	place in case a	markets in the Union and where
		produce significant	functioning of financial	benchmark changes	such contracts or financial
		disruption in the	markets in the Union and	materially or ceases to be	instruments as defined in
		functioning of financial	where such contracts <u>or</u>	provided. If possible,	Directive 2014/65/EU cannot be
		markets in the Union	<u>financial instruments as</u>	those contingency plans	renegotiated to include a
		and where such	defined in Directive	should identify one or	contractual fallback provision
		contracts cannot be	<u>2014/65/EU</u> cannot be	more potential	by the time of that benchmark's
		renegotiated to include	renegotiated to include a	replacement	cessation, a framework
		a contractual fall-back	contractual fallback provision	benchmarks. That	accompanying the cessation <u>or</u>
		rate by the time of that	by the time of that benchmark's	decentralised, non-	the orderly winding down of
		benchmark's cessation,	cessation, a framework	legislative method should	such benchmarks should be laid

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		a framework	accompanying the cessation <u>or</u>	remain the default	down. That framework should
		accompanying the	orderly winding down of such	method for provisioning	comprise a mechanism aimed at
		cessation of such	benchmarks should be laid	in the event of a	transitioning such contracts or
		benchmarks should be	down. That framework should	benchmark cessation,	financial instruments as
		laid down. That	comprise a mechanism aimed	but the LIBOR case has	defined in Directive
		framework should	at transitioning such contracts	shown that, in practice,	2014/65/EU to designated
		comprise a mechanism	or financial instruments as	that method might not	replacement benchmarks.
		aimed at transitioning	defined in Directive	always be sufficient.	Replacement benchmarks should
		such contracts to	<u>2014/65/EU to suitable</u>	Therefore, to ensure an	ensure avoiding contract
		suitable replacement	designated replacement	orderly wind down of	frustration which may result in
		benchmarks.	benchmarks. Replacement	contracts that reference a	negative consequences that
		Replacement	benchmarks should ensure	widely used benchmark	produce significant disruption in
		benchmarks should	avoiding contract frustration	the cessation of which	the functioning of financial
		ensure avoiding	which may result in negative	may result in negative	markets in the Union.
		contract frustration	consequences that produce	consequences that	GREY
		which may result in	significant disruption in the	produce significant	
		negative consequences	functioning of financial	disruption in the	
		that produce significant	markets in the Union.	functioning of financial	
		disruption in the		markets in the Union and	
		functioning of financial		where such contracts	
		markets in the Union.		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	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				provides for mandatory	
				public designation of a	
				replacement benchmark.	
				That method 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.	
				markets in the Omon.	
17a	Recital 5a				Article 28(2) of Regulation
	(new)				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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					replacement benchmarks. 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." BLUE
18	Recital 5a (new)		(5a)The absence of a mechanism within thisRegulation to organise the orderly winding down of a benchmark would likely result in heterogeneous legislative solutions by Member States. Hence,		(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,

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			European stakeholders are		European stakeholders would
			exposed to risks from the		be exposed to risks from the
			diverging implementation of		diverging implementation of
			national laws. Along with the		national laws. Along with the
			outstanding exposure and		outstanding exposure and
			stock of contracts and		stock of contracts and
			financial instruments as		financial instruments as
			defined in Directive		defined in Directive
			2014/65/EU, the increased		2014/65/EU, the increased
			<u>likelihood of contractual</u>		likelihood of contractual
			frustration and the increased		frustration and the increased
			risk of litigation could lead to		risk of litigation could lead to
			significant disruptions in the		significant disruptions in the
			functioning of financial		functioning of financial
			markets. Due to the		markets. Due to the
			extraordinary circumstances		extraordinary circumstances
			and systemic risks, it is		and systemic risks, it is
			necessary to establish a		necessary to establish a
			harmonised approach for		harmonised approach to deal
			critical benchmarks and		with the cessation or winding
			third country benchmarks		down of certain benchmarks
			with systemic relevance for		with systemic relevance for the
			the Union. Member States		<u>Union.</u>
			competencies with regards to		GREY
			significant and non-		
			significant benchmarks are		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			not affected by this		
			Regulation.		
19	Recital 6	(6) In order to	(6) In order to ensure	(6) In order to ensure	(6) In order to ensure
		ensure uniform	uniform conditions for the	uniform conditions for	uniform conditions for the
		conditions for the	implementation of this	the implementation of	implementation of this
		implementation of this	Regulation, implementing	this Regulation,	Regulation, implementing
		Regulation,	powers should be conferred on	implementing powers	powers should be conferred on
		implementing powers	the Commission to designate a	should be conferred on	the Commission to designate a
		should be conferred on	replacement benchmark to	the Commission to	replacement for a benchmark to
		the Commission to	replace all references to the	designate a replacement	replace all references to that
		designate a replacement	benchmark in cessation or	benchmark to be used for	benchmark in cessation or
		benchmark to be used	<u>being wound down</u> be used	the winding down of	being wound down be used for
		for the winding down of	for the winding down of in	contracts that have not	the winding down of in
		contracts that have not	contracts or financial	been renegotiated by the	contracts or financial
		been renegotiated by the	instruments as defined in	date the benchmark in	instruments as defined in
		date the benchmark in	Directive 2014/65/EU that	cessation is no longer	Directive 2014/65/EU that have
		cessation is no longer	have not been renegotiated by	published. Those powers	not been renegotiated by the
		published. Those	the date of the entry into force	should be exercised in	date of the entry into force of the
		powers should be	of the implementing act the	accordance with	implementing act the
		exercised in accordance	benchmark in cessation is no	Regulation (EU)	benchmark in cessation is no
		with Regulation (EU)	longer published. Those	No 182/2011 of the	longer published. Those powers
		No 182/2011 of the	powers should be exercised in	European Parliament and	should be exercised in
		European Parliament	accordance with Regulation	of the Council ¹¹ . Legal	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 .	(EU) No 182/2011 of the	certainty requires that the	(EU) No 182/2011 of the
		Legal certainty requires	European Parliament and of the	Commission exercises	European Parliament and of the
		that the Commission	Council ¹⁰ . Legal certainty	those implementing	Council ¹² . Legal certainty
		exercises those	requires that the Commission	powers only upon	requires that the Commission
		implementing powers	exercises those implementing	precisely defined trigger	exercises those implementing
		only upon precisely	powers only upon precisely	events clearly	powers only upon precisely
		defined trigger events	defined trigger events clearly	demonstrating that	defined trigger events clearly
		clearly demonstrating	demonstrating that	administration and	demonstrating that
		that administration and	administration and publication	publication of the	administration and publication
		publication of the	of the benchmark to be	benchmark to be replaced	of the benchmark to be replaced
		benchmark to be	replaced will cease	will cease permanently.	will cease permanently.
		replaced will cease	permanently. Those powers		GREY
		permanently.	should be conferred on the		
			Commission for critical		
			benchmarks under		
			<u>Regulation (EU) 2016/1011</u>		
			and for third country		
			benchmarks with systemic		
			relevance for the Union.		
20	Recital 6a		(6a) Similar negative		(6a) Similar negative
	(new)				

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
			consequences may arise from		consequences may arise from
			contracts or financial		contracts or financial
			instruments which are by		instruments which are by
			definition outside of the scope		definition outside of the scope
			of Regulation (EU)		of Regulation (EU) 2016/1011,
			2016/1011, but which		but which reference
			reference benchmarks that		benchmarks that are under
			are under cessation or are		cessation or are being wound
			being wound down. In the		down. In the same way, many
			same way, many entities use		entities use such benchmarks
			such benchmarks but do not		but do not qualify as
			qualify as supervised entities.		supervised entities.
			Consequently, those contracts		Consequently, those contracts
			and contractual parties		and contractual parties would
			would not benefit from-a the		<u>not benefit from-a the</u>
			replacement of a benchmark.		replacement of a benchmark.
			In order to mitigate potential		In order to mitigate potential
			impacts on market integrity		impacts on market integrity
			and financial stability as far		and financial stability as far as
			as possible and to provide		possible and to provide
			protection against legal		protection against legal
			uncertainty, the mandate of		uncertainty, the mandate of
			the Commission to designate		the Commission to designate a
			a replacement benchmark		replacement benchmark
			should apply to any contract		should apply to any contract
			or any financial instrument		or any financial instrument as

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			as defined in Directive		defined in Directive
			<u>2014/65/EU</u> that is subject to		2014/65/EU that is subject to
			the law of a Member State. In		the law of a Member State. In
			addition, the designated		addition, the designated
			replacement benchmark		replacement benchmark
			should also apply to contracts		should also apply to contracts
			that are subject to the law of		that are subject to the law of a
			<u>a</u> third country that have		third country that have been
			been entered into between		entered into between
			contractual parties		contractual parties established
			established in the Union in		in the Union in cases where the
			cases where the contract		contract meets the
			meets the requirements of		requirements of this
			this Regulation and where the		Regulation and where the law
			law of the third country does		of that third country does not
			not provide for an orderly		provide for an orderly wind
			wind down of a benchmark.		down of a benchmark. This
			This extension should not		extension should not affect the
			affect the remaining		remaining provisions of
			provisions of Regulation (EU)		Regulation (EU) 1011/2016.
			<u>1011/2016.</u>		GREY
20a	Recital 6b				(9) Use of that replacement
	(new)				benchmark should be allowed
					only for <u>The</u> application of the
					replacement for a benchmark
					by operation of law should be

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					restricted to contracts or
					financial instruments as
					defined in Directive
					<u>2014/65/EU</u> that have <u>not been</u>
					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. The use of
					the replacement benchmark
					designated by the Commission
					should therefore be restricted to
					contracts or financial
					instruments as defined in
					Directive 2014/65/EU already
					entered into by supervised
					entities at the moment of the
					entry into force of the
					implementing act designating
					the replacement benchmark.

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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 financial
					instruments as defined in
					Directive 2014/65/EU that
					already provide a <u>suitable</u>
					contractual fallback provision
					which addresses the
					permanent cessation of a
					<u>benchmark.</u>
					GREY
21	Recital 6b		(6b) The replacement		(6b) The adoption by the
	(new)		benchmark designated by the		Commission of a replacement
			Commission should not apply		for a benchmark should not
			where all parties have agreed		prevent parties to a contract
			to apply before or after the		from agreeing to apply a
			entry into force of the		different replacement for that
			implementing act a different		<u>benchmark.</u>
			<u>contractual fallback</u>		GREY
			provision.		
22	Recital 7	(7) Where	(7) Where necessary, the	(7) Where necessary,	-
		necessary, the	Commission should, at the	the Commission should,	GREY
		Commission should, at	appropriate moment, adopt a	at the appropriate	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		the appropriate moment,	recommendation encouraging	moment, adopt a	
		adopt a	Member States to designate,	recommendation	
		recommendation	by virtue of national laws, a	encouraging Member	
		encouraging Member	replacement rate for the	States to designate, by	
		States to designate, by	benchmark in cessation for	virtue of national laws, a	
		virtue of national laws,	contracts entered into by	replacement rate for the	
		a replacement rate for	entities that are not	benchmark in cessation	
		the benchmark in	supervised entities subject to	for contracts entered into	
		cessation for contracts	Regulation (EU) 2016/1011.	by entities that are not	
		entered into by entities	In order to account for the	supervised entities subject	
		that are not supervised	interconnectedness of	to Regulation (EU)	
		entities subject to	contracts, the Commission	2016/1011. In order to	
		Regulation (EU)	should have the possibility to	account for the	
		2016/1011. In order to	recommend that the national	interconnectedness of	
		account for the	replacement rates should be	contracts, the	
		interconnectedness of	identical to the replacement	Commission should have	
		contracts, the	rate it designates for	the possibility to	
		Commission should	contracts entered into by	recommend that the	
		have the possibility to	supervised entities.	national replacement rates	
		recommend that the		should be identical to the	
		national replacement		replacement rate it	
		rates should be identical		designates for contracts	
		to the replacement rate		entered into by	
		it designates for		supervised entities.	
		contracts entered into			
		by supervised entities.			

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23	Recital 8	(8) The	(8) The Commission	(8) The Commission	(8) The Commission should
		Commission should	should exercise its	should exercise its	exercise its implementing
		exercise its	implementing powers only in	implementing powers	powers only in situations where
		implementing powers	situations where it assesses	only in situations where it	it assesses that the cessation or
		only in situations where	that the cessation <u>or wind</u>	assesses that the cessation	winding down of a benchmark
		it assesses that the	<u>down</u> of a benchmark may	of a benchmark may	may result in negative
		cessation of a	result in negative	result in negative	consequences that produce
		benchmark may result	consequences that produce	consequences that	significant disruption in the
		in negative	significant disruption in the	produce significant	functioning of financial markets
		consequences that	functioning of financial	disruption in the	or the real economy in the
		produce significant	markets in the Union. The	functioning of financial	Union. The Commission should
		disruption in the	Commission should also	markets and the real	also exercise its implementing
		functioning of financial	exercise its implementing	economy in the Union.	powers only where it has
		markets in the Union.	powers only where it has	The Commission should	become clear that the
		The Commission should	become clear that the	also exercise its	representativeness of the
		also exercise its	representativeness of the	implementing powers	benchmark concerned cannot be
		implementing powers	benchmark concerned cannot	only where it has become	restored or that the benchmark
		only where it has	be restored or that the	clear that the	will no longer be published on a
		become clear that the	benchmark will no longer be	representativeness of the	permanent basis.
		representativeness of	published on a permanent	benchmark concerned	GREY
		the benchmark	basis.	cannot be restored or that	
		concerned cannot be		the benchmark will no	
		restored or that the		longer be published on a	
		benchmark will no		permanent basis.	
		longer be published on			
		a permanent basis.			

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
24	Recital 8a		(8a) It should be incumbent		(8a) Contracting parties are
	(new)		on the contracting parties to		responsible for analysing their
			<u>analyse their private law</u>		private law contractual
			contractual arrangement to		arrangement to determine
			determine which situations a		which situations a contractual
			<u>contractual fallback</u>		fallback provision intends to
			provision intends to cover. If		cover. If the interpretation of a
			the interpretation of a		contract or financial
			contract or financial		instrument as defined in
			instrument as defined in		Directive 2014/65/EU reveals
			Directive 2014/65/EU reveals		that the parties did not intend
			that the parties did not intend		to cover the permanent
			to cover the permanent		cessation of a chosen
			cessation of a chosen		benchmark, the statutory
			benchmark, the statutory		replacement benchmark that
			replacement benchmark that		is designated in accordance
			is designated in accordance		with the provision of this
			with the provision of this		Regulation should provide a
			Regulation should provide a		safe harbour to address the
			safe harbour to address the		permanent cessation.
			permanent cessation.		GREY
25	Recital 9	(9) Use of that	(9) Use of that	(9) Use of that	-
		replacement benchmark	replacement benchmark	replacement benchmark	GREY (Moved to 6b line 20a)
		should be allowed only	should be allowed only for	should be allowed only	
		for contracts that have	The application of the	for contracts that have not	
		not been renegotiated	replacement benchmark by	been renegotiated prior to	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		prior to the cessation	operation of law should be	the cessation date of the	
		date of the benchmark	restricted to contracts or	benchmark concerned.	
		concerned. The use of	financial instruments as	The use of the	
		the replacement	defined in Directive	replacement benchmark	
		benchmark designated	<u>2014/65/EU</u> that have <u>not been</u>	designated by the	
		by the Commission	renegotiated prior to the	Commission should	
		should therefore be	cessation date of the	therefore be restricted to	
		restricted to contracts	benchmark concerned.	contracts already entered	
		already entered into by	Where master contracts are	into by supervised entities	
		supervised entities at	used, the replacement	at the moment of the	
		the moment of the entry	benchmark will apply only to	entry into force of the	
		into force of the	transactions entered into	implementing act	
		implementing act	prior to the relevant	designating the	
		designating the	<u>replacement date, even</u>	replacement benchmark.	
		replacement	though later transactions	Furthermore, considering	
		benchmark.	might technically be part of	that such implementing	
		Furthermore,	the same contracts. The use of	act is aimed at ensuring	
		considering that such	the replacement benchmark	contract continuity, the	
		implementing act is	designated by the Commission	designation of the	
		aimed at ensuring	should therefore be restricted to	replacement benchmark	
		contract continuity, the	contracts or financial	should not affect	
		designation of the	instruments as defined in	contracts that already	
		replacement benchmark	Directive 2014/65/EU already	provide a suitable	
		should not affect	entered into by supervised	contractual fall back	
		contracts that already	entities at the moment of the	provision.	
		provide a suitable	entry into force of the		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		contractual fall back	implementing act designating		
		provision.	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 financial		
			instruments as defined in		
			Directive 2014/65/EU that		
			already provide a suitable		
			contractual <u>fallback</u> provision		
			which addresses the		
			permanent cessation of a		
			benchmark.		
26	Recital 10	(10) In exercising its	(10) In <u>Before</u> exercising its	(10) In exercising its	(10) In <u>Before</u> exercising its
		implementing powers to	implementing powers to	implementing powers to	implementing powers to
		designate a replacement	designate a replacement	designate a replacement	designate a replacement
		benchmark, the	benchmark, the Commission	benchmark, the	benchmark, the Commission
		Commission should	should conduct a public	Commission should take	should conduct a public
		take into account	consultation and should take	into account	consultation and should take
		recommendations by	into account recommendations	recommendations by	into account recommendations
		private sector working	by the central bank or by	private sector working	by relevant stakeholders and
		groups operating under	private sector working groups	groups operating under	in particular by private sector
		the auspices of the	operating under the auspices of	the auspices of the <i>public</i>	working groups operating under
		central bank responsible	the central bank responsible for	authorities of the	the auspices of <i>the public</i>

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
Nr	Ref.	European Commission	Council	benchmark in cessation. 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	Compromise text
				for the contents of the recommendations or necessarily share any of the views expressed in them.	
27	Recital 10a (new)		(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		(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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			should be empowered to lay		corresponding essential
			down such corresponding		conforming changes in the
			conforming changes in the		implementing act.
			implementing act.		GREY
28	Recital 11	(11) Since the main	(11) Since the main	(11) Since the main	-
		objective of those	objective of those	objective of those	GREY
		implementing powers is	implementing powers is to	implementing powers is	
		to ensure legal certainty	ensure legal certainty for	to ensure legal certainty	
		for supervised entities	supervised entities with	for supervised entities	
		with existing contracts	existing contracts referencing	with existing contracts	
		referencing a	a benchmark in cessation,	referencing a benchmark	
		benchmark in cessation,	competent authorities of a	in cessation, competent	
		competent authorities of	supervised entity using the	authorities of a	
		a supervised entity	benchmark in cessation	supervised entity using	
		using the benchmark in	should monitor the evolution	the benchmark in	
		cessation should	of the legacy stock between	cessation should monitor	
		monitor the evolution of	counterparts to such	the evolution of the	
		the legacy stock	contracts and report their	legacy stock between	
		between counterparts to	findings annually to the	counterparts to such	
		such contracts and	Commission and to the	contracts and report their	
		report their findings	European Securities and	findings annually to the	
		annually to the	Markets Authority	Commission and to the	
		Commission and to the	('ESMA').	European Securities and	
		European Securities and		Markets Authority	
		Markets Authority		('ESMA').	
		('ESMA').			

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Recital 11b		(11b) For benchmarks which		(11b) For benchmarks which
	(new)		are designated by the		are designated by the
			Commission as being critical		Commission as being critical
			in one Member State in		in one Member State in
			accordance with Regulation		accordance with Regulation
			(EU) 2016/1011 and where		(EU) 2016/1011 and where the
			the cessation or winding		cessation or winding down of
			down of such benchmark		such benchmark may result in
			may result in significant		significant disruptions of <u>the</u>
			disruptions of <u>the functioning</u>		functioning of financial
			of financial markets in one		markets in one Member State,
			Member State, the relevant		the relevant competent
			competent authority should,		authority should, take
			take necessary actions to		necessary actions to avoid such
			avoid such disruptions in		disruptions in accordance with
			accordance with national law.		<u>national law.</u>
					GREY
29	Recital 11a		(11a) Where a Member State		(11a) Where a Member State
	(new)		accedes to the Euro area and		accedes to the Euro area and
			where a subsequent lack of		where a subsequent lack of
			input data for computing a		input data for computing a
			national benchmark requires		national benchmark requires
			the replacement of that		the replacement of that
			benchmark, that Member		benchmark, that Member
			State may adopt a statutory		State may adopt a statutory
			provision providing for the		provision providing for the

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			transition from this		transition from this
			benchmark to a replacement		benchmark to a replacement
			benchmark. In such case, that		benchmark. In such case, that
			Member State should take		Member State should take into
			into account the status of		account the status of
			consumers as contractual		consumers as contractual
			parties and ensure their		parties and ensure their
			position is not negatively		position is not negatively
			affected by the transition of		affected by the transition of
			the benchmark to a greater		the benchmark to a greater
			extent than necessary.		extent than necessary.
					GREY
30	Recital 11b		(11b) It is generally		(11b) Benchmarks and their
	(new)		acknowledged that		contractually agreed fallback
			benchmarks and their		provision may over time
			contractually agreed fallback		significantly and unexpectedly
			provision may over time		diverge from each other and,
			significantly and		as a consequence, may neither
			unexpectedly diverge from		represent the same underlying
			each other and, as a		economic reality anymore nor
			consequence, may neither		lead to commercially
			represent the same		acceptable results. Such cases
			underlying economic reality		could include the significant
			anymore nor lead to		widening of the spread
			commercially acceptable		between the benchmark and
			results. Such cases could		the contractually agreed

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			include the significant		fallback provision over time or
			widening of the spread		situations where the
			between the benchmark and		contractually agreed fallback
			the contractually agreed		provision changes the basis of
			fallback provision over time		the benchmark from a
			or situations where the		variable rate to a fixed rate.
			contractually agreed fallback		Since this issue might arise in
			provision changes the basis of		a number of Member States,
			the benchmark from a		and frequently parties from
			variable rate to a fixed rate.		different Member States
			Since this issue might arise in		would also be affected in such
			<u>a number of Member States,</u>		cases, it should be tackled in a
			and frequently parties from		harmonized way in order to
			different Member States		avoid legal uncertainty,
			would also be affected in such		excessive litigation and, as a
			<u>cases, it should be tackled in</u>		consequence, possible
			a harmonized way in order to		significant negative effects on
			avoid legal uncertainty,		the single market or
			excessive litigation and, as a		repercussions on the financial
			consequence, possible		stability in individual Member
			significant negative effects on		States or the Union.
			the single market or		Accordingly, the replacement
			repercussions on the financial		for a benchmark that is
			stability in individual		established by the
			Member States or the Union.		implementing act should
			Accordingly, the replacement		under certain preconditions

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			benchmark that is established		serve as a replacement when
			by the implementing act to be		relevant national authorities,
			adopted under this		for example macro-prudential
			Regulation to provide for		authorities, systemic risk
			cases where there is no		councils or the central banks,
			<u>contractual fallback</u>		have established that the
			provision foreseen for cases		originally agreed fallback
			of a permanent cessation of a		provision no longer reflects the
			critical benchmark and third		economic reality that the
			country benchmarks with		ceasing benchmark was
			systemic relevance in the		intended to measure or could
			Union should under certain		pose a threat to financial
			preconditions serve as a		stability. The national relevant
			replacement benchmark after		authorities should undertake
			relevant national authorities,		this assessment when is is
			for example macro-		made aware of the potential
			prudential authorities,		unsuitability of a commonly
			systemic risk councils or the		used fallback clause by one or
			<u>central banks, have</u>		more potentially affected
			established that the originally		parties. This assessment
			agreed fallback provision no		should not be performed on a
			longer reflects the economic		contract by contract basis. The
			reality that the ceasing		national relevant authorities
			benchmark was intended to		involved should be obliged to
			measure or could pose a		inform the Commission and
			threat to financial stability.		ESMA of said assessment.

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			The relevant national		BLUE
			authorities involved should		
			<u>be obliged to inform the</u>		
			Commission and ESMA of		
			said assessment.		
31	Recital 12	(12) Regulation (EU)	(12) Regulation (EU)	(12) Regulation (EU)	(12) Regulation (EU)
		2016/1011 should	2016/1011 should therefore be	2016/1011 should	2016/1011 should therefore be
		therefore be amended	amended accordingly.	therefore be amended	amended accordingly.
		accordingly.		accordingly.	GREEN
32	Recital 12a			(12a) Regulation (EU)	(12a) Regulation (EU) No
	(new)			No 648/2012 of the	648/2012 of the European
				European Parliament	Parliament and of the
				and of the Council ¹³ is	Council is currently being
				currently being amended	amended for the purpose of
				for the purpose of	providing clarity to market participants that contracts
				providing clarity to	entered into or novated
				market participants that	before the entry into
				transactions entered into	application of the clearing or
				or novated before the	margin requirements to OTC
				beginning of the	derivative contracts
					referencing a benchmark
				application of the	("legacy contracts") will not
				clearing or margin	be subject to these
				requirements to OTC	requirements if those

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
				derivative transactions	contracts are amended with
				referencing an interest	regard to the benchmark they
				rate benchmark (legacy	refer to and those
				trades) will not be subject	amendments serve the sole
				to these requirements	purpose of implementing or
				when they are novated	preparing for the
				for the sole purpose of	implementation of a
				• • • •	<u>replacement benchmark or</u> introducing fall-back
				implementing or	provisions in this regard
				preparing for the	during the transition to a new
				implementation of the	benchmark as part of a
				interest rate benchmark	benchmark reform.
				reform. Regulation (EU)	Benchmark reforms in this
				2016/1011 requires	regard result from
				supervised entities to	internationally coordinated
				produce and maintain	work streams and initiatives
				robust written plans	aimed at reforming
				setting out the actions	benchmark rates to comply
				they would take in the	with the International
				event that any	Principles for Financial
				benchmark materially	Benchmarks published by the
				•	International Organization of
				changes or ceases to be	<u>Securities Commissions</u> (IOSCO). Regulation (EU)
				provided and to reflect	2016/1011 requires
				those plans in the	supervised entities to produce
				contractual relationship	and maintain robust written
				with clients. In order to	plans setting out the actions
				facilitate compliance by	they would take in the event

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				market participants with	that any benchmark
				those obligations and	materially changes or ceases
				action by market	to be provided and to reflect
				participants to enhance	those plans in the contractual
				the robustness of OTC	relationship with clients. In
				derivative contracts	order to facilitate compliance
					by market participants with
				referencing benchmarks	those obligations and to
				of any kind, Regulation	support action by market
				(EU) No 648/2012	participants to enhance the
				should be amended to	robustness of OTC derivative
				make clear that legacy	contracts referencing
				trades will not be subject	<u>benchmarks potentially</u> subject to reforms,
				to those clearing and	Regulation (EU) No 648/2012
				margin requirements	should be amended to clarify
				when those trades are	that legacy contracts will not
					be subject to clearing or
				replaced, amended or	margin requirements, if those
				novated, whether	<u>contracts are amended for</u>
				individually or as part of	the sole purpose of replacing
				changes relating to a	the benchmark they refer to
				portfolio of transactions,	against the background of a
				for the sole purpose of	benchmark reform. Thus,
				replacing the interest	this exception applies only to
				rate benchmark they	contractual amendments
				•	necessary to implement or
				refer to in order to	prepare for the
				implement or prepare for	implementation of a
				the implementation of	replacement benchmark due

Nr	Ref.	Euro	pean Commission		Council	Eur	ropean Parliament	Compromis	e text
Nr	Ref.		pean Commission		Council	the in bench introd provi any b refer imple that n in ord robus contr amen neces clarit partie not a the ch oblig the re amen of an	nterest rate hmark reform or of ducing fall-back isions in relation to benchmark they to in order to ement or prepare for reform or otherwise der to enhance the stness of their racts. Those adments are ssary to provide ty to market cipants and should affect the scope of learing and margin ations in relation to eplacement, adment or novation o OTC derivatives ract for other	Compromiss to a benchmark re- necessary to introd back provisions in a benchmark in th order to enhance the robustness of the re- contracts. Those and shall serve to provi- to market participe not affect the scope clearing and marge obligations in relate amendments of OT derivative contracte purposes or in relate replacements or no such as changes of counterparties. GREEN	form or luce fall- relation to is regard in he relevant mendments ide clarity ants and do e of the in tion to <u>CC</u> ts for other dion to ovations
33	Recital 13	(13) fact th	In view of the nat LIBOR will no	(13) LIBO	In view of the fact that R will no longer be a	· · /	In view of the fact LIBOR will no	(13) In view of t LIBOR will no long	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		longer be a critical	critical benchmark within the	longer be a critical	critical benchmark within the
		benchmark within the	meaning of Regulation (EU)	benchmark within the	meaning of Regulation (EU)
		meaning of Regulation	2016/1011 as of 1 January	meaning of Regulation	2016/1011 as of 1 January 2021,
		(EU) 2016/1011 as of 1	2021, it is appropriate that this	(EU) 2016/1011 as of 1	this Regulation should enter
		January 2021, it is	Regulation enters into force	January 2021, it is	into force as a matter of
		appropriate that this	without delay.	appropriate that this	urgency on the day following
		Regulation enters into		Regulation enters into	that of its publication in the
		force without delay,		force without delay,	Official Journal of the
					European Union
					GREY
34		HAVE ADOPTED	HAVE ADOPTED THIS	HAVE ADOPTED THIS	HAVE ADOPTED THIS
		THIS REGULATION:	REGULATION:	REGULATION:	REGULATION:
					GREEN
35		Article 1	Article 1	Article 1	Article 1
		Amendments to	Amendments to Regulation	Amendments to	Amendments to Regulation
		Regulation (EU)	(EU) 2016/1011	Regulation (EU)	(EU) 2016/1011
		2016/1011		2016/1011	GREEN
36	Article 1 –	(1) Article 2 is	(1) Article 2 is amended as	(1) Article 2 is	(1) Article 2 is amended as
	point 1 – introd. part /	amended as follows:	follows:	amended as follows:	follows:
	Article 2				GREEN
37	Article 1 –		(a) <u>the following</u>	(-a) the following	(-a) the following
	point 1 – point a (new) –		paragraph is added:	paragraph is inserted:	paragraph is inserted:
	introd. part /				GREY
	Article 2				
38	Article 1 – point 1 – point		<u>"1a. Chapter 4a applies to:</u>	"1a. Article 28a applies	<u>"1a. Chapter 4a applies to:</u>
	a (new) /			to:	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</u> <u>financial instrument listed in</u> <u>Section C of Annex I to</u> <u>Directive 2014/65/EU that is</u> <u>governed by the laws of one</u> <u>of the Member States and</u> <u>that references a benchmark;</u> <u>and</u>	(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	(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 GREEN
40	Article 1 – point 1 – point a (new) / Article 2 – paragraph 1a (new) – point b		(b) <u>any contract that is</u> <u>subject to the law of a third</u> <u>country but the parties to</u> <u>which are all established in</u> <u>the Union and where the law</u> <u>of that third country does not</u> <u>provide for an orderly wind</u> <u>down of a benchmark.''</u>	(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."	(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." 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, thefollowing point (i) is added:GREEN

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		not freely convertible;		convertible;	GREEN
46	Article 1 –	(b) supervised	(b) supervised entities use <u>the</u>	(b) supervised entities	(b) the spot foreign exchange
	point 1 – point b / Article 2 –	entities use the foreign	foreign spot exchange	use the foreign exchange	benchmark is used on a
	paragraph 3 –	exchange benchmark on	benchmark spot foreign	benchmark on a frequent,	frequent, systematic and regular
	point b	a frequent, systematic	exchange benchmark is used	systematic and regular	basis to hedge against adverse
		and regular basis in	on a frequent, systematic and	basis in derivative	foreign exchange rate
		derivative contracts for	regular basis <u>-in derivative</u>	contracts for hedging	movements.
		hedging against third	contracts for hedging against	against third country	GREEN
		country currency	third country currency	currency volatility;	
		volatility;	volatility to hedge against		
			adverse foreign exchange rate		
			movements.		
47	Article 1 –	(c) the foreign	(c) the foreign exchange	(c) the foreign	-
	point 1 – point b / Article 2 –	exchange benchmark is	benchmark is used as a	exchange benchmark is	GREEN
	paragraph 3 –	used as a settlement rate	settlement rate to calculate	used as a settlement rate	
	point c	to calculate the pay-out	the pay-out of the derivative	to calculate the pay-out of	
		of the derivative	contract referred to in	the derivative contract	
		contract referred to in	point (b) in a currency other	referred to in point (b) in	
		point (b) in a currency	than the currency with	a currency other than the	
		other than the currency	limited convertibility referred	currency with limited	
		with limited	to in point (a).	convertibility referred to	
		convertibility referred		in point (a).	
		to in point (a).			
48	Article 1 –		4. By 31 December 2024,		4. By 31 December 2022,
	point 1 – point b / Article 2 –		the Commission shall conduct		the Commission shall conduct
	paragraph 4		a public consultation to		a public consultation to

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Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			identify spot foreign		identify spot foreign exchange
			exchange benchmarks that		benchmarks that fulfil the
			<u>fulfil the criteria laid down in</u>		<u>criteria laid down in</u>
			<u>paragraph 3.</u>		<u>paragraph 3.</u>
					BLUE
49	Article 1 –	4. The	<u>4. 5.</u> By 31 December 2025,	4. By 31 December	4.5. By 15 June 2023, the
	point 1 – point b / Article 2 –	Commission shall adopt	the Commission shall adopt	2022, the Commission	Commission shall adopt
	paragraph 4	delegated acts in	delegated acts in accordance	shall <i>conduct public</i>	delegated acts in accordance
		accordance with	with Article 49 of this	consultations to identify	with Article 49 of this
		Article 49 to create and	<u>Regulation</u> to create a list of	the foreign exchange	<u>Regulation</u> to create a list of
		update as appropriate a	<u>foreign spot exchange</u>	benchmarks that meet	spot foreign exchange
		list of foreign exchange	benchmarks spot foreign	the criteria of paragraph	benchmarks that fulfil the
		benchmarks that fulfil	exchange benchmarks that	3 of this Article. By 31	criteria laid down in paragraph 3
		the criteria laid down in	fulfil the criteria laid down in	December 2023, the	<u>of this Article</u> . <u>The</u>
		paragraph 3. Competent	paragraph 3 of this Article.	Commission shall adopt	Commission shall update the
		authorities of	The Commission shall update	delegated acts in	list as appropriate.";
		supervised entities that	the list as appropriate."	accordance with Article	BLUE
		use third country	Competent authorities of	49 to create a list of spot	
		foreign exchange	supervised entities that use	foreign exchange	
		benchmarks that are	third country foreign	benchmarks <i>for hedging</i>	
		designated by the	exchange benchmarks that	against third country	
		Commission in	are designated by the	currency volatility, and	
		accordance with	Commission in accordance	shall update that list on a	
		paragraph 3 shall report	with paragraph 3 shall report	regular basis. Competent	
		to the Commission and	to the Commission and to	authorities of supervised	
		to ESMA on the	ESMA on the number of	entities that use third	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		number of derivative	derivative contracts that use	country foreign exchange	
		contracts that use that	that foreign exchange	benchmarks that are	
		foreign exchange	benchmark for hedging	designated by the	
		benchmark for hedging	against third country	Commission in	
		against third country	currency volatility at least	accordance with	
		currency volatility at	every two years.";	paragraph 3 shall report	
		least every two years.";		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 –		(1a) In Article 3, the	(1a) Article 3 is	(1a) Article 3 is amended as
	point 1a (new) – introd. part /		following paragraph is	amended as follows:	follows:
	Article 3		inserted:		GREY
51	Article 1 –		"(1a) For the purposes of		-
	point 1a (new) / Article 3 –		Chapter 4a of this		GREY
	paragraph 1a		Regulation, 'financial		
	(new)		instrument' means any of the		
			instruments listed in Section		
			<u>C of Annex I to Directive</u>		
			<u>2014/65/EU.</u>		
52	Article 1 – point 1a (new)			(a) in	(a) in paragraph 1,

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				decision that the legal	country is considered to have
				and supervisory	equivalent effect within the
				framework of that	meaning of Article 28(4) of
				country is considered to	Regulation (EU) No 600/2014
				have equivalent effect	of the European Parliament
				within the meaning of	and of the Council (22) or
				Article 28(4) of	Article 25(4) of Directive
				Regulation (EU) No	2014/65/EU of the European
				600/2014 of the	Parliament and of the Council,
				European Parliament	or a regulated market
				and of the Council (²²) or	considered to be equivalent
				Article 25(4) of Directive	under Article 2a of Regulation
				2014/65/EU of the	(EU) No 648/2012, but in each
				European Parliament	case only with reference to
				and of the Council, or a	transaction data concerning
				regulated market	financial instruments;"
				considered to be	GREEN
				equivalent under Article	
				2a of Regulation (EU)	
				No 648/2012, but in each	
				case only with reference	
				to transaction data	
				concerning financial	
				instruments;"	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
56	Article 1 – point 1b (new) introd. part / Article 28 – paragraph 2			(1b) Article 28(2) is replaced by the following:	(1b) Article 28(2) is replacedby the following:GREEN
57	Article 1 – point 1b (new) / Article 28 – paragraph 2			''2. Supervised entitiesother than anadministrator as referredto in paragraph 1 thatuse a benchmark shallproduce and maintainrobust written planssetting out the actionsthat they would take inthe event that abenchmark materiallychanges or ceases to beprovided. Where feasibleand appropriate, suchplans shall nominate oneor several alternativebenchmarks that couldbe referenced tosubstitute thebenchmarks no longerprovided, indicating whysuch benchmarks would	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
				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."	
58	Article 1 –	(2) the following	(2) the following chapter	(2) the following	(2) the following chapter is
	point 2 – introd. part /	Article 23a is inserted:	is added:	Article is inserted:	inserted:
	Article 23a				GREY
59	Article 1 –	"Article 23a	''CHAPTER 4a	"Article 28a	"CHAPTER 4a
57	point 2 /	Mandatory	Replacement of a benchmark	Mandatory replacement	Replacement of a benchmark
	Article 23a –	replacement of a	by legislation	of a benchmark	by legislation
	title	benchmark	Article 23a		Article 23a
		Dencimark	Mandatory replacement of a		Replacement of a benchmark
			henchmark		by EU legislation
			Replacement of a benchmark		GREEN (note: LL to assess
			by EU legislation		position chapter/title IVa)
59a					
J7d					(-1) This Article shall apply to:

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					a. benchmarks designated as critical by an implementing act adopted in accordance with Article 20, paragraph 1(a) or 1(c) of this Regulation; b. 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 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</u> for the financial system in the Union. GREEN
60	Article 1 –	(1) The	(1) The Commission may	(1) The Commission	(1) The Commission may
	point 2 / Article 23a –	Commission may	designate one or more	may designate one or	designate one or more
	paragraph 1	designate a replacement	replacement benchmarks for	more replacement	replacements for a benchmark
		benchmark for a	<u>a benchmark designated as</u>	<i>benchmarks</i> for a	provided any of the following
		benchmark that will	critical by an implementing	benchmark that will cease	events has occurred:
		cease to be published	act adopted in accordance	to be published where the	GREEN
		where the cessation of	with Article 20, paragraph	cessation of <i>the</i>	
		that publication may	<u>1(a) or 1(c) of this Regulation</u>	publication of that	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		result in significant	or a third country	benchmark may result in	
		disruption in the	benchmark where the	significant and adverse	
		functioning of financial	winding down or cessation of	impacts on market	
		markets in the Union	that benchmark may result in	<i>integrity</i> , financial	
		and provided that any of	significant disruption of the	stability and the real	
		the following events has	functioning of financial	economy in one or more	
		occurred:	<u>markets in the Union,</u>	Member States and	
			provided that any of the	provided that any of the	
			following events has	following events has	
			occurred:	occurred:	
61	Article 1 –	(a) the competent	(a) the competent authority	(a) the competent	(a) the competent authority
	point 2 / Article 23a –	authority for the	for the administrator of that	authority for the	for the administrator of that
	paragraph 1 –	administrator of that	benchmark has issued a public	administrator of that	benchmark has issued a public
	point a	benchmark has issued a	statement, or has published	benchmark has stated	statement, or has published
		public statement, or has	information, in which it is	<i>publicly or</i> issued a	information, in which it is
		published information,	announced that the capability	public statement, or has	announced that the capability of
		in which it is announced	of that benchmark to measure	published information, in	that benchmark to measure the
		that the capability of	the underlying market or	which it is announced that	underlying market or economic
		that benchmark to	economic reality cannot be	the capability of that	reality cannot be restored. <u>In the</u>
		measure the underlying	restored through the exercise	benchmark to measure	case of a critical benchmark
		market or economic	of any of the remedial powers	the underlying market or	under points (a) and (c) of
		reality cannot be	referred to in Article 23. In	economic reality cannot	Article 20 (1), the above
		restored through the	the case of a critical	be restored ; prior to	determinations shall be made
		exercise of any of the	<u>benchmark under points (a)</u>	making such an	by the competent authority of
		remedial powers	and (c) of Article 20 (1) of	announcement, the NCA	that critical benchmark only

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		referred to in Article 23;	this Regulation, the above	shall have applied the	after the remedial powers set
			determinations shall be made	remedial powers of	out in Article 23 have been
			by it's the competent	Article 23 and have	applied exercised without
			authority of that critical	determined that the	leading to the restoration of
			benchmark only after the	powers in Article 23 are	the benchmark's capability to
			<u>remedial powers set out in</u>	not sufficient to restore	measure the underlying
			Article 23 of this Regulation	the benchmark;	market or economic reality;
			have been applied without		GREEN
			leading to the restoration of		
			the benchmark's capability to		
			measure the underlying		
			<u>market or economic reality;</u>		
62	Article 1 –	(b) the administrator	(b) the administrator of a	(b) the administrator	(b) the administrator of a
	point 2 / Article 23a –	of a benchmark has	benchmark has issued a public	of a benchmark, or	benchmark, or someone acting
	paragraph 1 –	issued a public	statement, or has published	someone acting on	on behalf of the administrator
	point b	statement, or has	information, or such public	behalf of the	has issued a public statement, or
		published information,	statement has been made or	administrator, has stated	has published information, or
		or such public statement	such information has been	publicly, by issuing a	such public statement has been
		has been made or such	published on behalf of that	public statement, or	made or such information has
		information has been	administrator, in which it is	publishing information,	been published, in which it is
		published on behalf of	announced that that	that <i>the</i> administrator	announced that that
		that administrator, in	administrator will orderly	has ceased or will cease	administrator will commence
		which it is announced	wind down the benchmark	to provide the benchmark,	the orderly winding down of
		that that administrator	has ceased or will cease to	permanently or	the benchmark has ceased or
		has ceased or will cease	provide the benchmark or	indefinitely, provided	will cease to provide the
		to provide the	<u>certain tenors or certain</u>	that, at the time of the	benchmark or certain tenors or

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		that benchmark	in which the benchmark is	permanently or	currencies in which the
		permanently or	calculated permanently or	indefinitely, provided	benchmark is calculated
		indefinitely, provided	indefinitely, provided that, at	that, at the time of the	permanently or indefinitely,
		that, at the time of the	the time of the issuance of the	issuance of the statement	provided that, at the time of the
		issuance of the	statement or the publication of	or the publication of the	issuance of the statement or the
		statement or the	the information, there is no	information, there is no	publication of the information,
		publication of the	successor administrator that	successor administrator	there is no successor
		information, there is no	will continue to provide that	that will continue to	administrator that will continue
		successor administrator	benchmark;	provide that benchmark;	to provide that benchmark;
		that will continue to			GREEN
		provide that benchmark.			
64	Article 1 –		(d) the competent	(ca) the competent	(d) the competent
	point 2 / Article 23a –		<u>authority withdraws or</u>	authority withdraws or	<u>authority withdraws or</u>
	paragraph 1 –		suspends the authorization in	suspends the	suspends the authorization in
	point d (new)		accordance with Article 35 of	authorisation or	accordance with Article 35,
			this Regulation, withdraws	registration of the	withdraws the recognition in
			the recognition in accordance	benchmark	accordance with Article 32(8)
			with Article 32(8) of this	administrator, provided	or ceases the endorsement in
			Regulation or ceases the	that, at the time of the	accordance with Article 33(6),
			endorsement in accordance	withdrawal or	provided that, at the time of
			with Article 33(6) of this	suspension, there is no	the withdrawal or suspension
			<u>Regulation, provided that, at</u>	successor administrator	or cessation, there is no
			the time of the withdrawal or	that will continue to	successor administrator that
			suspension or cessation, there	provide that benchmark.	will continue to provide that
			<u>is no successor administrator</u>		<u>benchmark.</u>
			that will continue to provide		GREEN

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			that benchmark.		
65	Article 1 –	(2) The replacement	(2) The replacement	(2) The replacement	(2) For the purpose of
	point 2 / Article 23a –	benchmark shall, by	benchmark shall, by operation	benchmark shall, by	paragraph 1, the replacement
	paragraph 2	operation of law,	of law, replace all references to	operation of law, replace	for a benchmark shall replace
		replace all references to	the benchmark in contracts	all references to the	all references to that
		the benchmark that has	and financial instruments	benchmark in	benchmark in contracts
		ceased to be published	that are subject to Article	contracts subject to	and financial instruments as
		in financial instruments,	2(1a) of this Regulation,	Article 2(1a) where all of	referred to in Article 2(1a)
		financial contracts and	where all of the following	the following conditions	where those financial
		measurements of the	conditions are fulfilled:	are fulfilled:	instruments and contracts
		performance of an			contain:
		investment fund where			GREEN
		all of the following			
		conditions are fulfilled:			
66	Article 1 –	(a) those financial	(a) <u>the contracts or those</u>	(a) those contracts	(a) no fallback provision;
	point 2 / Article 23a –	instruments, contracts	financial instruments ,	reference the benchmark	GREEN
	paragraph 2 –	and performance	contracts and performance	that has ceased to be	
	point a	measurements reference	measurements reference the	published on the date the	
		the benchmark that has	benchmark that has ceased to	implementing act	
		ceased to be published	be published <u>will cease or</u> <u>be</u>	designating the	
		on the date the	wound down, on the date	replacement benchmark	
		implementing act	when the implementing act	enters into force;	
		designating the	designating the replacement		
		replacement benchmark	benchmark enters into force;		
		enters into force;	and		
67	Article 1 –	(b) those financial	(b) those contracts or	(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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					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.
					(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;
					(c) the contracting parties

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
67c	Article 1 – point 2 / Article 23a –				 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 5. For the purposes of point (c) of paragraph 3, the relevant authority shall inform the
	paragraph 5				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
67d	Article 1 – point 2 / Article 23a – paragraph 6				6. Member States shall designate a relevant authority, which is in the position which conducts the assessment in accordance with point (c) of paragrpah 3. Member States shall inform the Commission and ESMA of the designation

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)		(ba) no fallback provision or a fallback provision that does not cover the permanent cessation of a reference benchmark; or	(ba) a fallback provision shall not be deemed suitable where one of the following conditions is met:	- GREEN
69	Article 1 – point 2 / Article 23a – paragraph 2 – point ba (new) – point a			a) it does not cover the permanent cessation of a reference benchmark;	- GREEN
70	Article 1 – point 2 / Article 23a – paragraph 2 – point ba (new) – point b			b) any of the following conditions is fulfilled:	- GREEN
71	Article 1 – point 2 / Article 23a – paragraph 2 – point ba (new) – point b – subpoint			(i) there is no fallback rate,	- 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)			(ii) the application of the fallback rate requires further consent from third parties;	- GREEN
73	Article 1 – point 2 / Article 23a – paragraph 2 – point ba (new) – point b – subpoint (iii)			(iii) the fallback rate is calculated through quotes provided by third parties or fixes the last publication of the affected benchmark,	- GREEN
74	Article 1 – point 2 / Article 23a – paragraph 2 – point bb (new)		(bb) a permanent fallback provision, provided that		- GREEN
75	Article 1 – point 2 / Article 23a – paragraph 2 – point bb (new) – subpoint (i)		(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	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	- GREEN

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			economic reality that the	underlying market or the	
			ceasing benchmark is	economic reality that the	
			intended to measure, and	ceasing benchmark is	
			could have an adverse impact	intended to measure, and	
			on financial stability;	could have an adverse	
				impact on financial	
				stability;	
76	Article 1 –		(ii) following the		-
	point 2 / Article 23a –		assessment by the competent		GREEN
	paragraph 2 –		authority in accordance with		
	point bb (new) –		point (i), one of the parties to		
	(new) – subpoint (ii)		the contract has objected to		
	, in the second s		the contractually agreed		
			fallback provision at the		
			latest [3 months] before the		
			permanent cessation or		
			winding down of the		
			benchmark;		
77	Article 1 –		(iii) the contracting parties		-
	point 2 / Article 23a –		have not agreed on an		GREEN
	paragraph 2 –		alternative fallback provision		
	point bb		following the objection		
	(new) – subpoint (iii)		pursuant to point (ii) at latest		
	,,		[one working day] before the		
			permanent cessation or		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			winding down of the		
			benchmark.		
78	Article 1 –		For the purposes of point (i)	For the purposes of point	-
	point 2 / Article 23a –		of point (b)(bb), the relevant	(c) of point (b a), the	GREEN
	paragraph 2 –		authority shall inform the	relevant authority shall	
	subparagraph		Commission and ESMA of its	inform the Commission	
	2 (new)		assessment without undue	and ESMA of its	
			delay. Where entities in more	assessment without	
			than one Member State could	undue delay. Where	
			be affected by the assessment,	entities in more than one	
			the relevant authorities of all	Member State could be	
			those Member States shall	affected by the	
			conduct the assessment	assessment, the relevant	
			jointly.	authorities of all those	
				Member States shall	
				reach conduct the	
				assessment jointly.	
79	Article 1 –		Member States shall	Member States shall	-
	point 2 / Article 23a –		designate one or more	designate one or more	GREEN
	paragraph 2 –		<u>relevant authorities, which</u>	relevant authorities,	
	subparagraph		are in the position to conduct	which are in the position	
	3 (new)		the assessment in accordance	to conduct the	
			with i). Member States shall	assessment in	
			inform the Commission and	accordance with point	
			ESMA of the designation of	(c). Member States shall	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			the competent authorities	inform the Commission	
			pursuant to this paragraph	and ESMA of the	
			by [6 months after entry into	designation of the	
			force of this Regulation].	competent authorities	
				pursuant to this	
				paragraph by [6 months	
				after entry into force of	
				this Regulation].	
80	Article 1 –	(3) The	(3) The Commission shall	(3) The Commission	(3) The Commission shall
	point 2 / Article 23a –	Commission shall adopt	adopt an implementing act to	shall adopt implementing	adopt implementing acts to
	paragraph 3 –	implementing acts to	designate <u>one or more</u> a	acts to designate one or	designate one or more
	subparagraph	designate a replacement	replacement benchmarks in	more replacement	replacements for a <i>benchmark</i>
	1	benchmark in	accordance with the	<i>benchmarks</i> in	in accordance with the
		accordance with the	examination procedure referred	accordance with the	examination procedure referred
		examination procedure	to in Article $50(2)$ where one of	examination procedure	to in Article 50(2) where one of
		referred to in	the conditions laid down in	referred to in	the conditions laid down in
		Article 50(2) where one	paragraph 1 is fulfilled.	Article 50(2) where one	paragraph 1 is fulfilled.
		of the conditions laid	When adopting the	of the conditions laid	GREEN (note: Council deletion
		down in paragraph 1 is	implementing act referred to	down in paragraph 1 is	and EP addition moved to line
		fulfilled. When	in paragraph 1, the	fulfilled. When adopting	86)
		adopting the	Commission shall take into	the implementing act	
		implementing act	account, where available, the	referred to in paragraph 1,	
		referred to in paragraph	recommendation by an	the Commission shall	
		1, the Commission shall	alternative reference rate	take into account, where	
		take into account, where	working group operating	available, the	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		available, the	under the auspices of the	recommendation by an	
		recommendation by an	central bank responsible for	alternative reference rate	
		alternative reference	the currency in which the	working group operating	
		rate working group	interest rates of the	under the auspices of	
		operating under the	replacement benchmark are	<i>public authorities of</i> the	
		auspices of the central	denominated.	currency in which the	
		bank responsible for the		interest rates of the	
		currency in which the		replacement benchmark	
		interest rates of the		are denominated. Before	
		replacement benchmark		establishing a new	
		are denominated.		replacement benchmark,	
				the Commission shall	
				conduct a public	
				consultation and consult	
				ESMA as well as the	
				national competent	
				authority of the	
				benchmark	
				administrator.	
81	Article 1 –		The implementing act	(3a) The	(3a) The implementing act
	point 2 / Article 23a –		shall include the following	implementing act	referred to in paragraph 3 shall
	paragraph 3 –		<u>elements:</u>	referred to in paragraph	include the following:
	subparagraph			3 shall include the	GREEN
	2			following:	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
82	Article 1 – point 2 /		(i) the replacement	(i) the replacement	(i) the replacement for a
	Article 23a –		<u>benchmark</u>	for a benchmark or	benchmark or benchmarks;
	paragraph 3 –			benchmarks;	GREEN
	subparagraph 2 – point (i)				
83	Article 1 –		(ii) the spread	(ii) the spread	(ii) the spread adjustment,
	point 2 / Article 23a –		adjustment, including the	adjustment, including	including the method for
	paragraph 3 –		method for determining such	the method for	determining such spread
	subparagraph		spread adjustment, that is to	determining such spread	adjustment, that is to be applied
	2 – point (ii)		be applied to the benchmark	adjustment, that is to be	to the replacement for a
			in cessation on the date of the	applied to the	benchmark in cessation on the
			replacement for each	replacement for a	date of the replacement for
			particular term to account	benchmark in cessation	each particular term to account
			for the effects of the	on the date of the	for the effects of the transition
			transition or change from the	replacement for each	or change from the benchmark
			benchmark to be wound	particular term to	to be wound down to the
			down to the replacement	account for the effects of	replacement for a benchmark;
			benchmark;	the transition or change	GREEN
				from the benchmark to	
				be wound down to the	
				replacement for a	
				benchmark;	
84	Article 1 –		(iii) the corresponding	(iii) the corresponding	(iii) the corresponding
	point 2 /		essential conforming changes	essential conforming	essential conforming changes
	Article 23a – paragraph 3 –		that are associated with and	changes that are	that are associated with and
	subparagraph		reasonably necessary for the	associated with and	reasonably necessary for the
			reasonably necessary for the	ussociaica milli alla	reasonably necessary jor ine

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

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			under the auspices of the		of the public authorities or the
			central bank responsible for		central bank. Before adopting
			the currency in which the		the implementing act the
			interest rates of the		Commission shall conduct a
			replacement benchmark are		public consultation and shall
			denominated. <u>Before</u>		take into account the
			adopting the implementing		recommendations of other
			act the Commission shall		relevant stakeholders,
			conduct a public consultation		including the competent
			and shall take into account		authority of the benchmark
			the recommendations of		administrator and ESMA.
			other relevant stakeholders,		GREEN
			including the competent		
			authority of the benchmark		
			administrator and ESMA.		
87	Article 1 – point 2 /	(4) Competent	(4) Competent authorities	(4) Competent	-
	Article 23a –	authorities of	of supervised entities using	authorities of supervised	GREEN
	paragraph 4	supervised entities	the benchmark designated by	entities using the	
		using the benchmark	the Commission shall	benchmark designated by	
		designated by the	monitor whether the	the Commission shall	
		Commission shall	implementing acts adopted in	monitor whether the	
		monitor whether the	accordance with paragraph 1	implementing acts	
		implementing acts	have minimised contract	adopted in accordance	
		adopted in accordance	frustration or any other	with paragraph 1 have	
		with paragraph 1 have	detrimental effects on	minimised contract	
		minimised contract	economic growth and	frustration or any other	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		frustration or any other	investments in the Union.	detrimental effects on	
		detrimental effects on	They shall report to that	economic growth and	
		economic growth and	effect to the Commission and	investments in the Union.	
		investments in the	to ESMA annually."	They shall report to that	
		Union. They shall		effect to the Commission	
		report to that effect to		and to ESMA annually."	
		the Commission and to			
		ESMA annually."			
87a			(4a) Notwithstanding the		(4a) Notwithstanding the
			provisions of Article 23a (2)		provisions of Article 23a (4)
			(b)(bb) of this Regulation, the		(c), the replacement
			<u>replacement benchmark</u>		benchmark designated by the
			designated by the		Commission in accordance
			Commission in accordance		with paragraph 1 shall not
			with paragraph 1 shall not		apply where all parties or the
			apply where all parties or the		required majority of a
			required majority of a		contract or financial
			<u>contract or financial</u>		instrument that is subject to
			instrument that is subject to		Article 2(1a) have agreed to
			Article 2(1a) of this		apply a different replacement
			Regulation have agreed to		benchmark before or after the
			apply a different replacement		entry into force of the
			<u>benchmark before or after</u>		implementing act.
			the entry into force of the		GREEN
			implementing act.		

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
88	Article 1 – point 2 / Article 23a – paragraph 4a (new)			(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."	GREEN
89	Article 1 – point 2 / Article 23b (new) – title		<u>Article 23b – Replacement of</u> <u>a benchmark by national</u> <u>legislation</u>		<u>Article 23b – Replacement of a</u> <u>benchmark by national</u> <u>legislation</u> GREEN
90	Article 1 – point 2 / Article 23b (new) – paragraph 1		(1) <u>The Member State,</u> where the majority of <u>contributors is located, may</u> <u>designate one or more</u> <u>replacement benchmarks for</u> <u>a benchmark under Article</u> <u>20 (1)(b) of this Regulation,</u> provided that any of the		(1) <u>The national competent</u> <u>authority of the Member</u> <u>State, where the majority of</u> <u>contributors is located, may</u> <u>designate one or more</u> <u>replacement benchmarks for a</u> <u>benchmark under Article 20</u> (1)(b), provided that any of the

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			following events has		following events has occurred:
			occurred:		GREEN
91	Article 1 –		(a) the competent		(a) the competent
	point 2 / Article 23b		<u>authority for the</u>		authority for the
	(new) –		administrator of that		administrator of that
	paragraph 1 –		benchmark has issued a		benchmark has issued a public
	point a		public statement, or has		statement, or has published
			published information, in		information, in which it is
			which it is announced that		announced that the capability
			the capability of that		of that benchmark to measure
			benchmark to measure the		the underlying market or
			underlying market or		economic reality cannot be
			economic reality cannot be		restored. This determination
			restored and that the		shall be made by the
			<u>remedial powers set out in</u>		competent authority only after
			Article 23 of this Regulation		the powers set out in Article 23
			have been applied without		of this Regulation have been
			leading to the restoration of		exercised without leading to
			the benchmark's capability to		the restoration of the
			measure the underlying		benchmark's capability to
			market or economic reality;		measure the underlying
					market or economic reality;
					GREEN
92	Article 1 –		(b) the administrator of a		(b) the administrator of a
	point 2 / Article 23b		benchmark has issued a		benchmark, or someone acting
	(new) –		public statement, or has		on behalf of the administrator

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	paragraph 1 -		published information, or		has issued a public statement,
	point b		such public statement has		or has published information,
			been made or such		or such public statement has
			information has been		been made or such
			published on behalf of that		information has been
			<u>administrator, in which it is</u>		published, in which it is
			announced that that		announced that that
			administrator will orderly		administrator will commence
			wind down the benchmark or		the orderly winding down of
			will cease to provide the		the benchmark or will cease to
			benchmark or certain tenors		provide the benchmark or
			of the benchmark or certain		certain tenors of the
			currencies in which the		benchmark or certain
			benchmark is calculated,		currencies in which the
			permanently or indefinitely,		benchmark is calculated,
			provided that, at the time of		permanently or indefinitely,
			the issuance of the statement		provided that, at the time of
			or the publication of the		the issuance of the statement
			information, there is no		or the publication of the
			successor administrator that		information, there is no
			will continue to provide the		successor administrator that
			<u>benchmark;</u>		will continue to provide the
					benchmark;
					GREEN
93	Article 1 –		(c) the competent		(c) the competent
	point 2 /		<u>authority for the</u>		authority for the

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Article 23b		authorization of the		suspends the authorization of
	(new) – paragraph 1 –		benchmark administrator		the benchmark administrator
	point d		according to Article 35 of this		according to Article 35,
			Regulation, provided that, at		provided that, at the time of
			the time of the withdrawal or		the withdrawal or suspension
			suspension there is no		there is no successor
			successor administrator that		administrator that will
			will continue to provide that		continue to provide that
			benchmark.		benchmark.
					GREEN
95	Article 1 –		(2) <u>Where a Member</u>		(2) <u>Where a Member State</u>
	point 2 / Article 23b		State designates one or more		designates one or more
	(new) –		<u>replacement benchmarks in</u>		replacement benchmarks in
	paragraph 2		accordance with paragraph 1,		accordance with paragraph 1,
			the competent authority of		the competent authority of
			that Member State shall		that Member State shall
			immediately notify ESMA.		immediately notify the
					European Commission and
					ESMA.
					GREEN
96	Article 1 –		(3) <u>The replacement</u>		(3) <u>The replacement for a</u>
	point 2 / Article 23b		<u>benchmark shall, by law,</u>		benchmark shall replace all
	(new) –		replace all references to the		references to that benchmark
	paragraph 3		benchmark in contracts and		in contracts and financial
			financial instruments that are		instruments that are referred
			subject to Article 2 (1a) of		to in Article 2 (1a) where all of

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			this Regulation where all of		the following conditions are
			the following conditions are		<u>fulfilled:</u>
			<u>fulfilled:</u>		GREEN
97	Article 1 –		(a) the contracts or		(a) the contracts or
	point 2 / Article 23b		financial instruments		financial instruments
	(new) –		reference the benchmark that		reference the benchmark that
	paragraph 3 – point a		will cease or has ceased to be		will cease or has ceased to be
	point a		published on the date when		published on the date when
			the national legislation		the national legislation
			designating the replacement		designating the replacement
			benchmark enters into force;		benchmark enters into force;
			and		and
					GREEN
98	Article 1 –		(b) those contracts or		(b) those contracts or
	point 2 / Article 23b		financial instruments contain		financial instruments contain
	(new) –		no fallback provision or		no fallback provision or
	paragraph 3 – point b		contain a fallback provision		contain a fallback provision
	point b		which does not cover the		which does not cover the
			permanent cessation of a		permanent cessation of a
			<u>reference benchmark.</u>		reference benchmark.
					GREEN
99	Article 1 –		(4) <u>The replacement</u>		(4) <u>The replacement</u>
	point 2 / Article 23b (new) –		benchmark designated by the		benchmark designated by the
			Member State or competent		Member State or competent
	paragraph 4		authority in accordance with		authority in accordance with
			paragraph 1 shall not apply		paragraph 1 shall not apply

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			performance of an investment fund which fulfil the requirements in Chapter		
102	Article 1 – point 4 (new) – introd. part / Article 49		4a of this Regulation." (4) the Article 49 is amended as follows:		(4) the Article 49 is amended as follows: 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		3(2), 13(2a), 19a(2), 19c(1),		54(7) may be revoked at any
			20(6), 24(2), 27(2b), 30(2a),		time by the European
			30(3a) , 33(7) , 48i(10) , 48l(3) ,		Parliament or by the Council.
			51(6) and 54(3) may be		A decision to revoke shall put
			revoked at any time by the		an end to the delegation of
			European Parliament or by		power specified in that
			the Council. A decision to		decision. It shall take effect on
			revoke shall put an end to the		the day following the
			delegation of power specified		publication of the decision in
			in that decision. It shall take		the Official Journal of the
			effect on the day following		European Union or on a later
			the publication of the decision		date specified therein. It shall
			in the Official Journal of the		not affect the validity of any
			European Union or on a later		delegated acts already in
			date specified therein. It shall		force."
			not affect the validity of any		GREY
			delegated acts already in		
			force.		
107	Article 1 –		(c) paragraph 6 is replaced		(c) the following paragraph is
	point 4 (new) – point c –		by the following:		added
	introd. part /				GREY
	Article 49 –				
108	paragraph 6 Article 1 –				
108	point 4 (new)		"6. A delegated act adopted		"6a. A delegated act adopted
	– point c /		pursuant to <u>Article 2(5)</u> , 3(2), 12(2), 10 , (2) , 10 , (1) , $20(6)$		pursuant to Article 2(5), or
	Article 49 – paragraph 6		13(2a), 19a(2), 19c(1), 20(6),		54(7) shall enter into force

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Article 51 –		decision as referred to in		decision as referred to in
	paragraph 5		Article 30(2) or (3) or unless		Article 30(2) or (3) or unless
			<u>an administrator has been</u>		an administrator has been
			recognised pursuant to		recognised pursuant to Article
			Article 32, or a benchmark		32, or a benchmark has been endorsed pursuant to Article
			has been endorsed pursuant		<i>33, the use in the Union by</i>
			to Article 33, the use in the		supervised entities of a
			Union by supervised entities		benchmark provided by an
			of a benchmark provided by		administrator located in a third
			an administrator located in a		country where the benchmark
			third country where the		is already used in the Union as
			benchmark is already used in		a reference for financial instruments, financial
			the Union as a reference for		contracts, or for measuring the
			financial instruments,		performance of an investment
			financial contracts, or for		fund, shall be permitted only
			measuring the performance		for such financial instruments,
			of an investment fund, shall		financial contracts and
			be permitted only for such		measurements of the
			financial instruments,		performance of an investment
			financial contracts and		fund that already reference the benchmark in the Union on, or
			measurements of the		which add a reference to such
			performance of an		benchmark prior to 31
			investment fund that already		December 2023.
			reference the benchmark in		The transitional provision
					foreseen in the first sub-
			the Union on, or which add a		paragraph shall not apply to
			reference to such benchmark		benchmarks provided by

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			prior to, 31 December 2025.";		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				(6) in Article 54, paragraph 6 is replaced by the following: 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
					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
111	Article 1 – point 6 (new) – introd. part / Article 54		(6) in Article 54, the following paragraph is added:		-
112	Article 1 – point 6 (new) / Article 54 – paragraph 7 (new)		''7. By 31 December 2027, the <u>Commission shall review the</u> <u>functioning of the exemptions</u> <u>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				Article 1a	Article 1a
				Amendment to	Amendment to Regulation (EU)
				Regulation (EU) No	No 648/2012
				648/2012	GREEN
114	Article 1a			Article 13a of Regulation	Article 13a of Regulation (EU)
	(new) – introd. part / Article			(EU) No 648/2012 is	No 648/2012 is replaced by the
	13a			replaced by the	following:
				following:	GREEN
115	Article 1a (new) / Article			"Article 13a	"Article 13a
	(new) / Article 13a – title			Replacement of interest	
				rate benchmarks and	<u>Amendments to legacy</u> contracts for the purpose of
				embedding contractual	the implementation of
				fall-backs in legacy	benchmark reforms
				trades	GREEN
116	Article 1a			<i>1. Counterparties as</i>	1. Counterparties may
	(new) / Article			referred to in Article	<u>continue to apply the risk-</u>
	13a –			11(3) may continue to	management procedures as
	paragraph 1			apply the risk-	referred to in Article 11(3) in
					place at the date of
				management procedures	application of this Regulation

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
Nr	Ref.	European Commission	Council	European Parliament 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	Compromise textin 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
				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,	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. GREEN
				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.	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
117	Article 1a (new) / Article 13a – paragraph 2			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."	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.' GREEN
117+					<u>3. Paragraphs 1 and 2 of this</u> <u>Article apply only to OTC</u> <u>derivative contracts that are</u> amended or novated that

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					(a) are necessary to address
					benchmark replacements due
					to benchmark reforms,
					(b) do not change the economic substance or risk
					<u>factor represented by the</u>
					benchmark of the contract
					and
					(c) do not encompass other
					changes to that contract
					relating to any legal terms
					<u>that do not refer to the</u> reference benchmark and
					thus potentially amend the
					contract in a way that
					effectively requires its
					treatment as a new contract.
					GREEN
118	Article 2 -	Article 2	Article 2	Article 2	Article 2
	heading				GREEN
119	Article 2 –	This Regulation shall	This Regulation shall enter into	This Regulation shall	This Regulation shall enter into
	paragraph 1	enter into force on the	force on the day following that	enter into force on the	force on the day following that
		day following that of its	of its publication in the Official	day following that of its	of its publication in the Official
		publication in the	Journal of the European	publication in the Official	Journal of the European Union.
		Official Journal of the	Union.	Journal of the European	GREEN
		European Union.		Union.	
120	Article 2 –	This Regulation shall be	This Regulation shall be	This Regulation shall be	This Regulation shall be binding
	paragraph 2	binding in its entirety	binding in its entirety and	binding in its entirety and	in its entirety and directly

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		and directly applicable	directly applicable in all	directly applicable in all	applicable in all Member States.
		in all Member States.	Member States.	Member States.	GREEN
121		Done at Brussels,	Done at Brussels,	Done at Brussels,	Done at Brussels,
					GREEN
122		For the European	For the European Parliament	For the European	For the European Parliament
		Parliament For the	For the Council	Parliament For the	For the Council
		Council		Council	GREEN
123		The President The	The President The President	The President The	The President The President
		President		President	GREEN