2020/0154**(COD)**

COLUMN TABLE FOR INTERINSTITUTIONAL NEGOTIATIONS – WORKING DOCUMENT

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

Date of the trilogue: 25.11.2020

Committee on Economic and Monetary Affairs – Negotiating team

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

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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 REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1011 as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1011 as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1011 as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation <i>and amending</i> <i>Regulation (EU) No</i> 648/2012	
3		(Text with EEA relevance)	(Text with EEA relevance)	(Text with EEA relevance)	(Text with EEA relevance) GREEN
4		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE

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		THE EUROPEAN	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
		Functioning of the	European Union, and in	of the European Union,	European Union, and in
		European Union, and in	particular Article 114 thereof,	and in particular Article	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
		European Commission,	Commission,	European Commission,	Commission,
					GREEN
7	Citation 3	After transmission of the	After transmission of the draft	After transmission of the	After transmission of the draft
		draft legislative act to	legislative act to the national	draft legislative act to the	legislative act to the national
		the national parliaments,	parliaments,	national parliaments,	parliaments,
					GREEN
8	Citation 3a			Having regard to the	
	(new)			opinion of the European	
				Central Bank,	
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 ,
					GREEN

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

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

 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).
 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).

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

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).

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

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

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	acts.			
15 Recital 3a (new)			(3a)Regulation (EU)2016/1011 provides that,until 31 December 2021,Union marketparticipants can usebenchmarks administeredin a country outside theUnion regardless ofwhether an equivalencedecision is in place or theindex has beenrecognised or endorsedfor use in the Union. Theexpectation of thelegislators was that untilthe end of 2021 thirdcountries would adapttheir benchmark regimeto the rules put forwardby this Regulation andthat the use by Unionmarket participants ofbenchmarks administered	(3a) Regulation (EU) 2016/1011 provides that, until 31 December 2021, Union market participants can use benchmarks administered in a country outside the Union regardless of whether an equivalence decision is in place or the index has been recognised or endorsed for use in the Union. The expectation of the legislators was that until the end of 2021 third countries would adapt their benchmark regime to the rules put forward by this Regulation and that the use by Union market participants of benchmarks administered in a country outside the Union would be ensured by equivalence or endorsement decisions taken by the Commission, thus

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

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

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

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

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

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		result in negative	significant disruption in the	disruption in the	
		consequences that	functioning of financial	functioning of financial	
		produce significant	markets in the Union.	markets in the Union and	
		disruption in the		where such contracts	
		functioning of financial		cannot be renegotiated to	
		markets in the Union.		include a contractual fall-	
				back rate by the time of	
				that benchmark's	
				cessation, <i>there</i> should be	
				a fall-back method that	
				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	

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

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

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

⁸ 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).

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).

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		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		
	(new)		consequences may arise from		
			<u>contracts or financial</u>		
			instruments which are by		
			definition outside of the scope		
			of Regulation (EU)		
			2016/1011, but which		
			<u>reference benchmarks that</u>		
			are under cessation or are		
			being wound down. In the		
			same way, many entities use		
			such benchmarks but do not		
			qualify as supervised entities.		
			Consequently, those contracts		
			and contractual parties		
			would not benefit from a the		
			replacement of a benchmark.		
			In order to mitigate potential		
			impacts on market integrity		

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

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

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

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			benchmark, the statutory		
			replacement benchmark that		
			is designated in accordance		
			with the provision of this		
			Regulation should provide a		
			safe harbour to address the		
			permanent cessation.		
25	Recital 9	(9) Use of that	(9) Use of that	(9) Use of that	
		replacement benchmark	replacement benchmark	replacement benchmark	
		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	<u>replacement benchmark by</u>	been renegotiated prior to	
		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 the	used, the replacement	at the moment of the entry	
		moment of the entry into	benchmark will apply only to	into force of the	
		force of the	transactions entered into	implementing act	
		implementing act	prior to the relevant	designating the	
		designating the	replacement date, even	replacement benchmark.	

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

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

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Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		consultations and expert	replacement rate for the interest	benchmark administrator	
		knowledge, and reflect	rate benchmark in cessation.	as well as of ESMA.	
		benchmark users'	The Commission should also	Those recommendations	
		agreement about the	<u>take into account</u>	should be based on	
		most appropriate	recommendations of other	extensive public	
		replacement rate for the	<u>relevant stakeholders,</u>	consultations and expert	
		interest rate benchmark	including the competent	knowledge, and reflect	
		in cessation.	<u>authority of the benchmark</u>	benchmark users'	
			administrator and ESMA.	agreement about the most	
				appropriate replacement	
				rate for the interest rate	
				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	
				for the contents of the	
				recommendations or	
				necessarily share any of	

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

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

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

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

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			established that the originally		
			agreed fallback provision no		
			longer reflects the economic		
			reality that the ceasing		
			benchmark was intended to		
			measure or could pose a		
			threat to financial stability.		
			The relevant national		
			authorities involved should		
			be obliged to inform the		
			Commission and ESMA of		
			said assessment.		
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)	
	(new)			No 648/2012 of the	
				European Parliament	
				and of the Council ¹¹ is	
				currently being amended	
				for the purpose of	
				providing clarity to	

¹¹ 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).

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

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

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				of an OTC derivatives	
				contract for other	
				purposes.	
33	Recital 13	(13) In view of the	(13) In view of the fact that	(13) In view of the fact	(13) In view of the fact that
		fact that LIBOR will no	LIBOR will no longer be a	that LIBOR will no longer	LIBOR will no longer be a
		longer be a critical	critical benchmark within the	be a critical benchmark	critical benchmark within the
		benchmark within the	meaning of Regulation (EU)	within the meaning of	meaning of Regulation (EU)
		meaning of Regulation	2016/1011 as of 1 January	Regulation (EU)	2016/1011 as of 1 January
		(EU) 2016/1011 as of 1	2021, it is appropriate that this	2016/1011 as of 1 January	2021, it is appropriate that this
		January 2021, it is	Regulation enters into force	2021, it is appropriate that	Regulation enters into force
		appropriate that this	without delay.	this Regulation enters into	without delay,
		Regulation enters into		force without delay,	GREEN
		force without delay,			
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	
	point 1 – point a (new) –		paragraph is added:	paragraph is inserted:	

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



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

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

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Nr	Ref.	European Commission	Council	European Parliament	Compromise text
		currency with limited	limited convertibility referred	currency with limited	limited convertibility referred
		convertibility referred to	to in point (a).	convertibility referred to	to in point (a).
		in point (a).		in point (a).	BLUE Trilogue of 25/11/20
48	Article 1 –		4. By 31 December 2024,		4. [By 31 December
	point 1 – point b / Article 2 –		the Commission shall conduct		2024), the Commission shall
	paragraph 4		a public consultation to		conduct a public consultation
			identify spot foreign		to identify spot foreign
			exchange benchmarks that		exchange benchmarks that
			<u>fulfil the criteria laid down in</u>		<u>fulfil the criteria laid down in</u>
			paragraph 3.		paragraph 3.
					BLUE Trilogue of 25/11/20
					(note: date to be determined
					and aligned based on a political
					agreement on the transition
					period)
49	Article 1 –	4. The Commission	<u>4. 5.</u> By 31 December 2025,	4. By 31 December	4.5. [By 31 December
	point 1 – point b / Article 2 –	shall adopt delegated	the Commission shall adopt	2022, the Commission	2025), the Commission shall
	paragraph 4	acts in accordance with	delegated acts in accordance	shall <i>conduct public</i>	adopt delegated acts in
		Article 49 to create and	with Article 49 of this	consultations to identify	accordance with Article 49 of
		update as appropriate a	<u>Regulation</u> to create a list of	the foreign exchange	this Regulation to create a list
		list of foreign exchange	foreign spot exchange	benchmarks that meet the	of foreign spot exchange
		benchmarks that fulfil	benchmarks spot foreign	criteria of paragraph 3 of	benchmarks spot foreign
		the criteria laid down in	exchange benchmarks that	this Article. By 31	exchange benchmarks that
		paragraph 3. Competent	fulfil the criteria laid down in	December 2023, the	fulfil the criteria laid down in
		authorities of supervised	paragraph 3 <u>of this Article</u> .	Commission shall adopt	paragraph 3 of this Article.
		entities that use third	The Commission shall update	delegated acts in	The Commission shall update

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	– introd. part / Article 3		<u>following paragraph is</u> <u>inserted:</u>	amended as follows:	
51	Article 1 – point 1a (new) / Article 3 – paragraph 1a (new)		"(1a) For the purposes of Chapter 4a of this Regulation, 'financial instrument' means any of the instruments listed in Section C of Annex I to Directive 2014/65/EU.		
52	Article 1 – point 1a (new) – point a – introd. part / Article 3 – paragraph 1			(a) in paragraph 1, the following point is inserted:	
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;"	
54	Article 1 – point 1a (new) – point b – introd. part / Article 3 –			 (b) point i of point 24(a) is amended as follows: 	 (b) point i of point 24(a) is amended as follows: BLUE Trilogue of 25/11/20

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

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

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



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
59	Article 1 –	"Article 23a	<u>"CHAPTER 4a</u>	"Article 28a	<u>"CHAPTER 4a</u>
	point 2 / Article 23a –	Mandatory	Replacement of a benchmark	Mandatory replacement	Replacement of a benchmark
	title	replacement of a	by legislation	of a benchmark	by legislation
		benchmark	Article 23a		Article 23a
			Mandatory replacement of a		Replacement of a benchmark
			benchmark		by EU legislation
			<u>Replacement of a benchmark</u>		BLUE Trilogue of 25/11/20
			by EU legislation		
59a					(-1) This Article shall apply
					to:
					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
					panel contribution 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 in the Union.
					markets in the Union.

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

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

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

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

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

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

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	b				
71	Article 1 – point 2 / Article 23a – paragraph 2 – point ba (new) – point b – subpoint (i)			(i) there is no fallback rate,	
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;	
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,	
74	Article 1 – point 2 / Article 23a – paragraph 2 – point bb (new)		(bb) a permanent fallback provision, provided that		
75	Article 1 – point 2 / Article 23a – paragraph 2 –		(i) the relevant authority has established that the	c) the relevant authority has established	

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	point bb		application of the	that the application of the	
	(new) – subpoint (i)		contractually agreed fallback	contractually agreed	
			provision does generally no	fallback provision does	
			longer, and with significant	generally no longer, and	
			difference, reflect the	with significant	
			underlying market or the	difference, reflect the	
			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		
	paragraph 2 –		authority in accordance with		
	point bb		point (i), one of the parties to		
	(new) – subpoint (ii)		the contract has objected to		
	5 , P ()		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 /				

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Article 23a –		have not agreed on an		
	paragraph 2 – point bb		alternative fallback provision		
	(new) –		following the objection		
	subpoint (iii)		pursuant to point (ii) at latest		
			[one working day] before the		
			permanent cessation or		
			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	
	paragraph 2 –		<u>authority shall inform the</u>	relevant authority shall	
	subparagraph 2 (new)		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	

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

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

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

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

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

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Nr	Ref.	European Commission	Council	European Parliament	Compromise text
	Article 23a –	entities using the	the benchmark designated by	entities using the	
	paragraph 4	benchmark designated	the Commission shall	benchmark designated by	
		by the Commission shall	monitor whether the	the Commission shall	
		monitor whether the	implementing acts adopted in	monitor whether the	
		implementing acts	accordance with paragraph 1	implementing acts	
		adopted in accordance	have minimised contract	adopted in accordance	
		with paragraph 1 have	frustration or any other	with paragraph 1 have	
		minimised contract	detrimental effects on	minimised contract	
		frustration or any other	economic growth and	frustration or any other	
		detrimental effects on	investments in the Union.	detrimental effects on	
		economic growth and	They shall report to that	economic growth and	
		investments in the	effect to the Commission and	investments in the Union.	
		Union. They shall report	to ESMA annually."	They shall report to that	
		to that effect to the		effect to the Commission	
		Commission and to		and to ESMA annually."	
		ESMA annually."			
87a			(4a) Notwithstanding the		(4a) Notwithstanding the
			provisions of Article 23a (2)		provisions of Article 23a (2)
			(b)(bb) of this Regulation, the		(b)(iii) of this Regulation, the
			<u>replacement benchmark</u>		replacement 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		contract or financial

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			instrument that is subject to		instrument that is subject to
			Article 2(1a) of this		Article 2(1a) of this
			Regulation have agreed to		Regulation have agreed to
			apply a different replacement		apply a different replacement
			benchmark before or after		benchmark before or after
			the entry into force of the		the entry into force of the
			implementing act.		implementing act.
					BLUE Trilogue of 25/11/20
					GREY TM of 26/11/20
88	Article 1 –			(4a) This Article shall	[replaced by line 59a and 60
	point 2 / Article 23a –			apply to critical	BLUE Trilogue of 25/11/20
	paragraph 4a			benchmarks. It shall also	(note: text proposal from the
	(new)			apply to benchmarks that	EC, see line 59a and 60)
				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."	
89	Article 1 –		Article 23b – Replacement of		Article 23b – Replacement of
	point 2 /		a benchmark by national		a benchmark by national
	Article 23b (new) – title		legislation		legislation

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

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

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

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

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
					BLUE Trilogue of 25/11/20
					GREY TM 26/11/20 (note:
					language to be aligned with
					23a)
97	Article 1 –		(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
					BLUE Trilogue of 25/11/20
98	Article 1 –		(b) those contracts or		(b) those contracts or
	point 2 / Article 23b		financial instruments contain		financial instruments contain
	(new) –		<u>no fallback provision or</u>		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
			reference benchmark.		reference benchmark.
					BLUE Trilogue of 25/11/20
99	Article 1 –		(4) <u>The replacement</u>		(4) <u>The replacement</u>
	point 2 / Article 23b		benchmark designated by the		benchmark designated by the
	(new) –		Member State or competent		Member State or competent
	paragraph 4		authority in accordance with		authority in accordance with

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

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Nr	Ref.	European Commission	Council	European Parliament	Compromise text
			procedure set out in Chapter <u>4a and only applicable to</u> <u>those financial instruments,</u> <u>financial contracts and</u> <u>measurements of the</u> <u>performance of an</u> <u>investment fund which fulfil</u> <u>the requirements in Chapter</u> <u>4a of this Regulation.''</u>	accordance with the procedure set out in Article 23a."	
102	Article 1 – point 4 (new) – introd. part / Article 49		(4) the Article 49 is amended as follows:		
103	Article 1 – point 4 (new) – point a – introd. part / Article 49		(a) the following paragraph is inserted:		
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].		
105	Article 1 – point 4 (new) – point b – introd. part / Article 49 – paragraph 3		(b) paragraph 3 is replaced by the following:		

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

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

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

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

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

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

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

Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				introducing fall-back	
				provisions in relation to	
				any benchmark referred	
				to in the transaction.	
117	Article 1a			2. Transactions	
	(new) / Article 13a –			entered into or novated	
	paragraph 2			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	



Nr	Ref.	European Commission	Council	European Parliament	Compromise text
				clearing obligation	
				referred to in Article 4."	
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 day	force on the day following that
		day following that of its	of its publication in the Official	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
	paragraph 2	binding in its entirety	binding in its entirety and	binding in its entirety and	binding in its entirety and
		and directly applicable	directly applicable in all	directly applicable in all	directly applicable in all
		in all Member States.	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