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The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.

Consumer protection cooperation

The Commission estimates that the detriment to consumers caused by non-compliance with basic EU consumer rules in certain cross-border online markets and also by inefficient cross-border enforcement amounts to €770 million per year.

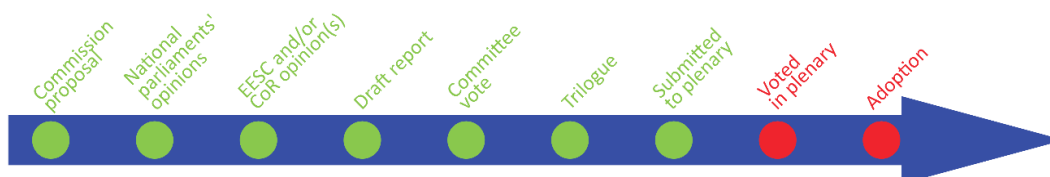
To remedy this, the Commission has presented a legislative proposal to review the existing rules on consumer protection cooperation between enforcement authorities as part of its e-commerce package in May 2016. The aim is to clarify the rules and to give more powers to national enforcement authorities, most importantly to enable them to address unlawful online practices and improve coordination among them.

Stakeholders have, in general, welcomed the move to improve cooperation between enforcement authorities, and the European Economic and Social Committee in its opinion of 19 October 2016 supported the proposal. The Maltese Council Presidency reached a general approach in February 2017, while the Parliament's IMCO committee adopted its report in March. In June 2017, the co-legislators announced that they had reached an agreement, which needs now to be formally adopted.

Proposal for a regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws

COM(2016) 283, 25.5.2016, 2016/0148 (COD), Ordinary legislative procedure (COD, Parliament and Council on equal footing – formerly 'co-decision')

Committee responsible:	Internal Market and Consumer Protection (IMCO)
Rapporteur:	Olga Sehnalová (S&D, Czech Republic)
Shadow rapporteurs:	Carlos Coelho (EPP, Portugal) Richard Sulík (ECR, Slovakia) Jasenko Selimovic (ALDE, Sweden) Julia Reda (Greens/EFA, Germany) Mylène Troszczynski (ENF, France)
Next steps expected:	First-reading vote in plenary



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Introduction

On 25 May 2016, the European Commission presented its [e-commerce](#) package of measures to help consumers and companies benefit fully from the European Single Market, in line with the [Digital Single Market strategy](#).¹ A legislative [proposal for a new revised regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws](#) is part of this package. The proposed regulation is to replace the current [Regulation 2006/2004/EC](#) and concerns the European Economic Area (EEA) of EU Member States, Iceland, Liechtenstein and Norway.

The main objective of the proposal is to **both clarify the rules and give more powers to national enforcement authorities** so as to improve enforcement of consumer rights, especially by better addressing unlawful online practices. It is also designed to **improve the coordination** of Member States' market monitoring activities and alert mechanisms to enable them to detect infringements earlier.

Context

The Commission states in its proposal that a 2014 screening of 2 682 e-commerce websites in five key online consumer markets (clothing, electronic goods, recreation, consumer credit and package travel) showed that on average 37% of websites were found to be in breach of EU consumer law.

The Commission also [estimates](#) that the detriment to consumers caused by non-compliance with basic EU consumer rules in the five cross-border online markets mentioned above amounts to around **€770 million per year**.

[In 2015, 68% of all cross-border complaints received](#) by [European Consumer Centres](#), which assist consumers daily with their cross border purchases within the EU by providing them with information on their rights in their own language, related to e-commerce. And business-to-consumer e-commerce within the EU is [expected to grow](#).

Existing situation

The existing Regulation 2006/2004/EC (Consumer Protection Cooperation Regulation²) already enables national enforcement authorities to work together to tackle practices that harm the interests of consumers in the Single Market. It lays down a cooperation framework to allow national competent authorities from all EU countries plus Iceland, Liechtenstein and Norway, to jointly address breaches of consumer rules that concern more than one country.³

1 This new e-commerce package is a follow-up to the Commission's [Digital Single Market strategy](#) from 2015, which announced legislative and non-legislative measures for achieving the Digital Single Market (DSM). Improving online access to digital goods and services across the EU was one of the three pillars of the DSM strategy. As part of this pillar, the review of the current Regulation on Consumer Protection Cooperation was announced for 2016.

2 The regulation has been fully applicable since 29 December 2006 and was amended in [2011](#) to update the content of the Annex to the Regulation because of legislative developments in the field of consumer protection.

3 The Annex to the Regulation on consumer protection cooperation (see the [consolidated version](#)) defines all directives and

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A mechanism of alerts and a mutual assistance mechanism currently exists⁴ together with a set of minimum powers covered by the cooperation of competent national authorities (see Article 4(6)). A mechanism to tackle malpractices concerning more than two countries is in place as well. To be precise, in line with Article 9 of the Regulation, Member States can voluntarily organise concerted actions called '[sweeps](#)' to investigate whether online businesses comply with EU and national consumer protection laws.

Nevertheless, in the [impact assessment](#) accompanying the proposal, the Commission defined the following shortcomings that are most closely related to the limitations of the current legal framework:

- > insufficient mutual assistance cooperation mechanisms;
- > inefficient response to widespread infringements across the EU, especially those occurring in the digital environment;
- > difficulty detecting infringements and lack of prioritisation in enforcement action.

Existing cross-border enforcement cooperation is therefore, in the Commission's opinion, both ineffective and inefficient, not least because national enforcement systems were designed mostly for the offline world.⁵ There is also a pronounced disparity among the Member States when it comes to the most commonly needed powers to tackle online infringements.⁶ All of this results in low deterrence in enforcement actions, legal uncertainty for traders, authorities and consumers, and duplication of enforcement efforts and cost.

Parliament's starting position

The European Parliament has adopted several resolutions related to consumer protection cooperation.

In its 2012 [resolution](#) on completing the Digital Single Market, Parliament called on the Commission and the Member States to develop and **give adequate resources** to instruments such as the **Consumer Protection Cooperation network** to ensure that online traders apply EU rules on transparency and unfair commercial practices.

regulations covered by this legal instrument (e.g. regarding unfair commercial practices, unfair contract terms, consumer rights, guarantees, e-commerce, alternative dispute resolution, e-privacy and sector-specific legislation on passenger rights or consumer credit).

4 [Three types](#) of mutual assistance requests between national authorities exist presently: information requests, enforcement requests and alerts.

5 The existing Consumer Protection Cooperation Regulation has been examined in multiple reports, each of them having identified some shortcomings. For details see the section 'Preparation of the proposal' in this briefing.

6 Certain powers are not available in certain Member States. Tackling past infringements is for instance [not available](#) in DE, FR, LT, LV or LU. Mystery shopping (tools or methods used by consumer watchdog organisations to measure the quality of certain services for consumers, evaluate compliance with consumer laws or gather specific information about products and services) is not available in AT, BE, CY, DE, EE, EL, HR, IT, LT, LU, MT, PT or SE. Furthermore, interim withdrawal or suspension of trade activity is not possible in AT, BE, CY, DE, EE, IE, LU, NL, PL, PT or SE.

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In its 2014 [resolution](#) on the implementation of the Unfair Commercial Practices Directive 2005/29/EC Parliament encouraged the Commission to examine the scope, effectiveness and operational mechanisms of the Consumer Protection Cooperation (CPC) Regulation thoroughly before the end of 2014, as promised.

In its 2016 [resolution](#), Towards a Digital Single Market Act, Parliament welcomed the review of the Consumer Protection Cooperation Regulation announced by the Commission. It stated that **extension of the competencies** of supervisory authorities and strengthening of their cooperation was a **prerequisite for the effective enforcement** of consumer rules for online shopping. It further called on the Commission to make concerted efforts to add the provision of Article 20(2) of the Services Directive⁷ to the Annex of Regulation (EC) 2006/2004 in order to make use of the Consumer Protection Cooperation Network's investigation and enforcement powers. It also called on the Commission to cooperate with all stakeholders and Parliament so as to introduce clear **guidance on the applicability of the consumer acquis**⁸ to traders using online platforms and, where necessary, assistance to Member State consumer protection authorities to help them enforce consumer law properly.

Current differences across the EU

Presently, only a limited number of enforcement authorities in Europe are able to address online breaches quickly and efficiently. Some are **unable to pursue traders for past infringements** (e.g. misleading advertisements online for only a few hours or days) or **track financial flows** to detect the identity of those behind these breaches. Some cannot take **measures to take down websites** containing scams before the investigations are finished.

Council and European Council starting position

At the [Competitiveness Council meeting](#) of 25 and 26 September 2014, EU ministers took note of the Commission's [report](#) on the functioning of the CPC Regulation presented in July 2014. They stated that full implementation of the regulation had proven difficult owing to many obstacles, especially the growing importance of the digital economy, which had challenged the effective enforcement of consumer rights given the specific nature of dematerialised trade and the speed with which consumer law infringements can spread across the EU.

In the [conclusions](#) of the European Council of 28 June 2016, the Heads of State or Government called for swift and determined progress to bring the full benefits of the Digital Single Market to all stakeholders, not least by removing barriers to e-commerce.

⁷ Article 20(2) of the [Services Directive](#) states the following: 'Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.'

⁸ This guidance was also presented in the e-commerce package. See [Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices](#).



Proposal

Preparation of the proposal

In 2009 the Commission presented its first [report](#) on the application of the CPC Regulation, stating that the activities of the CPC network were producing tangible results for consumers but that greater operational efficiency was needed. Another report on the application of the Regulation followed in [2012](#).

In 2012, an [external evaluation](#) of the functioning of the CPC Regulation assessed its relevance and efficiency between 2007 and 2011, and identified some areas for improvement. It recommended the adoption of guidance to improve the quality of mutual assistance requests and – in the event of a potential revision of the CPC Regulation – also suggested including minimum procedural standards in its text as well as expanding minimum investigative and enforcement powers. It further noted that the number of alerts decreased over the defined timeframe as they were perceived as less useful than information and enforcement requests. Additional weaknesses identified within the CPC system included the dedicated IT tool managing the alerts.⁹

From October 2013 to February 2014 the Commission held a [public consultation](#) to collect stakeholders' views on how to improve the functioning and effectiveness of the CPC Regulation. It received 222 responses. The majority of respondents supported strengthening the regulation. The majority also agreed that EU-level infringements (e.g. infringements occurring simultaneously in several Member States) remained an important issue and they were generally in favour of more effective and coordinated joint enforcement action in this area.

Additionally, in 2013 the Commission organised a [Consumer Summit](#) 'Towards a more efficient enforcement of the EU consumer rights'. Later, in July 2014 the Italian Council Presidency hosted a conference with the Commission on [The European Union Cooperation for Consumer Rights](#). The conference offered broad support for future initiatives aimed at further strengthening EU cooperation, in order to tackle infringements in this area. The same backing was expressed for future actions aimed at improving the exchange of information for early detection of widespread cross-border infringements, in cooperation with consumers' associations and the European Consumer Centres Network.

The Commission's 2014 [report](#) on the functioning of the CPC Regulation in many ways echoed the findings of the 2012 external evaluation, noting the need to address certain shortcomings (e.g. the under-use of alerts, and barriers to effective cross-border enforcement arising from Member States' differing procedural standards).¹⁰

In 2015, an external [support study](#) for the impact assessment on the review of the CPC Regulation provided the last input before publication of the Commission's [impact assessment](#) accompanying the legislative proposal in 2016. The impact assessment [states](#) that for the subset of five online markets alone (travel, entertainment, clothing, electronic goods and financial services) the newly proposed measures could

9 More details in [EPRS Implementation Appraisal on Regulation 2006/2004](#), pp. 5-6.

10 More details in [EPRS Implementation Appraisal on Regulation 2006/2004](#), p. 7.



Preparation of the proposal

The changes the proposal would bring

reduce yearly consumer detriment in the EU by 30%, from an estimated €770 million to about €539 million. It adds that any new single CPC action against a widespread practice could also considerably reduce consumer detriment across the EU. The cost of the proposed measures for Member States should include familiarisation with or training on new powers and procedures, amounting to approximately €3 000 per authority,¹¹ and around €174 000 per year for all Member States combined, for each coordinated enforcement action initiated through the mandatory coordination procedure. The pooling of resources to address widespread infringements could however save resources since one coordinated action would replace 28 national actions. That could in the Commission's opinion, result in net savings compared with the potential cost if several Member States act individually. These could amount to approximately €180 000 if the coordinated action is successful, rising to as much as €815 000 if it fails as that can involve more lengthy voluntary negotiations. The [initial appraisal of the impact assessment](#) conducted by EPRS in August 2016 showed that Commission's analysis related to the reduction of delays and costs in consumer protection cooperation and to non-compliance rates and related consumer detriment was reasonable and realistic. However, the aspects related to the economy and competitiveness were found to lack depth. In particular, the idea that increased consumer confidence due to better compliance and less consumer detriment would lead to higher cross-border trade and economic growth, and that this would create jobs, seemed to be theoretical, with insufficient data to back it up.

The changes the proposal would bring

The [proposed regulation](#) is to replace the existing Regulation 2006/2004/EC while also enlarging its scope, by updating the list of legislation the regulation applies to (contained in the annex) and adding some new legal instruments to be covered.

While legislation that is no longer in force is removed, the following legislation is proposed for inclusion in the annex: the [Directive on consumer rights](#); Article 20 of the [Directive on services in the internal market](#);¹² the [Regulation on rail passengers' rights and obligations](#); and the [Regulation on rights of disabled persons and persons with reduced mobility when travelling by air](#). Specific provisions of the [Air Services Regulation](#), the [Mortgage Credit Directive](#) and the [Payment Accounts Directive](#) are also to be covered by the new regulation (see Article 51).

The most important changes proposed are the following.

Firstly, the proposal includes **additional powers** for enforcement authorities in the Member States to **address unlawful online practices** more swiftly and efficiently. In Article 4, a limitation period for the possibility to impose penalties for ceased infringements is introduced, namely five years from the termination of such infringements. The role of the single liaison offices is further clarified (Article 5).¹³ New minimum

11 According to the new proposal (Article 5) each Member State is to designate as the competent authorities public authorities established at national, regional or local level with specific responsibilities to enforce the laws that protect consumers' interests. Where Member States should designate more than one competent authority on their territory, they should ensure that their respective duties are clearly defined so in order to be able to fulfil them effectively.

12 The inclusion of Article 20(2) of [Directive 2006/123/EC](#) on services in the internal market was specifically requested by the Parliament in its [2016 resolution](#), Towards a Digital Single Market Act.

13 Each Member State is to designate one competent authority as single liaison office. These single liaison offices across the



Preparation of the proposal

The changes the proposal would bring

powers for competent authorities (Article 8) include: the power to make test purchases and to carry out mystery shopping, adopt interim measures, take-down websites that are scamming consumers, request information from domain registrars and banks so as to detect the identity of the trader responsible, as well as the power to impose penalties and to safeguard consumer compensation in a cross-border context.

Secondly, new types of infringements are added to the scope of the regulation. While the current regulation refers only to ongoing intra-Union infringements (those that affect consumers in one Member State but have a cross-border dimension), the Commission proposal extends the application of the regulation to intra-Union infringements that have already stopped, widespread infringements (which harm or are likely to harm consumers in at least two Member States) and widespread infringements with a Union dimension (which harm or are likely to harm consumers in at least three quarters of Member States with three quarters of the EU population). New instruments are introduced to address these infringements. The proposal distinguishes between **coordinated action** (Article 16) which would be used in case of widespread infringements, and would be coordinated by a Member State, and **common action** in case of widespread infringements with a Union dimension, coordinated by the European Commission (Article 21).

Thirdly, a **new surveillance mechanism** (Article 33) is to replace the current CPC system of alerts. It would combine the alert mechanism as currently exists under the CPC Regulation with a wider exchange of relevant and necessary information for timely detection of widespread infringements. An additional novelty is that other entities may be able to participate in the alert mechanism through external alerts (Articles 34 and 35), namely: designated bodies and the European Consumer Centres, or entities nominated by the Member States and by the Commission from among consumer organisations, trade associations and other entities with appropriate expertise and legitimate interest in consumer protection. This increases the role of stakeholders in enforcement of the regulation.

Finally, the biennial reporting obligation of the current regulation is replaced with **biennial national enforcement plans** (Article 45), to ensure the prioritisation of activities and a more efficient use of resources to combat infringements in the Single Market.

The new regulation is to apply one year after its entry into force in order to allow Member States, competent authorities and the Commission to adapt to the proposed changes, while the annex should apply directly from the date of its entry into force.

EU are to be responsible for coordinating investigation and enforcement activities related to intra-Union infringements and widespread infringements by the competent authorities.

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Views

Advisory committees

The European Economic and Social Committee (EESC) adopted its [opinion](#) on the proposal on 19 October 2016. There, it supported the proposal, but also called on the Commission to extend the scope of the coordinated actions. It also stressed the importance of respecting traders' rights of defence, the right to be heard, and the right to use the language of one's choice during proceedings. The EESC welcomed the newly allowed formal involvement of civil society organisations in the process of the cooperation, but also considered the timeframe for the Commission to submit its report on the application of the proposal to be too generous.

National parliaments

The parliaments of [Austria](#), [Bulgaria](#), the [Czech Republic](#) and [Sweden](#) each submitted reasoned opinions within the subsidiarity [deadline](#), which was set for 1 September 2016.

Stakeholders' views¹⁴

In their initial reactions, stakeholders in general welcomed the move to make enforcement authorities in the EU cooperate more efficiently, but were more reserved regarding some other measures.

[Ecommerce Europe](#), representing companies selling goods or services online, supported the proposal, arguing that it will bring more legal certainty in this field for online merchants. It also expressed hope that the proposal will bring more uniformity regarding the cooperation of supervisory authorities in cross-border cases.

[BusinessEurope](#) noted that the e-commerce package will ensure better cooperation between national consumer authorities, which is important for effective enforcement in the Single Market. It stressed, however, that the use of additional powers – such as the one to take down websites – should be proportionate and subject to minimum procedural guarantees. It [questioned](#) the right of national authorities to publish any interim measure or information regarding ongoing enforcement procedures, stating also that ordering the restitution of profits obtained as a result of infringements is a step too far.

[BEUC](#), the European Consumer Organisation, welcomed the new proposed powers for enforcement authorities that should make them more efficient. It commented that the new 'alert' system to warn specific bodies about unfair practices in the Single Market has rightfully opened up to more entities, including consumer organisations. It also [noted](#) that more consumer-related provisions from EU retail financial

14 This section aims to give a sense of the debate on the issues surrounding the legislative file and cannot provide an exhaustive account of all the different views expressed. Additional information can be found in related briefings listed under References below.



Advisory committees

National parliaments

Stakeholders' views

services legislation need to be included under the scope of the proposal to ensure that widespread infringements in this area are efficiently addressed.¹⁵ In relation to the limitation periods (5 years from the end of infringement) to apply penalties, it stated that this should not apply only to the imposition of penalties in the strictest sense (i.e. financial fines), but also cover other measures, such as ordering redress or restitution of illegal profits. Additionally, it called on the EU institutions to remove the location of the trader as a prominent criterion from Article 25, as it could in its opinion lead to [forum shopping](#). Finally, it considered that the threshold for an infringement to be considered to have an EU dimension – the infringement harming consumers in at least three quarters of Member States accounting together for at least three quarters of the Union population – is too high.

[ANEC](#), the European consumer voice in standardisation, and Consumers International welcomed the Commission' proposals on new e-commerce rules in general.

15 More precisely, BEUC expressed the wish to include the following pieces of EU legislation: [Regulation 924/2009](#) on cross-border payments (Articles 3, 4 and 11); [Regulation 260/2012](#) establishing technical and business requirements for credit transfers and direct debits in euro (Articles 5, 7, 8 and 9); [Directive 2015/2366](#) on payment services in the internal market (Titles 3 and 4); [Directive 2016/97](#) on Insurance Distribution (Articles 1730).



Legislative process

Parliament's Committee on Internal Market and Consumer Protection (IMCO) is responsible for the file (rapporteur: Olga Sehnalová, S&D, Czech Republic), while the Committee on Legal Affairs (JURI) also prepared an opinion.

On 9 November 2016 the IMCO Committee held a [public hearing](#) with experts from two national enforcement authorities, a European Consumer Centre, a business federation, a consumer organisation and academia.

On 30 November, the rapporteur presented her [draft report](#), putting forward 197 amendments to the proposal. The Committee adopted the report on 21 March 2017 and voted to open negotiations with the Council.

The IMCO [report](#) suggested lowering the threshold for a widespread infringement with a Union dimension, from three quarters of Member States with at least three quarters of the EU population, to a majority of Member States with at least a majority of the population of the EU. It deleted the section on 'common actions', making 'coordinated actions' the only enforcement mechanism for widespread infringements, with the Commission required to take on the role of coordinator in case of a widespread infringement with a Union dimension. The committee also suggested that not all competent authorities in a Member State needed to have all the powers, but that all powers should exist in each Member State. It also further clarified these powers – for instance, an infringing website could be closed down only as a last resort. Launching 'sweeps' – coordinated controls of the markets when there is a suspicion of a widespread infringement – would be possible in the offline sector as well. While in favour of the proposal that Member States should submit their enforcement plans to the Commission, the committee was against monitoring of implementation of these plans by the Commission.

The examination of the text in the Council preparatory bodies started in June 2016 in the Consumer Protection and Information Working Party under the Dutch Presidency and continued under the Slovak Presidency. The Competitiveness Council adopted a [general approach](#) on 10 February 2017, under the Maltese Presidency, after 18 working party meetings. According to the [compromise text](#), the notion of the widespread infringement with a Union dimension would be deleted, while the 'common' and 'coordinated' action would be consolidated into a single mechanism, with the Commission as the coordinator where a widespread infringement affects three quarters of Member States with three quarters of EU population. The Council was also against the introduction of a surveillance mechanism, national enforcement plans and their monitoring by the Commission.

Three rounds of trilogue meetings took place from April to June 2017 and ended with a provisional agreement [announced](#) by the Maltese Presidency on 21 June 2017. The [text agreed](#) keeps the distinction between widespread infringement and widespread infringement with a Union dimension. For a widespread infringement to be considered to have a Union dimension, it would have to harm the interests of consumers in at least two thirds of Member States, with two thirds of the EU population.

The new 'surveillance mechanism' proposed by the Commission is not included in the provisional agreement. When a coordinated action to protect the interests of consumers in multiple Member States is needed, it would be launched by an agreement between the national authorities of the Member States affected. The Commission would be required to coordinate action if the national authorities were unable to agree on



a coordinator among themselves, but only in cases of widespread infringement with a Union dimension. Sweeps would be possible to investigate both online and offline markets and would be coordinated by the Commission, with the national authorities deciding on their launch.

The regulation further specifies the investigating and enforcement powers of the competent authorities in the Member States and the procedures for using the mutual-assistance mechanism, which requires the national authorities to help with the investigation of cross-border infringements and with enforcement.

The regulation would apply 24 months after entry into force, while the limitation period for infringements that have already stopped would depend on the limitation periods in the individual Member States.

Coreper confirmed the compromise text, on behalf of the Council, on 5 July 2017 and the IMCO committee endorsed it on 13 July. The vote in Parliament's plenary is expected in autumn 2017, and thereafter the regulation would be formally adopted by the Council.



References

EP supporting analysis

EPRS [Implementation Appraisal on Regulation 2006/2004 on consumer protection cooperation](#), April 2016.

EPRS Initial appraisal of a European Commission impact assessment, [Cooperation on the enforcement of consumer protection laws](#), August 2016.

Other sources

[Enforcement of consumer rights: Strategies and recommendations](#), Consumer Justice Enforcement Forum II, May 2016.

[Cooperation between national authorities responsible for the enforcement of consumer protection laws](#) / European Parliament, Legislative Observatory (OEL).

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