

External Dimension of the EU Energy Policy (ED EEP)

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EU Energy Policy I.

- *„In its broadest sense, EU energy policy can be described as the pursuit of comprehensive energy security.*
- *To achieve this, the EU pursues three broad objectives:*
- *mitigating climate change (known commonly as sustainability),*
- *guaranteeing that energy is affordable for European customers,*
- *and achieving security of supply .“*

Schubert, Pollack & Kreutler (2016): 12.

A typology of the EU's energy policy

INTERNAL

Establishing the internal energy market

Nuclear power politics

Developing new energy technologies

MULTIDIMENSIONAL

Reducing greenhouse gas emissions
(mitigation of climate change)

EXTERNAL

Energy diplomacy

Rule export

ED EEP - Development

- 2000 (Green paper): **Towards a European strategy for the security of energy supply**
 - Internal vs. External
 - EU should be a leader in global energy dialogues
- 2000 – 2006: **Energy Initiatives**
 - 2000 EU – Russia Energy Dialogue; 2004 Black Sea and Caspian Sea Cooperation Initiative; 2004 bilateral political dialogue between the EU and OPEC; 2005 Energy Community; 2005 Memorandum of understanding on energy cooperation with Ukraine; 2006 - Memorandum of understanding on energy cooperation with Kazakhstan and Azerbaijan
 - Energy policy was not formally incorporated within the scope of CFSP!
- 2005 – 2007: **Energy 'Big Bang'**
 - External and internal factors
- 2006 (Green paper): **A European strategy for sustainable, competitive and secure energy**
 - **Strategic EU energy Review**

ED EEP - Development

- 2008: **Second Strategic Energy Review – EU Energy Security and Solidarity Action Plan**
 - 2011: Communication - **On Security of Energy Supply and International Cooperation**
 - 2011: Communication - **On security of energy supply and international cooperation - The EU Energy Policy: Engaging with Partners beyond Our Borders**
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- **How to ensure security of supply?**

- They wanted to
 - improve internal coordination by establishing an information exchange mechanisms on agreements between member states and suppliers;
 - rank its energy partners and treat them accordingly with appropriate instruments;
 - strengthen its external energy supplier partnerships (rule export);
 - mainstream energy in its development policy;

	With our neighbours / market integration partners	With our key energy suppliers and transit countries	With key energy players worldwide	With developing countries
Scope	All issues covered by the EU energy policy	Wide range of issues of common interest such as security of supply/demand, industrial cooperation, trade and investment issues...	Focus on priority issues like research and innovation, low carbon technologies, energy efficiency, standards...	Low emission development strategies, energy access, policy and regulatory frameworks, promotion of energy generation and transmission, renewable energy...
Instruments	Energy Community Treaty	Strategic energy dialogues	Ad hoc energy cooperation	Ad hoc energy cooperation
	Instruments under the European Neighbourhood Policy, crisis response instruments, and/or specific partnership and cooperation agreements, covering inter alia energy Energy Charter Treaty		Other applicable instruments	Instruments under the EU development policy and, where relevant, crisis response instruments
Trade Agreements				

Characteristics of the ED EEP

- 1) Planned to be based on solidarity and speaking with one voice (?)
- 2) Problems with definition of priorities and interests with regard to specific partners or energy projects
- 3) Divergences between particular Member States regarding the establishment of the common external energy policy
- 4) The role of the EU member states vs. Role of the Commission
- 5) Problems with the instruments and their recipients

Conceptualizing the policy field

- 1) External dimension of the EU internal energy market
- 2) Energy security or foreign energy policy
- 3) Intersection between energy policy and other foreign-policy aims

What kind of international actor was EU emerging as?

EU as a market power?

EU as a traditional power?

EU as a normative power?

External dimension of the EU internal energy market

EU as a market power?

- Aim: the creation of a common energy regulatory space with third countries
- The main idea: a liberalized and de-monopolized energy sector is the best guarantee for efficient and reliable supplies of energy
- Examples: Energy Charter Treaty (ECT), European Energy Community Treaty (EnC)...

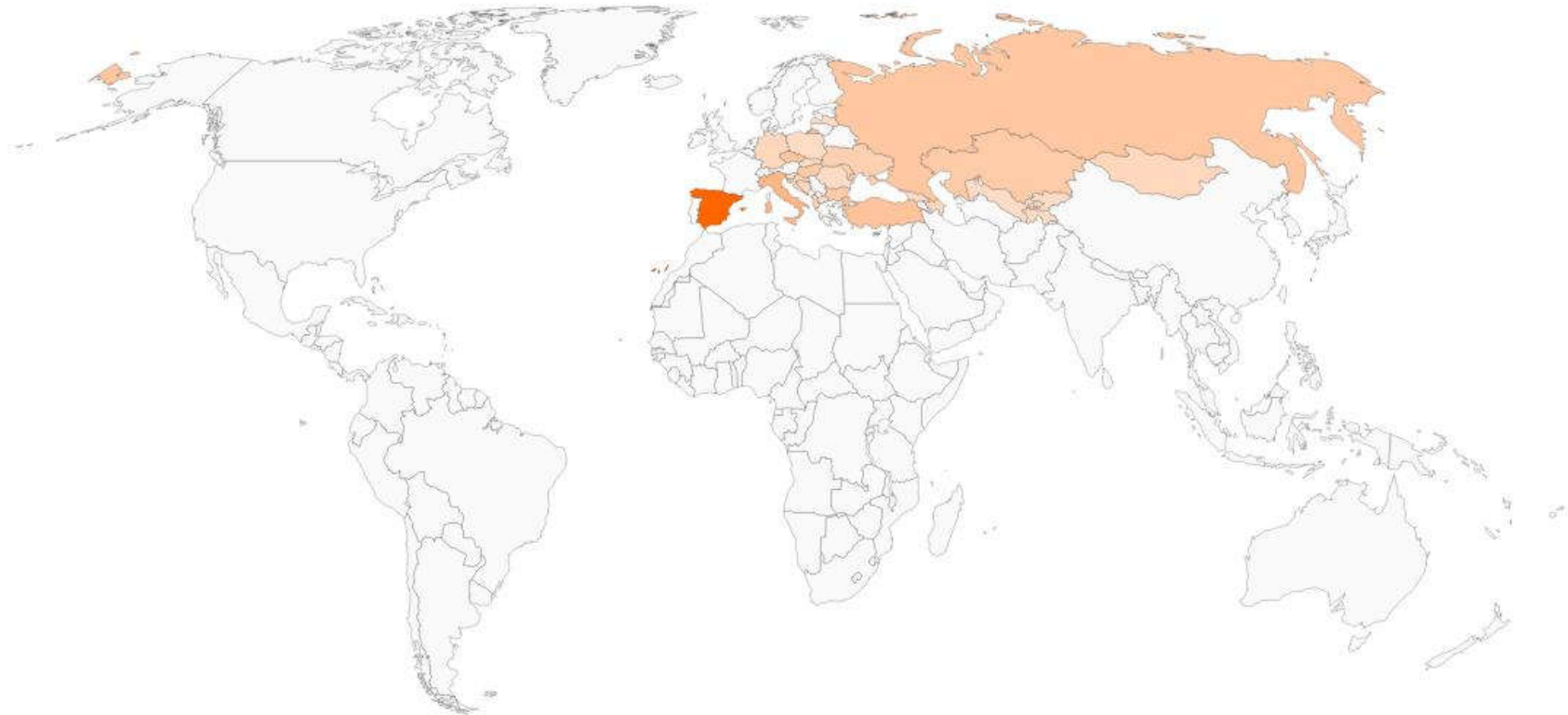
Energy Charter Treaty

European Energy Charter	Dec 1991	political commitment – not legally binding Sets out principles and objectives to govern East/West negotiations on energy issue Context: End of Cold War
Energy Charter Treaty (ECT)	Dec 1994	52 states + EU and Euratom – legally binding entered into force April 1998
International Energy Charter	May 2015	Same universal principles for new challenges New observer countries from all continents

- ECT a largely European initiative to address post cold-war political map.
- ECT tries to guarantee open markets, non-discrimination and access for foreign investment.
- Investment provisions modelled on BITs.
- Prevent abuse of sovereign power.
- ISDS to overcome deficiencies in local dispute resolution.

Investment Dispute Cases Heatmap

Frequency of Investor-State dispute cases per Country



Number of Cases



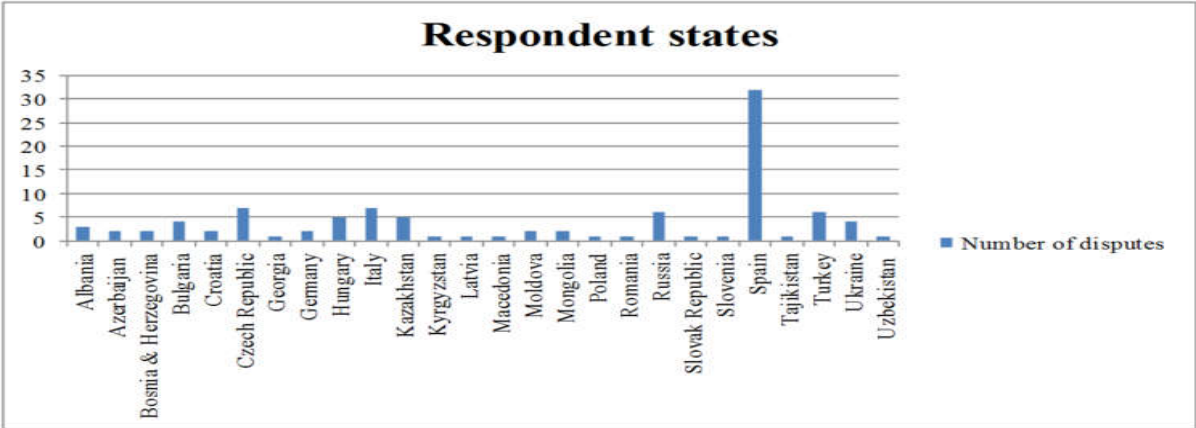
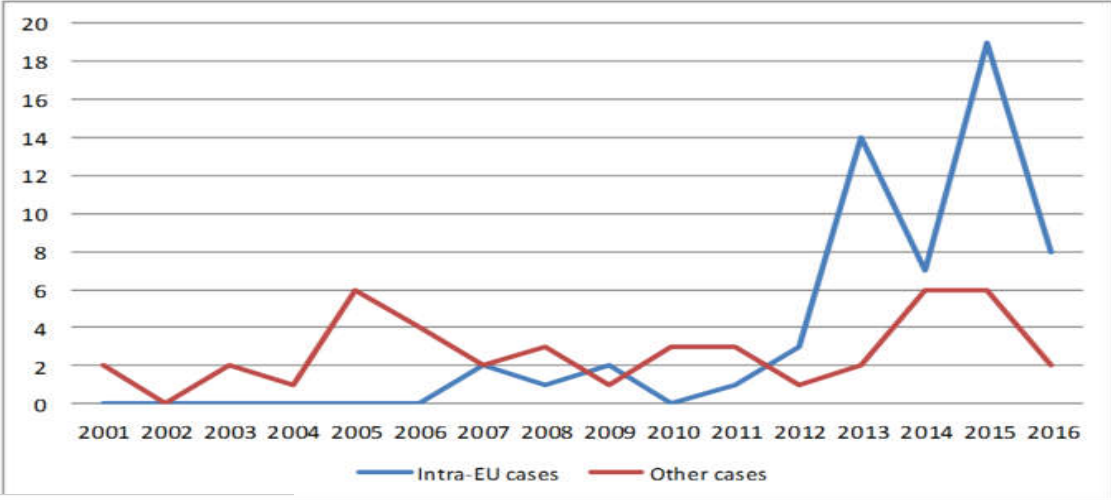
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The ECT Statistics



Energy Charter Treaty

Main problems	European organization with global impact?
	Position of the U.S., Canada, etc.
	Russia's attitudes toward ECT

Russia's attitudes toward ECT:

- ECT is consumer-friendly and 'EU-sponsored Treaty'
- Misunderstandings and Misinterpretations? (e.g. TPA)
- Transit protocol
 - REIO clause
 - access to pipeline and tariff-setting procedure
 - right-of-first-refusal on renewal of transit terms for existing users.
- Investment protection (Yukos case)
- Dispute settlement mechanism (Art. 7)

ECT – dispute settlement – Yukos case

- 1995 – privatization -) Yukos became one of Russia's largest oil companies (Khodorkovsky)
- October 25, 2003 - M. Khodorkovsky was arrested on charges of fraud and tax evasion
- April 2004 - Yukos was issued in stages with tax claims for \$27 billion. Yukos' assets were frozen by the government...
- July 2004 – Yukos' core asset Yuganskneftegaz was
- 2007 – Yukos shareholders file claim at Permanent Court of Arbitration (PCA)
- confiscated (Baikalfinansgrup – Rosneft)
- 2009 – PCA and European Court of Human Rights (ECHR) arbitrators agree to hear Yukos-related cases
- 2011 - ECHR rules that Russia violated human rights in Yukos case
- 2012 – Stockholm arbitrator rules in favour of Yukos' Spanish shareholders
- January 2015 – Russia breaches ECHR deadline to provide plan for paying compensation
- February 2015 – Dutch court rules against Rosneft in case brought by Yukos subsidiary
- June 2015 – French and Belgian courts freeze Russian state assets

Energy Community

- *...‘to extend the EU internal energy market to South-East Europe and to contribute to energy security supply not only in the EU but in the wider Europe as well.’*
- The Energy Community Treaty was signed in October 2005 by the European Community, Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, the Former Yugoslav Republic of Macedonia, Romania, Serbia and the United Nations Interim Administration in Kosovo on behalf of the latter.
- Energy Community was established on 1 July 2006, when the Treaty came into force for a period of 10 years.

Energy community – key assumptions

- EU cannot achieve its energy policy objectives (security of supply, climate change etc.) without cooperating with its neighbours
- Energy Community Contracting Parties are an integral part of the EU's internal energy market
- Energy Community has become an EU foreign energy policy tool
- Non-EU countries benefit from adopting a tried and tested legal framework to reform their energy markets, attracting investment, securing energy supply and raising citizens' welfare in an environmentally sustainable way

Energy community – challenges

- Decrease the gap between implementation commitments and reality in Contracting Parties
- Overcome existing obstacles to interconnectivity and create a truly pan- European energy market
- Continue to harmonise legal frameworks (adoption of new acquis)
- Increase investor confidence in the Contracting Parties

Energy security or foreign energy policy

- EU as a traditional power?
- Aim: Speaking with one voice
- The main idea: Rather than relying mainly on markets for security of supply, energy security (or foreign energy policy) connote a higher degree of political intervention
- Examples: Energy Diplomacy, Information exchange mechanism

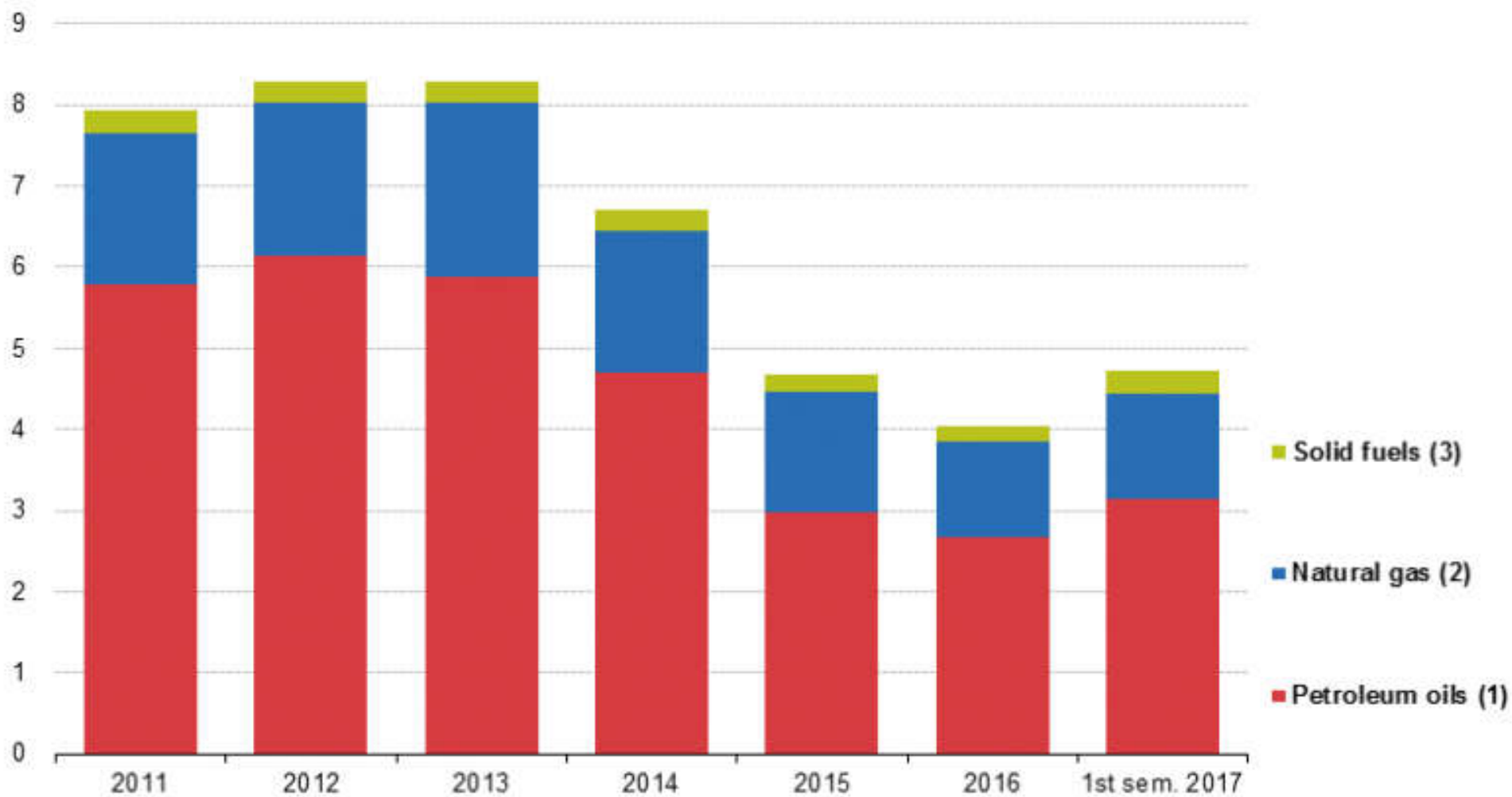
Is there an emerging EU energy diplomacy?

	Energy Diplomacy – Definition
Problem definition	Energy security as a (geo)political problem Over-reliance on markets; lack of strategic vision
Policy goals	Promote national interest; defend political sovereignty (unity/solidarity, in international institutions or alliances) Ensure energy supplies through strategic diversification and maintaining political trust with foreign suppliers
Policy instruments	Bilateral intergovernmental agreements (IGAs) in energy based on particular terms Political, legal, and economic tools to back strategic energy infrastructure projects or commercial agreements
Policy competences	Public authorities (including high-level political representatives and foreign affairs officials); energy companies (often state owned)

Source: Herranz-Surrallés 2015

Information exchange mechanism on Intergovernmental Agreements (IGA)

- 2011- the EC issued a proposal asking for an information exchange mechanism in the field of energy
- 2012 - an information exchange mechanism was established (decision No. 994/2012/EU)
 - did not grant powers to the Commission to vet the IGAs!
 - focus on the ex-post observation
 - South Stream case
- 2016 – EC proposal for revised information exchange mechanism on IGAs (2016/0031(COD))
 - ex-ante compability assesment IGAs (veto!) + non-binding instruments (NBIs) - Adopted March 2017



Source: Eurostat

(1) Product codes: 27090010 and 27090090

(2) Product codes: 27111100 and 27112100

(3) Product codes: 2701, 2702, 2703, 2704

EU – Russia Energy Relations

Legal basis for EU – Russia energy cooperation

- Partnership and Cooperation Agreement (PCA)
- Energy Charter Treaty (ECT)
- Partnership for Modernisation
- EU-Russia Energy Dialogue
- EU acquis communautaire

Results

- Early Warning Mechanism (EWM)
- Gas Advisory Council (GAC)

EU – Russia Energy Relations

Problematic points

- Legal pressure on Gazprom
- Sanctions targeting the Russian oil sector
- Trade disputes:
 - Mažeikių Nafta (ORLEN Lietuva) case
 - MOL case
 - Ukrainian Crisis ...

Limits of the coherent EU Policy

- Lack of more competences in energy policy
- Problems in institutional dimension

EC vs. Gazprom

- September 2011 EU antitrust officials made unannounced inspections of the energy companies in 10 CEE MS
- September 2012 – EC opened formal proceedings against Gazprom for allegedly violating EU competition rules (abusing its dominant position in CEE's gas supply markets)
- Three potentially anticompetitive practices:
 - Market partitioning (destination clauses)
 - Barriers to supply diversification (breaching of TPA principle)
 - Unfair pricing (long-term take-or-pay contracts, oil indexation)

MOL case

- June 2007 – ÖMV made an unsolicited bid to take over MOL
- March 2009 - Surgutneftegaz announced that will pay €1,4 billion to buy 21,2% stake in Hungary's oil and gas group MOL from ÖMV
- 2011 - Hungary has bought back a 21.2 percent stake in oil and gas company MOL (profit € 500 million)

Intersection between energy policy and other foreign-policy aims

- EU as a normative power?
- Aim: to reconcile or achieve synergies between energy and broader foreign-policy aims, such as fighting climate change, promoting democracy and development.
- Main idea: energy dependency is impairing the EU's autonomy as a foreign-policy actor and, in particular, its ability to uphold its 'normative' objectives
- Examples: energy–environment nexus, energy–development nexus, energy–good governance nexus

Thank you for your attention!

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