



EEL News Service

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CLEER/EEL Upcoming Conference:

**“EU environmental norms
and third countries:**

the EU as a global role model?”

T.M.C. Asser Instituut, The Hague, Friday 19 April 2013

(New updated **program**)

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Case Law

Austrian EIA legislation breaks EU rules

C-244/12, [Salzburger Flughafen GmbH](#), 21 March 2013

European Union member states must conduct an environmental impact assessment for any project likely to have significant effects on the environment, the European Court of Justice ruled. The Court was examining Austrian legislation, which requires environmental impact assessments on proposed modifications to airports only if the modification will increase traffic by at least 20,000 flights per year.

Salzburg Airport had taken the case to an Austrian court after the government had ruled retroactively that a modification made in 2002 required an impact assessment. The airport said that under Austrian law no assessment was needed. The ECJ ruled that this law contravenes EU rules.

The ruling can have major ramifications for projects across the EU, as it can stand in the way of using a quantitative size threshold to decide which projects need an assessment. Instead, the threshold must be based on the potential effect on the environment.

Lack of EIA and pecuniary damage

Case C-420/11, [Leth](#), 14 March 2013

Ms Leth sought compensation for the decrease in the value of her house resulting from, in particular, aircraft noise. The house was located within the security zone of Vienna airport which has been developed and enlarged several times, without prior assessment of the environmental effects of those projects. She based her claim on, *inter alia*, a breach of [Directive 85/337](#), which requires that an assessment will be carried out as to the environmental impact of such projects. In the preliminary ruling, the Court concluded that “the fact that an environmental impact assessment was not carried out, in breach of the requirements of Directive 85/337, does not, in principle, by itself confer on an individual a right to compensation for purely pecuniary damage caused by the decrease in the value of his property as a result of environmental effects.” It is ultimately for the national court to determine whether the requirements of EU law applicable to the right to compensation, in particular the existence of a direct causal link between the alleged breach and the damage sustained, have been satisfied.

ECHA approach on substances of very high concern confirmed

Cases T-93/10, T-94-10, T-95/10 and T-96/10, [Rütgers Germany a.o. v ECHA](#), [Cindu Chemicals a.o. v ECHA](#), [Rütgers Germany a.o. v ECHA](#) and [Bilbaína de Alquitranes a.o. v ECHA](#), 7 March 2013

A number of companies brought an action before the General Court for partial annulment of the decision of the European Chemicals Agency (ECHA), published on 13 January 2010, identifying anthracene oil, anthracene oil (low), anthracene oil (paste), and coal tar high pitch as persistent, bioaccumulative and toxic (PBT) substances and/or very persistent and very bioaccumulative (vPvB) substances and including them in the Candidate List of substances of very high concern. Anthracene oil (low) is used to produce a pigment and a reinforcing filler in rubber products (especially tyres). The General Court confirmed in all cases the approach taken by the ECHA. Furthermore, the Court ruled that after a substance has been identified by ECHA as having PBT and/or vPvB properties, suppliers of these substances are obliged to update the safety data sheets concerned and to carry out a chemical safety assessment and complete a chemical safety report for the substance at issue. The Court also upheld that ECHA's decisions were proportionate and did not breach the principle of equal treatment.

Dispute on free carbon allocation to Polish plants

Case T-370/11, [Republic of Poland v European Commission](#), 7 March 2013

The European Commission's Decision 2011/278/EU determining transitional Union-wide rules for harmonised free allocation of emission allowances was upheld by a judgement of the General Court. Poland claimed that the Decision infringed both the Treaty on the Functioning of the European Union (TFEU) and Directive 2003/87/EC. Poland raised four pleas. 1) As for the alleged infringement of Article 194(2) TFEU, read in conjunction with Article 192(2) TFEU, the General Court found that the decision is a measure implementing the Directive which, in turn, was adopted on the basis of the provisions of the TFEU on environment policy and not energy policy; the plea was rejected. The plea claiming breach of the principle of equal treatment and of Article 191(2) TFEU, read in conjunction with Article 191(3) was also rejected. The Commission can treat uniformly installations that are in different situations, due to the use of different fuels, when determining the benchmarks to calculate the number of emission allowances to be allocated. The proportionality principle was also not violated: the contested decision gives appropriate consideration to the economic and social consequences of the measures to reduce CO2 emissions. Finally, infringement of Article 10a and 1 of Directive 2003/87, and lack of competence to adopt the contested decision were also rejected. The Court noted that the system complies with the 'polluter pays' principle in so far as installations emitting more CO2 will be obliged to pay the price of allowances purchased at auction, or reduce their emissions.

Precautionary ban on bluefin tuna fishing by France and Greece upheld

T-367/10, [Bloufin Touna Ellas Naftiki Etaireia a.o. v Commission](#), 27 February 2013

The applicants sought annulment of a Commission Regulation prohibiting fishing for bluefin tuna by French and Greek purse seiners. First of all, according to the applicants, the Commission discriminated by prohibiting further fishing activities of Greece, France and Spain, while the exhaustion of the Greek quota was much lower than that of Spanish quota. Furthermore, the Commission had issued two different termination regulations banning fishing activities as of 10 June 2010; one for Greece and France published on 10 June and a second one for Spain, published only on 15 June, effectively allowing the Spanish fleet to continue fishing for a longer period of time. The

Court found that in reality, no discrimination took place, adding that irregularities in the latter regulation addressed to Spain would not affect the lawfulness of the former one addressed to France and Greece. A second plea claimed that the Commission violated the general principle of proportionality. In view of the discretion the Commission has on agricultural / fisheries matters, the Court examined if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue. Quoting earlier case law, measures prohibiting fishing adopted by the Commission on the ground that exhaustion of the quotas was imminent was not found to be manifestly inappropriate. The Commission, by virtue of the precautionary principle, implemented measures which seemed to it the most appropriate in order to avoid any risk of the quotas being exceeded. Invoking the precautionary principle by the Commission here is remarkable, considering that biologists have been advising in vain for decades to set precautionary lower EU fishing quota in order to avoid depletion of fish stocks. Thirdly, the applicants claimed that the contested regulation was adopted in breach of the general principle of good and proper administration and/or duty of care. That plea was also rejected by the General Court.

Conservation of living aquatic resources

T-76/11, [Kingdom of Spain v European Commission](#), 21 November 2012

Spain asked for the annulment of Commission's Regulation No [1004/2010](#) in which reductions of fishing quotas for 2010 are set because of overfishing in the previous year. It was based on art.105 [Regulation 1224/2009](#), which allows the Commission to impose quota reductions for the following year(s) when a Member State exceeds fishing quotas for a certain year. The Court ruled that the provision forms a substantive rule which - in order to ensure legal certainty and protection of legitimate expectations - in principle, should apply "only to situations existing subsequently to their entry into force". However, depending on the interpretation of "their terms, objectives or general scheme that they cover situations existing prior to their entry into force", they can apply to cases prior to its application, as well (point 26). The Commission thus has the right to make deductions to the fishing quotas of a specific year not only due to overfishing activities of last year but of previous years, too (point 64). Further, the Court explained that art. 23 (4) of Regulation [2371/2002](#) was applicable before art. 105 of 1224/2009. The former provision intends to conserve and manage the living aquatic resources and the sustainable exploitation of such resources, which must serve a non-discriminative purpose. Therefore, when the reduction of fishing quotas refer to the next year of the infringements, then the Member State that complied with its obligations is facing discrimination contrary to those that did not comply. Such a conduct is against "the conservation and management of living aquatic resources" and the other Member States (point 47).

As for Spain's *nulla poena sine lege* claim, the Court commented that art. 105 of Regulation 1224/2009 enables the Commission to make deductions to the fishing quotas of a specific year not only due to overfishing activities of last year but of previous years, as well (point 64). The Court reiterated that not taking into account the overall allowable catches in the EU, constitutes an element that stems from the nature and the scheme of a system which on the one hand provides individual quotas for each Member State and on the other hand works under a decentralised control system (point 75). The deductions are therefore linked to "the conservation and sustainable exploitation of living aquatic resources". As a result, despite the fact that the Commission deduces the fishing quotas without estimating whether the overall total catches in the EU were exceeded, this constitutes a "compensatory measure and not a penalty" (point 75). Of the same nature are art. 23 (4) of 2371/2002 Regulation and art. 5(2) of Regulation [847/96](#). These factors basically focus on the "full restitution for the damage caused by overfishing" and therefore do not form a penalty (points 76, 78). Lastly, the Court judged that the Commission had no alternative than applying art. 105 of Regulation 1224/2009. Only where primary law, such as the principle of legal certainty, so requires, the Commission must interpret this provision narrowly in order to ensure compliance with that law (point 90).

Sweden taken to Court over industrial permits

Sweden is again taken to the Court because it failed to license all industrial installations falling under the Directive concerning integrated pollution, prevention and control ([IPPC Directive](#)). According to this Directive, any installations engaged in industrial and agricultural activities with high pollution potential need to be licensed. In the previous case ([C-607/10](#)), Sweden was brought before the Court for not issuing permits to 26 different installations. The Court had ordered Sweden to comply with the Directive's measures. It has been over one year since the previous case and, based on the communication between the Commission and Sweden, the Commission inferred that Sweden did not issue permits for two mayor industrial installations. Under these circumstances, the Commission is asking for a daily penalty payment of 14912 euros for each day after the second Court ruling until Sweden complies with the judgment, and a lump sum calculated on the basis of 4893 euros per day for the period between the first judgment and the day of compliance or the day of the second Court ruling.

See also:

- [“Environment: Commission refers Sweden back to Court over industrial permits, asks for fines”](#), Europa Press Release, 21.02.2013

Poland not implementing Water Legislation properly?

The [Water Framework Directive](#) (2000/60/EC, WFD) establishes a legal framework for the protection and restoration of clean water and the security of its sustainable and long-term use in Europe. The Commission decided to bring Poland before the Court for failing to transpose the WFD correctly. The Commission claims that Poland has omitted substantial elements of the WFD. For example, important definitions are not included, Annex II is absent just like parts of Annex III. Annex II refers to characterising surface waters and ground waters and Annex III refers to the environmental impact to human health and the economic analysis of water use. Poland is taken to the Court on the basis of previous communication with the Commission. This reference is part of previous summons that took place earlier on nitrates and water pollution.

- See also: [“Environment: Commission takes Poland to Court over water legislation”](#), Europa Press Release, 21.02.2013

Greece taken to Court over illegal landfills

The Commission is taking Greece to Court again due to its failure to comply with a 2005 judgement in case [C-502/03](#) on illegal landfills, on the basis of Landfills [Directive 99/31/EC](#). According to the previous ruling by the ECJ, Greece had to close down or rehabilitate all illegal landfills. After this decision, progress on behalf of Greece has been insufficient since some 78 illegal landfills still operate and 318 are still in the progress of rehabilitation, the Commission claims. Under these conditions, and based on previous communication with the Member State, the Commission decided to bring Greece to Court and is suggesting a daily penalty equal to 71193 euros for each day after the second decision until Greece complies with the judgement and a lump sum of 7786 euros per day for the period between the first ruling and the day of compliance or the date of the second ruling. The ECJ might agree to reduce the amounts asked for taking the financial crisis into account (like it did for Ireland as reported on in the previous News Service 2013/01), but considering the size and duration of the waste problems (the [Chania waste case](#) from the year 2000 being the first case in which a daily penalty of 20000 euro was imposed on the country for similar breaches of EU waste law), Greece cannot expect too much leniency.

See also:

- [“Environment: Commission takes Greece back to Court over illegal landfills and asks for fines”](#), Europa Press Release, 21.03.2013

General

A decent life for all: Communication on Rio+20 follow-up

In June 2012 "Rio+20", the UN conference on sustainable development, was held. We reported on the issue in previous EEL news services (see: [Rio+20 outcomes disappoint despite EU's active and constructive role in negotiations](#); [Planet under Pressure conference formulates challenges for Rio+20](#) & [First draft of Rio+20 text released](#)). The conference aimed to secure renewed global political commitment for Sustainable Development. In the context of Rio+20 follow-up the European Commission adopted on 27 February 2013 the Communication (COM(2013) 92 final) "A decent life for all: ending poverty and giving the world a sustainable future". In the Communication it is suggested that the EU should move towards a post-2015 overarching framework. Discussion on the basis of the orientations set out in the Communication should make it possible for the EU to come to a common position on how the Sustainable Development Goals (SDGs) and the Millennium Development Goals (MDGs) review processes should best be converged and integrated into a single process to better deliver such a comprehensive framework. Furthermore, the Communication underlines the need for actions towards an inclusive green economy and sets out main current and forthcoming actions in the EU and internationally that contribute to the implementation of Rio+20.

See also:

- [Insight into Rio+20 - Rio+20: will it green economies?](#)
- [International Issues - Rio+20: United Nations Conference on Sustainable Development](#)

New EU timber import rules

Two main elements of the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan are the EU Timber Regulation and Voluntary Partnership Agreements (VPAs). On 3 March 2013, the EU Timber Regulation (EUTR) came into effect to stop the circulation of illegally logged wood in the European Union. Under the EUTR, placing illegally harvested timber and products derived from such timber on the EU market is prohibited. Timber which carries a FLEGT license or a CITES permit is considered to comply with the Timber Regulation. With this in mind it is interesting to note that Delegates to the CITES conservation meeting in Thailand have agreed far-reaching restrictions on the trade in critically endangered hardwood trees. Voluntary Partnership Agreements (VPAs) and the EU Timber Regulation are expected to reinforce each other. Recently, on 19 February 2013, the Republic of Congo and the EU completed the ratification of a Voluntary Partnership Agreement. The Agreement entered into force on 1 March 2013. There are currently six countries developing the systems agreed under a Voluntary Partnership Agreement (VPA) and six countries that are negotiating with the EU. Furthermore, there are around 15 countries from Africa, Asia and Central and South America that have expressed interest in VPAs.

See also:

- [EU Timber Regulation 2013](#)
- [FLEGT Voluntary Partnership Agreements – Ensuring Legal Timber Trade & Strengthening Forest Governance](#)
- [Cites meeting: Ebony beats ivory in conservation stakes](#) BBC,12.03.2013

Climate Change

New researches confirm Indirect Biofuels Emissions

Two new studies are to become available which confirm the existence of Indirect Land Use Change (ILUC). ILUC occurs when the increase of crop biomass used to produce biofuels contributes to further deforestation and higher GHG emissions, while the disproportionate agricultural use fails to cover food supply and leads to higher food prices.

Both studies were co-authored by the EU's [Joint Research Centre](#) (JRC), the [Netherlands Environment Assessment Agency](#) (PBL) and an independent Dutch consultancy Koen Overmans. The studies are based on a transparent method that it is easy to verify and cover more than 10 years. They seem to prove that it is possible to estimate the indirect land use emissions under the same standard as the direct land emissions which are recognised by general consent. This is an important breakthrough, because until today, there are sides claiming the opposite. In particular, agricultural and biofuels lobbyists have been very sceptical of ILUC's existence. Notably, Raffaello Garafalo, the secretary-general of the European Biodiesel Board, at a European Parliament Workshop claimed that "ILUC is not a science" and "has never been confirmed".

Meanwhile, a substantial majority of the Member States have shown their objection towards the Renewable Energy Resources Directive [proposal](#) of October, 2012. As we reported in EEL News Service 2012/10, the proposal is suggesting a 5% limit to feed stock based biofuels and the elimination of subsidies.

Despite the fact that these studies were due by September 2012, they have not yet been released. At the moment they are under peer review. The delay causes increased concerns, and environmental groups even decided to file a law [suit](#) asking for the release of the report.

See also:

- ["Historical studies shore up proof of indirect biofuels emissions"](#), EurActiv, 25.02.2013
- ["Campaigners take legal action over EU biomass review"](#), Reuters, 31.01.2013

Renewable energy report vague on social aspects biofuels

Three months after the 2012 deadline set out in the Renewable Energy Directive (RED) 2009/28, the Commission released its first Renewable Energy Progress Report, indicating that member states are mostly meeting their interim targets, but that they need to step up their efforts in order to meet the 2020 targets.

The report sets out that biofuels have reached a 4.7% share in the EU. This is estimated to have generated savings in greenhouse gas emissions of 22.6 Mt CO₂eq. The "estimated savings are significantly reduced" when indirect land use change (ILUC) effects and indirect agricultural intensification effects would be taken into account, the report admits without setting out what the savings amount to in reality because of these effects. It is admitted that "often food crop-based biofuels ... have lower or no estimated greenhouse gas emissions savings" – thus not saying explicitly that the production and use of some of biofuels causes more greenhouse gases than fossil fuel. The Commission is under the legal obligation (art. 17(7) RED) to "report on the impact on social sustainability in the Community and in third countries of increased demand for biofuel, on the impact of Community biofuel policy on the availability of foodstuffs at affordable prices, in particular for people living in developing countries, and wider development issues." Such "[r]eports shall address the respect of land-use rights." The report does not shed much light on these issues. The Commission states that "it is not clear if EU biofuels demand contributes any abuse of land use rights" but assures that "monitoring of this issue must, however, continue." Significant food price increases and impact on food availability are acknowledged, and for EU biodiesel consumption, the estimated price effect on food oil crops is 4%. In spite of the legal obligation to report specifically on what this means for people living in developing countries, the Commission remains silent on this issue.

Remarkably enough, the vague information on these important aspects of biofuels did bring a representative of an organisation called the Renewable Energy Association to claim that "[t]he Commission's assessment ... highlighted the sustainable nature of biofuels produced and used in the EU. This is in stark contrast to recent stories which have wrongly linked biofuels to high food prices and poor GHG savings."

See also:

- Commission, [Renewable energy progress report](#), COM(2013)175 final of 27 March 2013
- [Commission website](#) with summary and links to other reports
- [REA recommends extension of successful renewable energy targets](#)

EP Committee backs temporary exception for intercontinental flights

The Environment Committee of the European Parliament (EP) adopted a report with regard to the Commission's "Stop the Clock" [proposal](#) on a temporary derogation from ETS Directive [2003/87/EC](#), allowing non-EU aviation companies to not comply with this Directive. The report suggests that MEPs should "facilitate talks on a global deal" to reduce aviation emissions. The solution to this could be the exemption of international aviation companies from complying with the ETS Directive measures. Under the condition that "clear and sufficient" progress has been marked, the exemption could be extended.

Peter Liese, the responsible MEP "rapporteur" for this project reiterated the reasons of this concession. The EP supports the [ETS Directive](#) but also appreciates the momentum created by the Civil Aviation Organization (ICAO)" and the efforts for a global ETS framework. The MEP also explained the reasons for adding the provision to "earmarking the revenues". According to him, this provision lays down the purpose of the money that is generated by the auctioning procedure. Notably, he stressed that such money should be destined for combatting climate change. Determinative point of the "Stop the Clock" proposal will be September 2013, when the [ICAO general Assembly](#) meets. It is very likely that a global ETS framework will take longer than 2014, but it has to be seen whether EU will extend the "Stop the Clock" proposal or put the ETS Directive into effect again.

The proposal is awaiting Parliament's first reading which will take place during the 15-18 April 2013 session in Strasbourg.

See also:

- ["Committee Draft Report on the proposal for a decision of the European Parliament and of the Council derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community"](#), Committee on the Environment, Public Health and Food Safety, 21.12.2012
- ["Amendments on the proposal for a decision of the European Parliament and of the Council derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community"](#), Committee on the Environment, Public Health and Food Safety, 28.01.2013
- (COM(2012)0697 – C7-0385/2012 – 2012/0328(COD))
- ["MEPs asked to give global talks to limit aviation emissions chance to take off"](#), European Parliament News, 27.02.2013
- ["CO2: MEPs want ETS exception for intercontinental flights and progress in ICAO"](#), European Parliament News, 26.02.2013

Air

European Commission launches clean fuel strategy

On 24 January 2013, the European Commission released a new [proposal for a Directive of the European parliament and of the Council on the deployment of alternative fuels infrastructure](#). Clean fuel is a vital issue for sustainability and future generations. However, progress has been slow due to high prices of vehicles, low acceptability among consumers and a lack of infrastructure of distribution and refuelling stations. To tackle this, the Commission releases with this strategy binding targets for a minimum level of infrastructure for clean fuels and for necessary equipment for Member States. Examples of clean fuels are hydrogen, electricity and natural gas.

The proposal includes the establishment of a common plug for electricity charging throughout Europe and a minimum number of charging points. For hydrogen, the implementation of common standards for the infrastructure of a refuelling network was proposed. Similarly, the Commission attempted to find relevant solutions for liquefied natural gas which is used for transport purposes. Interestingly, for biofuels which now cover 4,7% of renewable energy in transport, the Commission only reiterates that due to their nature as "blended fuels" no infrastructure is necessary. The total estimate for these proposals reaches € 8 billion; the EU already made provisions for providing TEN-T funds, cohesion and structural funds.

By this strategy the European Commission aims at breaking the Union dependence to oil (94% of transport). The Commission's [Transport 2050 Strategy](#) sets the targets of achieving 60% greenhouse gas reductions by 2050, wider establishment of cleaner fuels in transport, and it also provides for 40% CO2 low aviation fuels and 40% CO2 emissions reduction from ships.

See also:

- ["EU launches clean fuel strategy"](#), Europa press release, 24.01.2013
- ["Clean power for transport – Frequently asked questions"](#), Europa press release, 24.01.2013

Noise

European Parliament votes on draft law for lower noise limit in cars

Traffic noise is scientifically proved harmful for human health and the environment. For these purposes the European Parliament moved towards the implementation of a draft law that focuses on the limitation of noise generated by the vehicle engine. The engine noise would reduce to 68 decibels (db) from today's limit of 74db. The amendments will take place within 6 to 8 years, initially the limit will apply to the cars introduced to the market and on the second phase all vehicles would need to follow. More powerful cars would be allowed for 2 to 6 extra decibels while heavy lorries decibel limits will remain the same at 81 db. In addition, noise labels will be introduced for the new cars in a similar way as the labels that already exist for CO2, tyre noise and fuel efficiency. For quiet and hybrid car engines, the Parliament expressed its concern as they may pose a danger to the pedestrians and therefore suggested the provision of adding some noise to these cars by developing the "Acoustic vehicle Alerting Systems" (AVAS).

See also:

- ["European Parliament legislative resolution of 6 February 2013 on the proposal for a regulation of the European Parliament and of the Council on the sound level of motor vehicles"](#), 06.02.2013
- ["Proposal for a Regulation of the European Parliament and of the Council on the sound level of motor vehicles"](#), COM(2011) 856 final, 09.12.2011

Events

[AEBIOM Bioenergy Conference](#)

The AEBIOM Bioenergy Conference organized by the European Biomass Association is the fourth edition of the growing series. "Bioenergy Markets for Europe" is the main focus of the AEBIOM European Bioenergy Conference which is organized annually in Europe's capital – Brussels. The event aims at all companies, organizations and institutes that wish to be involved in the rapid growth of the European bioenergy markets. This edition will be co-organized with the European Pellet Council, the Industrial European Pellet Suppliers and the European Biogas Association and it is organized in association with the Irish presidency of the Council of the EU.

Date: 17-18-19 June 2013

Location: Radisson Blue Royal Hotel, 47 Rue du Fosse-aux-Loups, B-1000.

[Greening Economics, Greening Society: What is the Role of the EU?](#)

How can we alter our economies and societies to adapt to the environmental crisis? Climate change and biodiversity loss reveal the unsustainability of our economic and social models, and yet a truly

green economy remains a long way off. The necessary social changes are equally distant, and debate between academics and policy-makers remains too often a 'dialogue of the deaf.'

Date: 9-10 May 2013

Location: Guildford, United Kingdom

[Environmental Law and Governance: New Ideas and Old Problems](#)

The last two centuries of rapid economic development enjoyed in various parts of the world have come at the price of serious environmental degradation on global scale. Climate change, water pollution, land degradation, species extinction and deforestation are only a few examples of a plethora of contemporary environmental issues. Laws and regulations introduced at various regulatory levels in order to tackle those problems have proved to be insufficient: many pressing environmental problems are still awaiting comprehensive regulatory frameworks successfully addressing the matter.

The idea behind this event is to bring together early career scholars researching in the area of environmental law (or other related fields) and to provide them with a platform for innovative thinking about current environmental issues.

Date: 28 May 2013

Location: Dublin, Ireland

Colofon

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