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**Britain & the EU:
What the Balance of
Competences
Review Found**

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Introduction

In its review of the balance of competences between the UK and the EU, the British Government published reports in 2013-14 on every aspect of the policies of the European Union. Prime Minister David Cameron declared “we have launched our review to give us an informed and objective analysis of where the EU helps and where it hampers”.¹ Foreign Secretary William Hague said “this review is the most extensive analysis of the impact of EU membership on the UK ever undertaken”.² Its scope was not limited to ‘competence’ or the legal power to act (should more, or less, be decided at the British rather than the European level?). The review covered wider questions of national interest (what are the advantages, and disadvantages, of EU policies?) and future options and challenges.

This paper summarises the main points that emerge from the review, firstly on the balance of competences in general, and then on British interests and future challenges in important areas of EU policy.

Background

To initiate the review, the Government published ‘calls for evidence’, in response to which members of the public and organisations of all kinds, in the UK and elsewhere, submitted evidence.³ Many government departments organised consultations, workshops and seminars with experts, the business community, and other interest groups. This wide consultation was followed by the publication of 32 reports in four series, amounting to nearly 3,000 pages, in which the results were distilled and summarised under the supervision of a Ministerial Committee from around 10,000 pages of written evidence. Never before has a British government organised such a well-informed scrutiny of European policies; never before has it published such a mass of evidence-based information, advocacy, and opinions about the EU.⁴

The Government itself has published no summary of its findings, has given little publicity to the reports, and has avoided discussion of them in Parliament. Each report states that “it does not predetermine or prejudge proposals that either coalition party may make in the future for changes to the EU or about the appropriate balance of competences”. When the Conservative Party and the Liberal Democrat Party entered government in 2010, the review

¹ HM Government, ‘EU speech at Bloomberg’, 23 January 2013

² HM Government, ‘Second set of Balance of Competences reports published’, 13 February 2014

³ The Senior European Experts Group made 12 submissions to the Review

⁴ All 32 reports can be found at HM Government, ‘Review of the balance of competences’, 12 December 2012

of the balance of competences formed part of their coalition agreement. According to the press "Eurosceptic Conservatives and businessmen hoped it would provide a 'shopping list' of powers that should be returned from Brussels to Westminster, to form the basis for David Cameron's demands in the renegotiation of Britain's membership terms before the referendum he has promised for 2017".⁵ The Liberal Democrats continued to insist strongly that the review should be "evidence-based". When the first series of reports suggested that the overall balance of competences was about right, the press reported that Eurosceptics denounced them as a "Whitehall whitewash from a pro-Europe bureaucratic elite".⁶ They are in fact determinedly objective and a store of well-balanced information, obtained through public consultation to which all interested parties were invited to contribute. They offer an invaluable resource for informing public debate in Britain. A commentary on the review, with a digest of all the reports, can be found in the book, *Britain's Future in Europe: Reform, renegotiation, repatriation or secession?*⁷

Balance of competences: what the review found

On the question of competences (should more be decided at the national, rather than the European level?) the results of the review are clear. In none of the areas of policy examined did a convincing case emerge for transferring competences back from the EU to the UK. Although some contributors argued for a transferring in the EU's competences, and others for its extension in a few areas, the 32 reports regularly conclude that, on balance, the evidence suggests that the existing situation is appropriate. In no case does the review recommend the transfer of competences to the national level.

Probably the most controversial issue in the current debate is free movement of persons, and the report on this – whose publication was delayed because of disagreements within the Government – does not conclude in favour of a transfer of competence back to the national level. It says "some of those who submitted evidence argued for stricter enforcement of the existing rules, but others called for radical change, including amendments to EU legislation or Treaties".⁸

Another finding of the review is that, in areas of policy where the UK does not wish to participate, it has already negotiated a series of opt-outs that limit the competences of the EU. Britain does not use the euro, and is not subject to the macroeconomic and fiscal constraints of the eurozone. It has an opt-out from EU policies for justice and home affairs, although it opted back into a number of key measures in December 2014. With its opt-out from the Schengen passport-free area, it retains control of its borders. It will not participate in the banking union.

⁵ 'Whitehall backing for EU ties is setback for Eurosceptics', Andrew Grice, *The Independent*, 13 February 2014

⁶ *Ibid.*

⁷ Michael Emerson (ed.), *Britain's Future in Europe: Reform, renegotiation, repatriation or secession?* (Brussels: Centre for European Policy Studies; London: Rowman & Littlefield, 2015)

⁸ HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Single Market: Free Movement of Persons*, July 2014, p. 7

British interests and future challenges

The 32 reports contain a wealth of material on the advantages and disadvantages for Britain of EU policies, and the future options and challenges facing Britain and the EU. When Foreign Secretary William Hague launched the review he declared that:

[it] will be a valuable exercise for deepening understanding in Britain of the nature of our relationship with the European Union and will provide a constructive and serious contribution to the public debate across Europe about how the EU can be reformed, modernised and improved.⁹

A brief note of this kind cannot summarise all the reports, so it focuses on the ten most sensitive areas of EU policy that present important challenges: the Single Market, Free Movement of Persons, Social and Employment Policy, Energy, Transport, Agriculture, Fisheries, Environment and Climate Change, Enlargement, and Foreign Policy.

1. Single Market

The Single Market is covered in several reports – an overview, and reports on different aspects. Overall, the review states that “integration has brought to [...] the UK, in most if not all observers’ opinions, appreciable economic benefits. It has also spread the UK’s liberal economic model of policy-making more widely across the EU”.¹⁰ It has however brought constraints on policy making and a regulatory framework which some find difficult or burdensome. Nevertheless, overwhelmingly the evidence indicates that the benefits outweigh the downsides.

The economic benefits – from removal of barriers, increased trade, improved efficiency and innovation and more foreign direct investment – are spelled out in detail and supported by a range of quantitative analyses, including of specific sectors. Vodafone, for example, is quoted as saying: “Europe has given British companies like Vodafone the opportunity to acquire scale on the European continent and to use this as a stepping stone in the US, Japan, China and India”.¹¹ The report on financial services reflects the view that “access to the single market in financial services and the free movement of capital provides significant benefits for the UK financial services industry and for consumers”.¹² But it also comments that “there are [...] significant weaknesses in the EU’s current approach to harmonisation and policy-making [and] focused reform is required to ensure the success of the single market”.

Foreign governments and interests also contributed to the review. The Australian Government said that not only the UK economy but the Australian economy benefits from UK membership. The American Chamber of Commerce declared that “the UK’s active participation in the EU is of primary commercial importance to many UK companies, and to most US and other foreign investors in the UK”.¹³

⁹ HC Deb, 12 July 2012, vol. 548, cols. 468-470

¹⁰ Baroness Morgan of Ely: HL Deb, 11 March 2015, vol. 760, col. 746

¹¹ HM Government, *Submissions to the Call for Evidence*, 28 February 2013

¹² HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market: Financial Services and the Free Movement of Capital*, 22 July 2014, p. 5

¹³ HM Government, *Submissions to the Call for Evidence*, *op cit.*

Economic integration within the single market necessarily involves detailed legislation. Whilst business representatives accept that this is much better than facing 28 separate sets of rules, the review identifies examples where EU law is believed to be unduly burdensome, especially for businesses not trading across borders, and concludes that there is scope for less, but better, EU regulation.

As regards the future, the single market is seen as underperforming in several areas: priority for action lies in network industries (energy, telecommunications etc.), the digital economy where regulation has failed to keep up with technological development, and services where (in particular) existing legislation needs better enforcement. The review identifies key challenges, notably globalisation and the ever-present danger of protectionist forces, and the need to ensure that further eurozone integration does not undermine the single market through fragmentation, or domination by the eurozone countries. In all areas the UK needs to ensure that it is at the heart of EU policy making, especially in financial services.¹⁴

2. Free Movement of Persons

This report highlights a most politically sensitive area of EU competence. Whilst acknowledging free movement of persons as being “one of the four fundamental freedoms of the EU’s single market”¹⁵ and noting a substantial body of evidence from key UK interests of its benefits to the British economy and to UK citizens living and working abroad, the report also cites evidence of negative effects, such as competition for jobs and pressure on public services and housing.¹⁶

Overall, the report shows that EU competence is of major benefit to the UK economy but that its impact in the recession, after Britain’s 2004 decision not to impose restrictions on migrants from newly acceding Member States (unlike other large Member States) has led to real, if localised, difficulties and created a focus for anxieties about control of immigration. The employers’ organisation CBI is unequivocal:

The free movement of persons within the EU is necessary alongside the free movement of goods, services and capital to facilitate the operative functioning of the internal market, helping to raise the productivity and global competitiveness of UK-based companies.¹⁷

Analyses of the impact on a range of sectors and occupations illustrate positive results except possibly for some low skilled workers. But even on this a joint Home Office/BIS report concludes that there is “little evidence so far in the literature of a statistically significant impact from EU migration on native employment”.¹⁸

The role of social security co-ordination is recognised as important to facilitate labour mobility within the single market, but there is concern (shared by several other Member

¹⁴ HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market*, 22 July 2013, pp. 51-58

¹⁵ HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Single Market: Free Movement of Persons*, 8 July 2014, p. 6

¹⁶ *Ibid.*, pp. 13, 32, 37

¹⁷ *Ibid.*, p. 25

¹⁸ *Ibid.*, p. 33

States) that the welfare system can also act as a 'pull factor'. However, no hard data exist to demonstrate clear-cut conclusions on this.¹⁹

Future options identified by stakeholders range from scaling back the right of EU citizens to free movement, which would require Treaty change, to modernising social security legislation domestically and at EU level. The Government has already begun this process in domestic law. Debate about changes at EU level is set to continue, although many EU governments have signalled that the basic right of free movement is one they would not be prepared to see tampered with.

3. Social and Employment Policy

The report illustrates a wide range of views amongst interested parties, extending from those who consider the EU should have no competence for social and employment policy, through those who see value in this competence in supporting the operation of the single market, to those who regard EU competence as bringing positive benefits in its own right. The bulk of the evidence submitted fell within the latter two categories.

An important criticism is that whilst EU rules – which include health and safety measures and gender and equality legislation – should define minimum standards, they are often excessively prescriptive for the needs of highly diverse labour markets with differing structures and cultural traditions. A further criticism is the role of the Court of Justice which some argue to be guilty of 'judicial activism'.²⁰ As regards the costs and benefits of EU policy to the UK, the report found this impossible to determine, not least because in many areas similar national legislation would be adopted in the absence of European law. A CBI survey is quoted as saying that "49% of businesses polled reported that creating employment law through Europe impacted negatively on their businesses, while only 22% saw a positive impact".²¹ On the other hand, benefits of EU law for individuals may include "improved living standards, better work-life balance, health and wellbeing and more inclusive, fairer workplaces".²² The TUC, UNITE, GMB and UNISON are quoted as arguing that there is a moral case for EU intervention in this area. In their view, EU action has played a central role in maintaining employment, protecting working people from exploitation, combating discrimination and social exclusion and promoting high trust, high skilled workplaces.²³

Looking to the future, the report observes that whilst the EU has encouraged, in the context of the economic crisis, the deregulation of rigid labour market laws by Member States, it has also recognised the need to monitor the social impacts of austerity policies. It sees broad support for the view of the manufacturers' organisation EEF that more account should be taken of the impact of social and employment law "upon jobs, growth and businesses [...] with a greater focus on supporting Europe's industrial base and reducing both the direct costs and administrative burden of regulation".²⁴ But there remains an important divide in

¹⁹ HM Government, *supra* n. 15, pp. 7, 28, 39, 40

²⁰ HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy*, 22 July 2014, p. 49

²¹ *Ibid.*, p. 58

²² *Ibid.*, p. 63

²³ *Ibid.*, p. 6

²⁴ *Ibid.*, p. 67

UK opinion between those who see future legislation delivering more rights for individuals and those looking to strengthen the operation of the single market.

4. Energy

The internal EU energy market is recognised as of key importance to the UK economy, and the failure by some countries to implement fully the Third Energy Package is criticised. The Union's efforts to enhance its energy security are welcomed, albeit with a strong reminder that Member States should take responsibility for developing their own indigenous resources. Opinion was split on whether the EU should take a greater role in external relations: the potential of "greater weight" is counter-balanced by concerns that it may be difficult to define a common view, given Member States' competing interests.²⁵ Opinion was also divided on whether the EU's action on setting renewable energy targets and legislating on energy efficiency is beneficial in helping to secure reduction of greenhouse gas emissions in an affordable and cost-effective way.

Future challenges include security of supply and affordability, under threat from increased global demand (though the recent fall in oil prices suggests this may be less of an issue in the short to medium term) and geopolitical developments. This in turn raises questions about the effectiveness of the internal market and EU's external competence in energy matters, questions that will be important in the forthcoming debate on Energy Union. Another challenge is the EU's climate change policy framework for 2030, notably the role of renewable energy and energy efficiency targets (on which, since the report was published, the British Government has successfully convinced its partners to avoid member state-specific targets).

5. Transport

This report shows that the UK has been a leading advocate for the development of a single market and liberalisation in transport services such as air and rail. The main messages from the evidence were general support for liberalised free trade in the EU, a desire for it to go further, and frustration where it has been held back by poor implementation.

Air travel is identified as a great facilitator for the freedom of movement of people and capital in Europe. The exercise of EU competence is recognised as having broken down barriers that previously existed, and is credited with encouraging growth. The British Air Transport Association said:

EU oversight over air transport in recent decades has been extremely beneficial, creating a very liberalised and efficient sector in Europe, allowing the industry entry to markets in Member States and to grow across borders, delivering better and cheaper travel for the public.²⁶

The low-cost airline EasyJet went further: "EasyJet is a product of the EU's deregulation of Europe's aviation market. Without deregulation we would not exist". British Airways said that "engagement

²⁵ HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report*, 22 July 2014, p. 6

²⁶ HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Transport*, 13 February 2014, p. 24

by the EU in transport is a success, and the UK national interest would be better served by the UK taking a leading role within the EU in helping to form and shape the direction of the EU". In maritime transport, the UK Chamber of Shipping said "the existence of the Single Market has brought tremendous economic benefits for all businesses engaged in trading with it".²⁷

However, there was concern at the perceived use of common standards in fields such as safety or social policy in a protectionist way, and the tendency of the European Parliament to promote consumer protection. While the single market in transport services is strongly supported, there is a need in some cases for better observance of the principles of subsidiarity and proportionality, for example where EU cross-border rules are applied to domestic transport.

For the future, stakeholders want the EU to focus on implementing the existing laws, for example in rail where other members need to reciprocate in opening their markets. But there were also suggestions to broaden EU action in transport service, for example in relation to car and van rental. There is broad consensus that the single market in transport services is at the core of the EU's transport policy, that it has driven growth and prosperity in the UK and in other members, and should continue to do so.

6. Agriculture

The report on agriculture contains strong criticism of the Common Agricultural Policy (CAP) but shows that it has developed in ways that successive British governments have advocated. The majority of respondents considered that "the CAP remains misdirected, cumbersome, costly and bureaucratic" but there is "a recognition that the CAP has changed significantly, particularly over the past 30 years. The most damaging and trade-distorting elements have been removed and the UK has played a significant role in driving reform".²⁸ The focus of the CAP has switched decisively from indiscriminate support of market prices to direct support of farm incomes and enhancement of the environment: Europe's butter-mountains and wine-lakes have long since disappeared, along with the practice of dumping agricultural products on world markets.

The report states that agri-environment schemes have been beneficial across Europe and provide a regime for conservation that might not otherwise exist. The Royal Society for the Protection of Birds – with more than one million members, Europe's largest voluntary environmental organisation – argued that shared natural resources such as biodiversity, air, carbon stores and water require a cross-border approach, and that EU competence for agriculture, land management and plant health is justified because these resources require an international framework for environmental protection.²⁹

The budgetary cost of the CAP continues to be a focus of criticism; on this however the report quotes the argument that Britain's budgetary rebate "has neutralised for UK taxpayers a major part of the CAP's net costs".³⁰ The report also examines the implications for the UK of radical options such as leaving the CAP, or leaving the EU. Here a key question is the level of national

²⁷ HM Government, *supra* n. 26, p. 26

²⁸ HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Agriculture*, 22 July 2014, p. 5

²⁹ *Ibid.*, p. 53

³⁰ *Ibid.*, p. 38

agricultural support that would replace the CAP: most respondents argued that it would be lower, but the report also quotes the assessment that with a return to separate national subsidies, there would be such a wide variation in subsidy that a level playing field would be impossible; without EU action, there would either be a subsidy race between Member States determined to protect their farmers, or a breakdown of the Single Market, or both.³¹

7. Fisheries

The report on fisheries contains many criticisms of the Common Fisheries Policy (CFP) but gives a positive judgement on the EU's recent reform of the policy. Interestingly, on the question of competence it says that the majority of respondents support some form of supranational management of fisheries, due to the trans-boundary nature of fish stocks.³² Many respondents considered it essential to have a central coordinator to set conservation objectives for all countries with an interest in a particular fishery.³³

On the EU's setting of quotas for catches, there were many criticisms of the way in which decisions have been taken, with annual negotiations leading to unsatisfactory political compromises. However, the Cornish Fish Producers Organisation stated candidly that although the system has many problems "it is very far from clear if any superior alternative is available".³⁴ Some respondents suggested that fisheries policy should revert to exclusive national control of fisheries resources, and UKIP claimed that this would be worth £2.5 billion per year to the British economy. Others questioned that these benefits could be achievable, given that the UK would continue to need to negotiate catch limits for all its fish stocks shared with other EU countries, in order to avoid a free-for-all leading to overfishing and collapse of the stocks. The report quoted the assessment that in this context the UK "could not mount a credible case for an increase in quotas at the expense of other countries, given that the current shares have been unchanged for over 30 years and are themselves based on historic fishing activity".³⁵

The report explains that in 2013 negotiations between Britain and its EU partners on reform of the CFP were successfully concluded, with the aid of the European Parliament. The Deputy Prime Minister, Nick Clegg, commented "for years people said the policy was beyond reform [...] Yet in June we led the way on a historic agreement that will transform fishing practices across Europe, and end micro-management from Brussels, massively benefiting our fishing industry and our marine environment too".³⁶ The Minister for Europe, David Lidington, declared "this negotiation has shown how the UK can work successfully with European partners to deliver significant reforms that benefit our country".³⁷ The case of fisheries has wider implications for British policy and the British debate on the EU: it shows that European policies can be improved if the UK makes a good case and recruits allies in the cause of reform.

³¹ HM Government, *supra* n. 28, p. 76

³² HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Fisheries Report*, 22 July 2014, p. 6

³³ *Ibid.*, p. 35

³⁴ *Ibid.*, p. 36

³⁵ *Ibid.*, p. 58

³⁶ *Ibid.*, p. 26

³⁷ *Ibid.*

8. Environment and Climate Change

The report reflects a general view that EU competence is desirable both for environmental protection and to ensure a level playing field within the single market. In addition the EU's role in amplifying UK influence in international negotiations is seen as important, as many key environmental issues require action at the global level.

The report reveals tensions about the extent and impact of EU environmental legislation. It shows that EU competence has increased standards and performance in the UK, citing legislation on water quality, waste and climate change as examples. But some organisations argued that EU action should not extend beyond issues with trans-boundary impacts, and called for a better application of subsidiarity and proportionality.³⁸ The regulatory burden of some EU legislation is a matter of concern, especially to small businesses which can be disproportionately affected by complex requirements. The report also recognises the legislation's role in stimulating growth and innovation especially in environmental and low carbon technologies which now form a significant part of the economy. It reflects some anxiety that the EU may not necessarily follow UK priorities in external negotiations, whilst recognising the view that the EU is more effective internationally when it speaks with a single voice.

For the future, maintaining the EU's competitiveness whilst effectively tackling major issues such as climate change and pressure on resources are the key international challenges. Domestically, the emphasis should be on ensuring good application of EU legislation and addressing its flaws, such as its impact on small businesses, rather than extending it.

9. Enlargement

The report explains that successive British governments have strongly supported this policy, which has transformed the EU into a global actor with over 500 million citizens. Enlargement helped to embed democracy in Greece, Portugal and Spain, and later extended stability and democracy to former Communist countries. Now it is supporting democratic reform in Turkey, and bringing peace and stability to the countries of the Western Balkans.

There is general agreement that it has been a historic success for the EU. It has increased prosperity through extending the Single Market – Poland's economy, for example, grew by over 40 per cent in 2004-13 – and has been generally beneficial to UK interests. Enlargement has made a major contribution to European stability, to the benefit of the UK, and many contributors argued that it has acted as an "influence-multiplier" for British foreign policy priorities.³⁹

The UK has gained like-minded allies, who share its outward-looking, free-market outlook. British business has benefitted, and trade with new members has grown much faster than with old members, though there is concern about some of their compliance with EU rules. The report notes that, in the past, some countries were permitted to join the EU before they reached the required standards, so now there an increasing focus on conditionality and

³⁸ HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Environment and Climate Change*, 13 February 2014, p. 6

³⁹ HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: EU Enlargement*, 18 December 2014, pp. 7, 67

embedding reforms before accession, especially the rule of law and the fight against organised crime and corruption.

On the balance of competences there is, in practice, nothing to repatriate from Brussels: Member States have a 'unanimity lock' at each stage of the enlargement process, and national parliaments have the final say on ratification.⁴⁰

The evidence showed a general consensus that enlargement should continue, in line with the UK's vision of an open, outward-looking, flexible Europe. But there was disagreement over the prospect of Turkey or Eastern Partnership countries (such as Ukraine) joining the EU.⁴¹ The report concludes that there is growing agreement that, to ensure public confidence, the issue of migration must be addressed in future enlargement, for example through transitional controls on free movement of persons.

10. Foreign Policy

The report states that in this area the balance of competence lies squarely with EU Member States. All significant decisions are made by unanimity, and each member has a power of veto. No British personnel can be deployed in an EU mission unless the government agrees.

The evidence suggests that an important advantage for the EU is its ability to combine its diplomatic and security tools with a wide range of policy instruments: political, economic, development, and humanitarian. However, there was criticism of the Commission's insistence on representing the EU at the international level in a wide range of negotiations.⁴²

The report concludes that it is strongly in the UK's interests to work through the EU. The key benefits include the increased impact of concerted action with 27 other countries; greater influence derived from Britain's position as a leading EU member; the international weight of the EU's single market; the EU's financial instruments; the range and versatility of its tools, compared with other international organisations; and the EU's perceived political neutrality, which enables it to act in cases where other countries or organisations might not. But challenges remain in formulating strong, clear strategy within the EU, with its sometimes slow decision-making.

Since the report was published, Russia's actions in Ukraine have presented an important challenge in foreign policy, and here the EU has played a large role in Britain's response. Foreign Secretary Philip Hammond says "Britain has been, throughout, a key player in the European Union sanctions regime [...] That is why the Russians are talking [...]".⁴³ According to Prime Minister David Cameron "[w]hat Britain has done is led the charge in Europe for very strong and tough and consistent sanctions against Russia [...] We will continue to play that key role in the EU [...]"⁴⁴

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⁴⁰ HM Government, *supra* n. 39, pp. 9, 82

⁴¹ *Ibid.*, pp. 8, 10, 83

⁴² HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy*, 22 July 2013, pp. 40, 41

⁴³ 'UK a 'key player' in Ukraine negotiations, Hammond says', *Daily Telegraph*, 7 February 2015

⁴⁴ 'David Cameron plays down UK absence from Ukraine talks', Nicolas Watt, *The Guardian*, 5 February 2015



Senior European Experts

The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

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