

DISCUSSION
BRIEF

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MIGRATION

Migration-related
Conditionality in EU
external funding



ReSOMA Discussion Briefs aim to address key topics of the European migration and integration debate in a timely matter. They bring together the expertise of stakeholder organisations and academic research institutes in order to identify policy trends, along with unmet needs that merit higher priority. Representing the first phase of the annual ReSOMA dialogue cycle, nine Discussion Briefs were produced, covering the following topics:

- hardship of family reunion for beneficiaries of international protection
- responsibility sharing in EU asylum policy
- the role and limits of the Safe third country concept in EU Asylum policy
- the crackdown on NGOs assisting refugees and other migrants
- migration-related conditionality in EU external funding
- EU return policy
- the social inclusion of undocumented migrants
- sustaining mainstreaming of immigrant integration
- cities as providers of services to migrant populations

Under these nine topics, ReSOMA Discussion Briefs capture the main issues and controversies in the debate as well as the potential impacts of the policies adopted. They have been written under the supervision of Sergio Carrera (CEPS/EUI) and Thomas Huddleston (MPG). Based on the Discussion Briefs, other ReSOMA briefs will highlight the most effective policy responses (phase 2), challenge perceived policy dilemmas and offer alternatives (phase 3).

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Discussion Brief

Migration-related Conditionality in EU External Funding*

1. Introduction

The increase in the number of migrants and refugees arriving in Europe in 2015–16, during what has commonly been referred to as the European 'refugee crisis', has put into question the EU's capacity to react in a timely and effective manner. In a context marked by tensions among member states on how to equitably share responsibility for asylum seekers entering Europe, cooperation with third countries has been singled out by EU policy-makers as a crucial priority to reduce migration pressure towards Europe.

The 2015 European agenda on migration expressed the determination to use all leverage and incentives at the disposal of the EU to increase the enforcement rate of return decisions. Following this approach, cooperation was stepped up with African countries, through the Valletta Action Plan in November 2015, and with Turkey, through the launch of a political dialogue that culminated in the adoption of the EU–Turkey Statement in March 2016. Financial incentives are at the core of these initiatives. A €3.3 billion EU Trust Fund (EUTF) to address the root causes of migration and forced displacement was set up in order to advance the Valletta Action Plan, while a dedicated €3 billion EU Facility for Refugees in Turkey was established in the framework of EU cooperation with Ankara.

The conditionality approach that has driven EU strategy towards both Turkey and African countries was formalised in the Commission's

Communication on a New Partnership Framework with Third Countries under the European Agenda on Migration, released in June 2016. The Partnership Framework proposed by the Commission, which takes the 2016 EU–Turkey deal as a model, revolves around 'migration compacts' to be offered to selected third countries, which should employ in a coordinated manner all the instruments, tools and leverage available to the EU in different policy areas, including development aid, trade, migration, energy and security. The Communication states that positive and negative incentives should be integrated into the EU's development policy, rewarding those countries that cooperate in managing the flows of irregular migrants and refugees while penalising the others.

The recent trend towards making EU external funding conditional on migration control poses a set of questions regarding the overall coherence of EU external action, as well as the relation between migration objectives and the objectives pursued by the EU in different policy areas, including trade, development and democracy promotion. At the same time, concerns have been raised from several sides about the potential negative impact of the EU migration agenda on human rights protection in third countries. With negotiations on the next Multiannual Financial Framework (2021–27) entering into a crucial stage, migration-related conditionality is also set to remain a major issue on the

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agenda of EU institutions in the future.

2. Scoping the debate

There is widespread agreement in the academic literature that the beginnings of EU cooperation on migration and asylum matters were marked by the imperative of containing movements in European countries. Security-related concerns dominated the agenda of European countries party to the Schengen and Dublin Conventions adopted in the early 1990s. Policies in the area of external border controls, visa policy, return and readmission were considered preconditions to ensure the sustainability of a common area without internal border controls and to respond to growing societal concerns about migration (Guiraudon 2000; Lavenex & Kunz 2008).

In relation to this, some have argued that early formulations of 'root causes' approaches to migration discussed at the EU level since the early 1990s should be viewed as an expression of the same control-oriented paradigm, aimed at alleviating migration pressure from countries of origin. As clearly stated by Chetail, "a preventive approach to migration, combining the improvement of socioeconomic conditions in countries of origin with the fight against irregular migration, constituted the original matrix of the migration-development nexus" (Chetail 2008, p. 188).

In this context, it is no wonder that, following bilateral patterns of cooperation previously developed by member states, EU debates revolved around the issue of conditionality, that is, of incentives and 'bargaining chips' to be offered to third countries in order to secure their cooperation in the management of migration. Following academic theorisation, a distinction should be made here between positive and negative conditionality. Positive conditionality is based on a 'more-for-more' approach, that is, on the provision of benefits subject to the fulfilment of a specific set of conditions by a recipient, while negative

conditionality involves the reduction, suspension or termination of benefits if a recipient fails to meet the required conditions. Nevertheless, in real situations the boundaries between these two typologies are blurred, since both 'carrots' and 'sticks' are often used simultaneously as part of negotiating strategies in different policy fields (Koch 2015, p. 98).

A first attempt to make explicit the use of conditionality in EU migration policy was advanced in 1998 by the Austrian Presidency of the EU in its strategy paper on migration and asylum. Among many other controversial measures – including the revision of the 1951 Geneva Convention Relating to the Status of Refugees – the Austrian paper proposed to make development aid to third countries dependent on readmission cooperation, border control and, more broadly, their willingness to cooperate to reduce push factors. The Austrian proposal thus explicitly advanced a negative version of conditionality, foreseeing the use of sanctions (e.g. the suspension of development assistance) against third countries unwilling to cooperate on migration. While the Austrian proposal was ultimately rejected, not least due to its controversial proposals on refugee protection, some of the measures it envisaged have continually resurfaced in EU debates on external migration policy, especially at times of increasing migratory pressure.

Given the importance of securing third countries' cooperation to pursue EU readmission priorities, the 'communitarisation' of migration and asylum policy sanctioned by the Treaty of Amsterdam in 1999 was accompanied by a parallel reflection on how to develop an external dimension of the EU's migration and asylum policy. The Tampere Presidency Conclusions in 1999 stated the ambitious objective of developing "a comprehensive approach to migration", addressing political, human rights and development issues in countries and regions



of origin and transit of migrants, hence focusing on the long-term drivers of migration flows. In parallel, however, the Tampere Conclusions reiterated the priority to conclude EU readmission agreements and to include 'migration clauses' in association and cooperation agreements between the European Community and third countries or groups of countries (Coleman 2009, p. 211). Following Boswell's analysis (2003), it is possible to conclude that the coexistence of a preventive approach (focused on addressing the long-term drivers of migration) and a control-oriented approach (centred on short-term security concerns) has been (and continues to be) a distinctive feature of EU debates on external migration policy.

A few years later, at the 2002 Seville European Council, the Spanish and UK prime ministers relaunched the idea of making development aid dependent on third countries' effort to combat irregular immigration. As in the case of the Austrian proposal mentioned before, the initiative did not find enough support among the other member states but the Seville Conclusions maintained a level of conditionality between migration control and development cooperation. One of the key decisions taken at Seville was to subordinate the conclusion of any future association or cooperation agreement by the EU to the inclusion of readmission clauses covering nationals of third states unlawfully present in a member state and also third country nationals who have transited through the country in question. In addition, the Seville Conclusions also formalised a negative conditionality mechanism, stating that 'insufficient cooperation' by a third country in combating illegal immigration should prevent the establishment of closer relations between that country and the EU. Yet as widely documented, the negative conditionality approach envisaged by the Seville Conclusions has never been translated into practice. A central reason accounting for this circumstance has to do with the fear that the implementation of a "punitive approach"

could disrupt broader bilateral relations between the EU (and its member states) and third countries (Coleman 2009, p. 135).

EU attempts to engage third countries in the containment of migration through the use of a conditionality strategy have been subjected to substantial criticism. Already in 2004, for example, ECRE (2004) argued that the EU's prioritisation of measures to combat irregular immigration over improving refugee protection in third countries was leading to a lack of coherence between EU external migration policy on the one hand, and its human rights and development policies and objectives on the other.

The use of EU external funding (notably development funds) in the pursuit of a migration control-related agenda has also met opposition from EU actors holding different interests and priorities. While justice and home affairs officials at the Commission have been keen to accommodate member states' requests to use EU development assistance for supporting cooperation with third countries on border management and readmission, Commission development and external relations officials have generally resisted the subordination of development objectives to what they perceive as attempts to achieve short-term containment of migration flows (Boswell 2003; Lavenex and Kunz 2008).

The dynamics of migration in the Mediterranean have been recognised as important factors in putting into question a narrow approach focusing on containment of flows and in prompting the elaboration of more comprehensive solutions. In 2005, it was the 'shock' provoked by the tragic events at the Spanish enclaves of Ceuta and Melilla that prompted the Global Approach to Migration (GAM), the overarching framework of EU cooperation with countries of origin and transit (Lavenex and Kunz 2008). Again, in 2012, it was the changing geopolitical situation in North Africa and the Middle East



following the Arab uprisings that motivated the adoption of a revised Global Approach to Migration and Mobility (GAMM) (European Commission, 2011).

The aim of the GAMM is to establish balanced and comprehensive partnerships with third countries covering all relevant aspects of migration. The focus on the notion of 'partnership' that lies at the centre of the GAMM has been associated with a shift in EU policy discourse that signals a willingness to establish more comprehensive relations with third countries on migration issues, including by fostering actions aimed at exploiting the positive impact of migration on development processes. At the same time, several contributions have pointed to the 'gap' between the comprehensive narrative advanced in the GAMM and the narrow and conditionality-driven policies emanating from it, as is the case of the EU Mobility Partnerships and regional migration dialogues, such as the Rabat and the Khartoum Processes (Carrera & Hernández i Sagrera 2011; Lavenex and Stucky 2011).

3. EU policy agenda

Since the inception of the refugee crisis, the EU has reinforced its determination to use a more-for-more approach and to deploy all available leverage and incentives to obtain cooperation from third countries on control of migration flows. The more-for-more principle entails tying border control and readmission demands to other areas of cooperation, by rewarding those countries that support the EU's migration agenda.

Cooperation on migration with African countries has been a longstanding priority for both the EU and the member states, in light of persistent concerns over trans-Mediterranean movements from North Africa to southern European countries, such as Italy, Spain and

Malta.¹ The last comprehensive dialogue on migration with African countries culminated with the EU–Africa summit held in Valletta in November 2015. The summit resulted in the approval of an action plan covering different priority domains, including the development–migration nexus, legal migration and mobility, international protection and asylum, the fight against irregular migration and human trafficking, readmission and return. The implementation of the Valletta action plan is backed by an “Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa”, currently endowed with a budget of about €3.3 billion (European Council 2015). The budget of the EUTF for Africa draws mainly from the reserve of the European Development Fund, with additional contributions from the Development Cooperation Instrument, the European Neighbourhood Instrument and a limited contribution from the Asylum, Migration and Integration Fund. In spite of the Commission's repeated calls to match the EU's contribution (initially worth €1.8 billion), member states have been reluctant to pour additional money into the EUTF; it was not until 2017 that two member states, namely Italy and Germany, decided to substantially increase their contributions.

In parallel, the EU focused its efforts on increasing cooperation with Turkey. This choice was dictated by the centrality that the Eastern Mediterranean route acquired in the dynamics of migration flows towards Europe: in 2015, over 800,000 refugees and migrants came via the Aegean Sea from Turkey into

¹ An increased migratory pressure was experienced especially along the Central Mediterranean Route, which connects North African countries (particularly Libya) to Italy. According data from the International Organization for Migration, around 154,000 arrivals were recorded in 2015 on this route, and in 2016 they stood at 181,000. Arrivals dropped to 119,000 in 2017, showing a decreasing trend that has continued also during the first months of 2018 (13,000) (IOM 2018).



Greece, accounting for 80% of the people arriving irregularly in Europe by sea that year.² Against this background, the EU–Turkey joint action plan of October 2015 included a commitment on the part of the Turkish government to reduce migration flows along the Eastern Mediterranean route. In exchange, the EU agreed to establish a dedicated €3 billion financial facility to support Turkey's efforts in coping with refugees within its territory.

In March 2016, cooperation was further advanced through the signing of the EU–Turkey Statement, which included additional action points on readmission: the return to Turkey of all new irregular migrants and asylum seekers whose applications are judged unfounded or inadmissible, and a 'one-for-one' mechanism, whereby for every Syrian being returned to Turkey from the Greek Islands, another Syrian will be resettled from Turkey to the EU. In addition, the EU–Turkey Statement provides that once the €3 billion provided under the Facility is almost fully used, the EU will mobilise an additional €3 billion for the Facility (European Council 2016). In March 2018, noting that the operational envelope of the first €3 billion tranche of the Facility had been fully contracted before the end of 2017, the Commission adopted a decision on the allocation of the second €3 billion tranche, mobilising €1 billion from the EU budget and calling on member states to honour their pledged contributions under the aforementioned agreement (Commission 2018a).

In early 2016, responding to increasing pressures from southern member states (particularly Italy) to take actions to address flows along the Central Mediterranean route (linking Libya with Italy), the Commission released a Communication on establishing a new Partnership Framework with third

countries under the EU agenda on migration (Commission 2016a). The Partnership Framework proposed by the Commission, which explicitly takes the EU–Turkey deal as a model, states that the EU should employ in a coordinated manner all the instruments, tools and leverage available to the EU in different policy areas, including development aid, trade, migration, energy and security. In particular, the Communication states that "positive and negative incentives" should be integrated into the EU's development policy, rewarding those countries that cooperate in managing the flows of irregular migrants and refugees while penalising the others. The Communication envisages the Partnership framework as being implemented with five priority countries in Africa, namely Ethiopia, Mali, Niger, Nigeria and Senegal. However, according to recent reports, cooperation under the Partnership Framework is now expanding beyond those priority countries to encompass other countries in West and North Africa as well as Asian countries, including through increased cooperation on returns with Bangladesh, Pakistan and Afghanistan (Castillejo 2017).

In early May 2018, the Commission put forward its opening proposal for the next Multiannual Financial Framework (2021–27) to be negotiated by EU institutions in the following two years (European Commission 2018b). Together with a 26% increase in investment for EU external actions, the proposal foresees a major restructuring of the external dimension of the EU budget by bringing together 12 existing financial instruments into a broad neighbourhood, development and international cooperation instrument with worldwide coverage. The EU's external spending architecture would be further simplified via the integration of the European Development Fund into the EU budget. Moreover, the proposal also foresees the establishment of a flexibility cushion to address existing or emerging urgent priorities, including migratory pressures. As observed by some commentators, the Commission's

² Arrivals by sea to Greece decreased substantially during 2016, when they stood at 176,000, and even further in 2017, when 35,000 arrivals were recorded (IOM 2018).



structure for the new Multiannual Financial Framework takes stock of the experience of emergency instruments established during the crisis years (such as the EUTF for Africa and the Facility for Refugees in Turkey) by providing the EU budget with increased flexibility and financial leverage to address complex migration challenges (Hooper 2018).

4. Key issues and controversies

The Communication on the New Partnership Framework was explicit in saying that all areas of external action should be used as leverage to gain cooperation from partner countries. This has led to serious concerns among NGO representatives and also Commission and member state officials involved in foreign and development policy that longstanding EU priorities in these areas could be subordinated to the EU's migration agenda. For instance, the explicit linking of the EUTF for Africa, whose budget is made up in large part of funds from EU development instruments, with the EU's Partnership Framework has been considered an attempt to put development resources at the service of a strategy of conditionality.

Specifically, development actors have stressed the risk of development funding being diverted away from the central objective of EU development policy and poverty eradication, and potentially away from the poorest countries or those with the greatest needs. Along the same line, in a 2016 Resolution on the EU Trust Fund for Africa, the European Parliament warned that the use of resources from the European Development Fund to finance the EUTF for Africa may have an impact on the amount of aid available for African countries that are not covered by this instrument, notably least-developed countries (European Parliament, 2016). Financial support granted particularly to Libyan authorities has come under heavy criticism by NGOs, experts and also the European Parliament, which have denounced the serious human rights violations to which migrants are exposed in Libya (Concord 2017;

Castillejo 2015, 2017; European Parliament 2016).

Another key issue regarding the EU's conditionality strategy concerns its effectiveness. An expanding literature points to the limited success of incentives (including increased financial assistance) to ensure third country cooperation on readmission and return. This is because for countries of origin the costs associated with readmission are not only linked with the concrete implementation of the agreement and its consequences, but also with broader domestic and regional political dynamics, including the politicisation of readmission issues at the domestic level (Wolff 2014). Indeed, readmission cannot be isolated from the broader framework of relations with third countries, which include other strategic issue areas like energy and trade as well as other diplomatic and geopolitical concerns. In this context, exerting pressures on uncooperative third countries may even turn out to be a counterproductive endeavour from a strategic point of view, as it may disrupt cooperation on other, perhaps more crucial, matters (Cassarino and Giuffr  2017).

In addition, there is a set of administrative and procedural obstacles precluding the successful implementation of readmission agreements, such as identification of the nationality of the person to be readmitted, and the subsequent issuing of travel documents by the relevant authorities of the requested state. More fundamentally, the need to ensure the respect of fundamental rights of migrants during return procedures has been singled out as one of the main reasons why readmission agreements (at both the EU and national levels) have not worked as expected by their proponents (Carrera 2016; Cortinovis 2018).

Emergency instruments such as the EUTF for Africa and the EU–Turkey Facility imply a re-labelling and reorganisation of the EU budget and its funding instruments. This



reconfiguration of the funding landscape has been motivated by the search for flexibility and the capacity to rapidly intervene in emergency contexts (den Hertog 2016). Furthermore, practitioners have recognised that effective responses to crises can benefit from flexible, strategic, multi-year funding that breaks down the silos of humanitarian responses and long-term development assistance (European Commission 2016b). That notwithstanding, EU funding instruments have specific and delineated legal mandates and objectives that should be complied with even when resources from such instruments are channelled through EUTFs (Castillejo 2015). The primary objective of development aid, in particular, should be poverty reduction and, in the long term, poverty eradication.

As the vast majority of funding for the EUTF for Africa comes from development instruments, most EUTF projects must be in line with those objectives. As argued among others by Oxfam (2017, p. 16), the fungible nature of EUTFs, which gather resources from different EU financial instruments, makes it difficult to ascertain compliance with the rules established as the legal basis of those instruments, including criteria related to the use of official development assistance. The same concern was shared by the European Parliament, noting the lack of clarity regarding the use of resources channelled through the EUTF for Africa. It added that a clear, transparent and communicable distinction should be made within the EUTF between the funding envelopes for development activities on the one hand, and those for activities related to migration management, border controls and all other activities on the other (European Parliament 2016).

The accountability issues mentioned above are compounded by the fact that the European Parliament has no official role in monitoring EUTFs and thus limited opportunity to provide input or supervise how European resources are spent. The insufficient level of

democratic oversight allowed for by extra-budget tools (such as EUTFs) coupled with the development of 'extra-Treaty' arrangements, e.g. the EU–Turkey Statement or Valletta Declaration, has been associated with a trend towards increased bilateralism and intergovernmentalism in EU migration and asylum policy. Yet this trend poses a set of challenges from an EU rule of law perspective, since the EU's role and competencies in those areas were supposed to be consolidated and expanded under the Lisbon Treaty, especially when securing democratic control by the European Parliament and its role as "co-owner" of EU policy in these domains (Carrera et al. 2018, p. 74). In this regard, it has been observed that the approach of mixing funds and adopting flexible ways of operating can also be manipulated to promote internal political agendas if it lacks sufficient accountability, supervision and consultation mechanisms (Oxfam 2017, p. 25).

Accountability and rule of law issues that have been raised in relation to the expanding EU external migration agenda are coupled with deeply rooted concerns regarding the potential impact of those initiatives on human rights protection in third countries. The European Ombudsman has concluded in relation to the EU–Turkey Statement and subsequent funding via the Facility for Refugees in Turkey that fundamental rights need to be respected when implementing political agreements with third countries. In addition, according to the Ombudsman, the establishment of large-scale financial instruments such as EUTFs should be subject to a proper *ex ante* and ongoing/regular impact assessment, including on fundamental rights – a concern shared by the European Parliament (Carrera et al. 2018, p. 76).

A critical assessment of recent EU initiatives from a human rights perspective has also been given by NGOs involved in the provision of humanitarian and development assistance. The Migration Partnership Framework was described by Oxfam as "an attempt to



outsource the EU's obligation to respect human rights" (Oxfam 2016). In this regard, a joint statement of more than a hundred NGOs released in June 2016 expressed deep concerns about the direction taken by EU external migration policy, and specifically about attempts to make deterrence and return the main objective of the EU's relations with third countries (ACT Alliance EU et al. 2016). According to the statement, the new Partnership Framework with third countries risks cementing a shift towards a foreign policy that serves a single objective, to curb migration, at the expense of European credibility and leverage in defence of fundamental values and human rights.

5. Potential impacts of policies adopted in this area



EU and international human rights standards

Several concerns have been expressed that the conditionality approach that lies at the heart of the Migration Partnership Framework risks producing a negative impact on human rights principles.

For a start, a strategy geared towards containment inevitably restricts the protection space for those in need of protection, especially in the almost complete absence of legal pathways to access asylum in Europe. This circumstance has a clear repercussion on the right to asylum enshrined in Art. 18 of the Charter of Fundamental Rights of the EU. Second, there are broader concerns that cooperation with third countries displaying a poor human rights record may further impact on the protection of fundamental rights of migrants residing in or transiting those countries. Among the cases recently brought to the attention of public debate is cooperation with the governments of Libya and Sudan, and the funding of initiatives in those countries through the EUTF for Africa.

In light of the above-mentioned concerns, EU external spending on migration should be subject to a comprehensive human rights assessment, as requested, in particular, by the European Court of Auditors and the European Ombudsman.



EU rule of law and better regulation principles

There have been concerns that the proliferation of emergency instruments, such as EUTFs, may have negative consequences on the unity and integrity of the EU budget. The 'emergency' atmosphere that dominated EU policy-making during the refugee crisis has also implied that the new instruments have been adopted following political pressures, without a comprehensive assessment of their added value. Doubts have been raised, for example, on the appropriateness to establish an EU emergency Trust Fund to achieve a long-term objective such as addressing "root causes" of migration in Africa.

The fact that these financial instruments are increasingly linked to 'extra-treaty' political agreements based on a logic of conditionality brings intergovernmental dynamics and democratic accountability deficits back to EU cooperation, as they exclude the EP from the decision-making process. The 2009 Lisbon Treaty, however, had precisely sought to reinforce coherence and democratic accountability in the EU.

In addition, the 'conditionality' approach poses a set of issues as regards its compatibility with the objectives of EU development policy. Art. 208(1) of the Treaty on the Functioning of the European Union unequivocally sets out that "Union development cooperation shall have as its primary objective the reduction and, in the long term, the eradication of poverty". This EU constitutional objective should constitute the



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leading factor informing EU migration and development policies. While pursuing the legitimate objective of increasing the flexibility and effectiveness of EU external funding, negotiations on the next Multiannual Financial Framework should focus on ensuring full compliance with the EU legal principles.



EU international relations

The reorientation of EU external priorities to respond to migration concerns has the potential to produce an impact on EU cooperation with third countries. The principle of policy coherence on development is at the core of EU development policy and it is also enshrined in EU Treaties. Through this principle, the EU aims to take account of development objectives in all of its policies that are likely to affect developing countries.

The EU and its member states are currently the world's largest aid donor, providing over 50% of all global development aid. In light of this, the use of development cooperation as leverage to foster third countries' collaboration on returns and readmission implies a redefinition of the EU development agenda, with the possible inclusion of objectives and strategies that are driven by a migration-control rationale instead of a genuine development rationale.



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ReSOMA - Research Social Platform on Migration and Asylum

is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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