
ECONOMICS

Sociology

Anna Karolak
Warsaw School of Economics
The Collegium of World Economy

Received: February, 2011
1st Revision: March, 2011
Accepted: July, 2011

ADAPTATION PROCESS OF A POLISH TAX LAW TO EUROPEAN UNION NORMS – HARMONIZATION OF A VALUE ADDED TAX

ABSTRACT. The aim of this article is to show a law tax harmonization process in a situation of a growing economic integration of member countries of European Union. In the article particular emphasis was laid on the course of a process of adapting Polish law system in the field of indirect taxes to the rules valid in the European Union. The reasoning of particular actions and negotiation moves were explained – both on Polish and European side.

The process is complex, long and difficult. However, there is a field for negotiations – The basis for the article were literature studies. Author is not the first one that is dealing with the subject. Literature in this matter is convergent in assessments and analysis of changes in case of tax harmonization. Most of authors, like Brzeziński, Gluchowski and Kosikowski [1998] or Kawecka-Wyrzykowska [2004] in their publications emphasize that the harmonization process is difficult and long. However it is inevitable to create conditions for the functioning of the common market in the EU. There are possibilities to negotiate unique solutions or transitory periods. Author concentrated on Value Added Tax (VAT) and all details concerning the process of its harmonization.

JEL Classification: H29

Keywords: harmonization, VAT, European Union, directive, transitory period, adaptation, negotiations.

Introduction

Taxes are one of the main instruments of an economic policy. Through a tax system, in some countries, a redistribution of even almost a half of their national income is being made. *Ipsa facto* taxes have significant influence on economy.

Economies of European Union (EU) reached higher and higher level of integration as in this organization evolution from customs union to monetary-economic union took place. In such circumstances economic integration process should be accompanied by adaptation of tax regulations (Suwalski, 2009). Leveling of differences in this segment is a basic condition to eliminate number of problems and misunderstandings, both at political and economic level. For this reason, to achieve main goal of EU common market, a common tax system is necessary, which will mitigate difficulties caused by differences in a tax law of particular member countries (Makowicz, 2004).

Standardization of a tax system in an integration group lies in an adaptation of a member countries' law to uniform standards of Union law (Arndt, 1998). Ipso facto this process does not mean a complete unification of tax systems but an elimination of differences that is crucial to make an integration of member countries economies of an integration group possible. Tax harmonization is not a goal in itself, but it mainly serves an improvement of effectiveness of allocation of resources between member countries. Ipso facto harmonization relating to a free movement of goods and provision of services concerns indirect taxes, i.e. VAT and excise. At the same time competences concerning direct taxes lie exclusively within member countries' competences.

According to the above, the aim of the work is a, possibly clear, description of a complicated and lengthy process of European Union's tax harmonization, especially taking harmonizing Polish tax regulations into account. However, in the study one focused on the course of adaptation of VAT, which concerns free movement of goods and provision of services. On the basis of literature study of a Polish case (mainly a governmental document – Poland's negotiation position TAXATION), the work contains the most important issues connected with the harmonization process of a tax law together with economic development. In the study the focus was laid on VAT harmonization. Excise was not included as it will be a subject of a next article.

First part of the article deals with the history of integration in Europe with the special focus on tax law and documents that lead to the present status. Consequently, Polish way to European Union in case of taxes was described. The main part of the article consist of precise description of negotiated areas and the result of the negotiations in a Polish case.

1. General rules concerning creation of a tax law in European Union

At the beginning of the 70s the aim of the member countries of the Community was recognized as a creation of a European Union (EU), which was to contain the whole of their relations. In March 1985 in Brussels European Council adopted a Dooge's Report – during six rounds of conferences a Single European Act was established and entered into force on July 1 1987. Methods and means of harmonization of member countries law regulations were defined there.

At the beginning of the existence of the Community's law harmonization (considered as a positive integration) was based on a detailed directives describing features and characteristics of products that could have been admitted to the common market. In the 70s steps were taken towards accelerating the process of harmonization – the Council started to issue harmonization directives of a new type that related to basic requirements of obligatory harmonization and referred to three special normalizing institutions within a scope of detailed requirements (European Committee for Standardization CEN, European Committee for Electrotechnical Standardization CENELEC and European Telecommunications Standards Institute ETSI).

A supplement to the Treaty Establishing the European Community (TEC) concerning bringing together law was the Single European Act that made it possible to take steps leading to creating and functioning of an internal market with a qualified majority. With the approval of European Commission member countries in exceptional cases could keep regulations that would assure higher level of protection than one resulting from harmonization regulations.

2. Harmonization of value added tax in a process of integration of the member states of European Union

The necessity of value added tax (VAT) harmonization was already enclosed in a Treaty of Rome from 1957 establishing European Economic Community (EEC). Article 93 of the Treaty meets goals to unify taxes. This rule foresees harmonization of indirect taxes as an indispensable condition for realizing common market. It refers to aims enclosed already in article 2 of the Treaty, specifying them at the same time (Kuntze, 1998). To main assumptions belong creation of conditions enabling realization of “four freedoms” and undisturbed competition (Voss, 2003). Simultaneously article 201 “obliged the Commission to investigate conditions of provision own revenue to a budget” (Maruchin, 1998), which source are indirect taxes.

Critical meaning concerning regulation of rules forming VAT had the Sixth VAT Directive from 1977. It particularizes definitions of the terms concerning taxes and normalizes basic elements of taxation engineering. According to the directive, VAT is assessed at every stage of production and distribution of goods and services. However, VAT amount paid in the previous period may be deducted from VAT that is to be paid at present. Apart from that, it obliged members of the European Union to adopt the VAT system until January 1 1978. Not all member countries managed to meet the deadline – also next one, set by the Ninth Directive from 1978, fixed on January 1 1979. In such circumstances the Court of Justice prescribed to rely on the Sixth Directive, in spite of its not full enforcement.

In 1985 the EU cabinet decided on the need of the further VAT system standardization. It was connected with the statement of the fact that the internal market idea was not realized, especially in the field of free movement of goods within the EU. Differences in creation of a tax base in different member countries still remained, what was the main obstacle in creating a common market and transferring part of the income to the Union’s budget. Existing discrepancies concerning VAT and individual excises of the member countries caused the necessity of border controls and customs formalities in the trade within the EU. The idea of free market that was to be introduced at the end of 1992, required an abolishment of inner border control and customs formalities. In such situation the progress of integration had to be accompanied by changes in the taxation. Hence, new regulations concerning VAT harmonization, which were included in two directives of the Council and implemented in the legal order of member countries. New decree on VAT concerning trade within the EU has been applied since the beginning of 1993.

Because of a discordant interests of particular members of the Community, the level of tax rates still have not been standardized. Members of the Community feared that common tax rates would cause price growth in countries that had low VAT rates and decrease of budget revenue in countries having high VAT rates. Consensus was reached only in case of minimum rates (basic rate can not be lower than 15% and reduced one lower than 5%) and a list of goods and services with reference to which lower rate could have been applied (Annex H and K of the Sixth Directive).

3. Outline of the harmonization of the Polish tax law to the rules binding in the European Union

Polish intention to access the European Union exacted the adaptation of its regulations to the norms of the European Union. Inter alia, it was necessary to adapt the tax law in the field of indirect taxes.

The process of harmonizing Polish law in the field of turnover taxes to the European Union’s rules officially started in 1990 and lasted over ten years. To join the European

structures Poland had to change binding rules in the taxation field. For this reason before May 1 2004 all negotiated tax issues had been closed. This field was one of the most important among all that were negotiated, because it related to the budget of Poland as well as EU's. Taxes are the main source of budget revenue therefore significant changes in a tax law are in practice noticed by the whole society, they influence the social sphere as well as enterprise. For this reason, so that the changes in law were not too big or sudden, Poland was trying to obtain transitional periods for, for example, increased VAT rate on books and specialized magazines. "Fight" for transitional periods was often connected with the fear of the growth of unemployment rate, the biggest problem of Polish economy in the 90s of the XX century and in the first years of the XXI century.

Over 10-year-long process of action that was undertaken to ensure Poland the membership, gives evidence to an enormous process of Polish and other nine countries entrance to European Union in 2004. It was necessary to create new structures and organs that were dealing only with contacts with "Europe". While entering the European Union Poland had to change much in the VAT rates, inter alia it had to abolish 0% rate.

Scope of taxation of VAT in the Poland's negotiation position (Poland's negotiation position TAXATION, 2001) was compliant with article 2 of the Sixth Directive relating to turnover taxes.

In case of *territorial range* Poland had to introduce exemptions from the application of VAT (as stipulated in article 3 of the Sixth Directive) as well as introduce appropriate provisions relating to notions such as: member state territory, Community territory, third country territory.

In case of *taxable persons*, modifications in Polish law were not necessary. Sixth Directive did not introduce into a notion of VAT payers taxable persons not running a business but only performing single paid jobs. In connection with that modifications in the area of determining categories of tax payers in the area of intra-Community clearings were needed. Provisions were to be introduced not later than 6 months before Poland's accession to the EU.

Taxable transactions category (articles 5-7 of the Sixth Directive) required extension of the taxation scope to assignment of intangible property (for ex. transfer of copyrights), sale of land for building purposes and the transfer of title to property in exchange for compensation (on demand of an appropriate body). Regulations of the Community law and the VAT law differently defined a "thing" (Community law), a "good" (VAT law) and a "service". The above amendments were to be introduced in 2001 by provisions of the new act on tax on goods and services and excise.

In the field of *place of taxable transaction* full alignment of Polish law with articles 8 and 9 of the Sixth Directive required adoption of detailed provisions relating to the place of taxable transaction. These regulations relate to services connected with real estate, transport, consulting, advertising, banking services and hiring of movable tangible property. Relevant regulations had to be adopted in relation with intangible property. Adaptation of the law was to be introduced in 2001.

Polish regulations in case of *tax liability and tax payability* were compliant with the Sixth Directive. In this case member countries are free to choose the moment of tax liability and the Directive's rules say when at the latest such an obligation has to arise (issuing an invoice or a customs clearance document, moment of payment, after specified time limit, if an invoice / customs clearance document were not issued). Tax obligation in case of imported goods arises when those are admitted for trade within the EU market.

Differences between Polish law and a Sixth Directive laid in the fact that in a Polish law the condition for the obligation of the tax to arise was a fact of giving out or delivery of goods and in the Union's rules payment was crucial. Alignment of the regulations with the

Community law required introduction of definitions of tax obligation and chargeability of tax in transactions between EU member states. Provisions were to be introduced not later than 6 months before Poland's accession to the EU.

Full alignment of Polish legislation in the field of *taxable amount* required an amendment related to determination of taxable amount for import of goods (inclusion into that amount transport and insurance expenses to the first point of destination in the country). Article 11 of the Directive for the taxable amount in case of delivery of goods or provision of services defines as "everything which constitutes the mutual provision which is to be obtained by the supplier from the purchaser, or person for whose benefit delivery has been made or even from a third party" (Maruchin, 1998). In the Directive cases, when the taxable amount is, as a rule, a price paid by a purchaser of a goods or services, were determined. European law oscillates between notions of "payment" and "purchase price". Introduction of these changes (in describing taxable amount for import of goods) was anticipated for the year 2000.

The amount of the VAT *rates* in Poland was in compliance with EU regulations. The scope of application of 0% and 7% rates went beyond the provisions of Sixth Directive.

Table 1. Changes in range of rates from 0% to 7%, from 0% to 22%, from 7% to 22%

Changes in VAT rates ¹	Group of goods or services
0% → 7%	<ol style="list-style-type: none"> 1. Basic means of production for agriculture, forestry and fisheries (excluding machinery and farming tractors), including: fertilizers, chemical components of feed mixtures, pesticides, veterinary preparations, lime for fertilizers, lime fertilizers, fishing nets, bran, ground grain, industrial feeding stuff, 2. Sale of housing in multi-family buildings provided as part of a social policy (in the remaining scope – 22%).
0% → 22%	<ol style="list-style-type: none"> 1. Sale of new housing, 2. Machinery for agriculture, gardening or forestry including spare parts, 3. Tractors and tractor trailers for farming including spare parts, 4. Platinum and gold for state reserves and services relating to the refining of precious metals for those reserves, 5. Fire-fighting equipment for fire fighters, 6. Services of storage of reserves for defence-related purposes, 7. Services of printing books, newspapers and periodicals.
7% → 22%	<ol style="list-style-type: none"> 1. Goods for children, including clothing, footwear, school accessories, toys and some kinds of sport equipment, cosmetics for infants, baby carriages, furniture for children, 2. Basic building materials, works related to infrastructure accompanying construction of housing, construction and renovation of housing, construction and renovation of facilities for science, education, culture and art., sacral buildings, facilities for health-care, physical education, temporary housing etc., 3. Some products related to health-care (e.g. eye-glasses, lenses for eye-glasses, syringes, blood pressure measuring devices, x-ray films, dressing products, 4. Repair services for farming equipment, 5. Musical instruments, 6. Restaurant services, 7. Other minor services (press advertisements of natural persons, geodetic, cartographic services, services related to mountain rescue, tyre recapping, patent agents and some legal services, drilling services, services related to construction and maintenance of roads and bridges, other specialist services for construction).

¹ From January 1 2011 VAT rate in Poland increased by 1 percentage point.

Regardless of the above mentioned settlements, some medical and sanitary products, apart from the rehabilitant equipment, should have been covered by 22% VAT rate. Rehabilitation equipment and equipment for the sole use by disabled persons (including repair services) should have been covered by 7% VAT rate.

In case of changes in the VAT rates Poland requested five years of transition period for restaurant services because of a low income level of Polish society that was referential for the pricing level on restaurant services.

Another requirement of a Polish side was five years of transition period for the 0% VAT rate for certain book categories and specialist periodicals. The justification for that was a low income level of Polish society and that the growth of book prices would create barriers in access to e.g. education.

In a change of Poland's negotiation position TAXATION from March 29 2001 Poland, with reference to article 12 paragraph 3 of the Sixth Directive abandoned the possible five years of transition period (till the end of 2007) for 0% VAT rate for certain book categories and specialist periodicals. Poland required five years of transition period in case of this article for an application of a super-reduced VAT rate of 3% on the books carrying the ISBN code and specialist periodicals. The cause of the resignation of a Polish side from a 0% VAT rate for the above mentioned goods was negative reaction of European Union in the Common position from September 27 2000 on that request. Member countries pay attention not to encroach the rules concerning 0% VAT rate.

As an answer to the EU position Poland requested five years of transitional period for VAT rate of 3% on the books carrying the ISBN code and specialist periodicals. The justification for that was a very bad situation at a reading market.

In a consecutive change of Polish negotiation position from December 28 2001, Poland requested for a super-reduced VAT rate on books and specialist periodicals at the level of 0% till the end of 2007. That decision was taken after a deep analysis of a situation at a books and magazines market in Poland where negative trends had strengthen, causing an increase of prices (and consequently decrease of demand). 0% VAT rate would, at least to some extent, hamper a growth of prices in a short period of time. It was also the only way to hamper a decrease of the sale of books and prevent from the negative social consequences of this fact in a long period of time.

Removal of the discrepancies in the fields where 0% and 7% taxation was not foreseen (and which were used in Poland) was to be effected gradually in the years 2000-2002. For some periods parking rates of 3%, 12%, 17% were to be applied.

In case of *exemptions* Polish law was largely coherent with the Community law. In comparative analysis of Polish VAT law and Sixth Directive a different division of exemptions in Polish law was visible; there was a subjective and objective division, not exemptions with or without the right for deduction of the charged tax (Maruchin, 1998). Catalogue of exempted activities with the right to deduct of the charged tax (article 14 of the Sixth Directive) was in Poland charged with 0% VAT rate. Catalogue of exempted services without the right to deduct the charged tax (article 13 of the Sixth Directive) was largely coherent with the catalogue of services constituting second amendment to the VAT law. Exemptions within a country include two lists: connected with activities that can be exempted because of social interest and one connected with other activities that are subject to exemptions (Brzeziński, Głuchowski, Kosikowski, 1998). For some groups of goods and services 7% and 22% VAT rate had to be introduced instead of existing exemptions.

In the years 2000-2002 gradual introduction of taxation in line with the Sixth Directive took place. For some periods parking rates (3%, 12%, 17%) were to be applied.

In Poland 0% VAT rate was used (equivalent of exemption) in export of goods and international transport services, with the right to deduct foreseen for those activities in the

Sixth Directive. The scope of application of this rate is broader than permitted by provisions of the Directive (in international transport services). In case of export of goods the area of application of a 0% VAT rate with the right to deduct was narrower in Poland than what was stipulated in the Sixth Directive. It related to supply of goods to be placed in a duty-free zone or duty-free warehouse. The relevant modifications were to be introduced by provisions of the new act on tax on goods and services and on excise duty in 2001.

In case of *deductions* Polish law in principle was coherent with the Union's legislation (i.e. with the Sixth Directive). Article 17 of the Sixth Directive stipulates that the right to deduct of an input VAT arises "in a moment when it is paid in connection with a purchase of goods or services". It relies both to goods and services purchased in the country and imported ones. The right to return or deduct an input VAT member countries give to every taxable person if purchased goods or services were assigned for:

- running a business on a country territory;
- exempted from VAT sale of goods for export and services of international transport;
- exempted from VAT services whose purchaser is located outside EU territory or if they are connected with export to third countries.

In general taxable persons have the right to deduct an input VAT, connected with taxed purchase, but it is limited in certain cases. As an example, purchase of passenger cars and other vehicles with maximum capacity of up to 500 kg, as well as use of such vehicles under lease, hire or other similar contract.

In case of deductions Poland agreed to accept provisions of the Sixth Directive but an exception was made to deductions of an input VAT for purchase of above described passenger cars. The justification was that such cars and other vehicles are commonly used by taxable persons for private purposes and there were no mechanisms allowing to assess in which part such vehicles are used for private purposes. The possibility to deduct VAT while buying them would significantly increase such practices and because of that reason Poland requested an abrogation of the right to deductions of an input VAT from "purchased passenger cars and other vehicles with maximum capacity of up to 500 kg (with the exception of cases when resale of those vehicles is the subject of taxable persons business operations), as well as abrogation of the right for deductions of input VAT on the services of hire, lease and other similar services relating to those vehicles" (Poland's negotiation position TAXATION, 2001). In this scope Poland requested a derogation consisting in abrogation of the right to deductions.

Persons and subjects liable to pay VAT in Poland were consistent with the definitions enclosed in the Sixth Directive. But for the full adaptation there was a need to define a person liable to pay tax in internal transactions between the member countries. These modifications were to be introduced not later than 6 months before Poland's accession to the EU.

The general principles of *obligations laid upon payers of tax on goods and services* was coherent with provisions of the Sixth Directive (article 22). Full alignment required an introduction of legal regulations defining obligations of tax-payers in "transactions between EU Member States and terms for meeting those obligations" (Poland's negotiation position TAXATION, 2001). This referred to introduction of regulations related to:

- drawing up collective declarations for transactions concluded within the Union;
- submission of the tax return form including all transactions carried out in the previous year;
- drawing up collective lists of purchasers identified for the purposes of VAT to whom goods were supplied under specified conditions.

These modifications were to be introduced not later than 6 months before Poland's accession to the EU.

Regulations concerning *VAT refunds* like one included in the Eighth Council Directive 79/1072/EEC of 6 December 1979 and the Thirteenth Council Directive 86/560/EEC of 17 November 1986, were not included in Polish law. An alignment of Polish law to Union's regulations required introduction of VAT refund to taxable persons not established in Poland. Relevant regulations were to be introduced in 2001.

Special schemes were foreseen in the Sixth Directive for small undertakings, travel agents and farmers. In case of small-scale production article 24 of the Sixth Directive limited the subject exemptions to 5000 euro. Polish limit, before starting the adoption of law, was at the level of 18700 euro. In Poland such a significant reduction of turnover allowing the exemption would result in administrative costs of taxation of such entities much exceeding the income from taxes. Therefore Poland reserved the right to apply the exemption threshold of 10,000 euro (similarly to other EU member states). This threshold also makes allowance for regulations relating to determination of VAT-related payments into European Union budget. Apart from that special system for small undertakings allow member countries to simplify the administrative tax execution procedures but stipulates that the tax cannot be lowered.

Apart from that Polish legislation granted exemptions for taxable persons, irrespectively of the annual turnover. Discrepancies in exemptions for protected labour establishments were included in the amendment to the act on tax on goods and services and excise duty; the changes were effected in 2000. Whereas till the end of 2002 elimination of VAT exemption for taxable persons paying income tax in the form of the so-called income card effected.

In Polish law there was no optional regulation, included in the Sixth Directive, allowing to apply flat-rate schemes for small and medium sized undertakings.

Article 25 of Sixth Directive stipulates special taxation scheme for farmers, what was not included in Polish law on VAT. In 1999 Polish law in the area of VAT taxation for agriculture, turnover of farming products and means of agricultural production was not compliant with the Sixth Directive. Full alignment required:

- introduction of 7% rate on unprocessed agricultural products in place of the exemption;
- increase of taxation on agricultural means of production: 0% → 7% on fertilizers, industrial feed, etc.; 0% → 22% on agricultural machines and tractors;
- increase of VAT rate on repair services related to farm machines and tractors: 7% → 22%;
- removal of exemptions on agricultural services;
- introduction of solutions provided in article 25 of the Sixth Directive into Polish agriculture.

Implementation of VAT taxation in agriculture was supposed to be effected gradually by the end of 2002.

Travel agents were included in special schemes. Full alignment to 26th article of the Sixth Directive required changes in the area of the taxable amount for taxable persons operating as travel agents in their own name, and namely basing taxable amount solely on the profit margin (Poland's negotiation position TAXATION, 2001). It constituted travel agent offers a single service. System of special schemes was compliant with the rule of the destination. The change was to be effected in 2001.

In case of transitional arrangements Poland was of the opinion that upon Poland's accession the EU enacted a directive (Poland's negotiation position TAXATION, 2001) amending Council Directive 77/388/EEC by the introduction of transitional measures applicable as regards VAT. This directive regulates the rules for treatment:

- of goods introduced into the territory of the Community or one of its new member states before accession date;
- of goods which were earlier covered by transit procedures or were covered by the procedure for temporary admission to sale;
- of goods in relation to which it was proven that they were traded freely in the territory of one of new member states or of the Community.

In case of taxation of trade between member countries Poland did not have appropriate regulations in 1999. Taxation of sale of goods and provision of services carried out in the territory of Poland, both by taxable persons from member states and from third countries, was covered by the same taxation rules. Full alignment with provisions of the Sixth Directive in the area required introduction of new tax return forms for taxable persons supplying goods and services to other member states. Apart from that introduction of new rules for calculation and collection of taxes on goods imported to Poland from another member state or sale of goods to another member state was required. These changes ensued with the moment of a Polish entrance to the European Union. The condition of the realization was an abolishment of customs borders. The above solutions were to be introduced into Polish legislation not later than 6 months before Poland's accession to the EU.

Polish law did not have appropriate regulations concerning second-hand goods, works of art, collectors' items and antiques. Full alignment of Polish law with Union's provisions required introduction of definitions of these notions; introduction of reduced VAT rates for imports of works of art, collectors' items and antiques and for some cases of the sale of works of art, introduction of special regulations consisting in basing the taxation on the profit margin for taxable persons operating in the area of resale of second-hand goods, works of art, collectors' items or antiques. New regulations were to be introduced together with a new act on tax on goods and services and excise duty in 2001.

Conclusion

Present study proves that European Commission, using legislative authorization on the basis of the Treaty, increased its competences in case of indirect tax. Harmonization of law in this field is necessary for realization of a main idea, for which European Union was created, that is realization and good functioning of internal market. However, the harmonization process was difficult and protracted, especially for countries entering the Union and a scale of the difficulties is illustrated by example of changes that had to be made in a Polish tax system so that the country could enter the Union.

Difficulties in the process of harmonization of law occurred because of the unanimity rule, which is still obligatory in this field. Thus, relatively big progress in the area of unification of indirect taxes system was achieved. One may say though that the state of harmonization is far from being fully compliant but the process will be advancing. For the legal basis, giving the European Union legislative power in the field of taxation, give the possibility to enact successive acts, even more harmonizing member countries' tax systems, adequately to changes and development of the internal market. Such situation is however an inevitable cost that member countries committed to bear for a realization of an economic community and for reaching economic benefits connected with its existence.

Polish legislator had a serious task – the harmonization process in the field of taxation was long and difficult. European side had to show understanding for the difficult economic situation in Poland and grant transitory periods what often resulted in lower revenues to common Union budget in the first years of Polish membership in the European Union.

Polish side, from the beginning having a weaker position, thus had to have its feet firmly on the ground and take into account a state of Polish economy, fight for transition

periods. But repeatedly Poland had to change its position, agree to conditions laid down by the Union in order not to prolong the whole process. Concessions had been made with the awareness that in future Poland will benefit from the accession to the EU.

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