



European Communities No. 02 (2009)

Agreement

between the Member States of the European Union concerning the status of military and civilian staff seconded to the institutions of the European Union, of the headquarters and forces which may be made available to the European Union in the context of the preparation and execution of tasks referred to in Article 17(2) of the Treaty on European Union, including exercises, and of the military and civilian staff of the Member States put at the disposal of the European Union to act in this context
(EU SOFA)

Brussels, 17 November 2003

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
March 2009*

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**AGREEMENT
BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION
CONCERNING THE STATUS OF MILITARY AND CIVILIAN STAFF
SECONDED TO THE INSTITUTIONS OF THE EUROPEAN UNION, OF
THE HEADQUARTERS AND FORCES WHICH MAY BE MADE
AVAILABLE TO THE EUROPEAN UNION IN THE CONTEXT OF THE
PREPARATION AND EXECUTION OF THE TASKS REFERRED TO IN
ARTICLE 17(2) OF THE TREATY ON EUROPEAN UNION,¹ INCLUDING
EXERCISES, AND OF THE MILITARY AND CIVILIAN STAFF OF THE
MEMBER STATES PUT AT THE DISPOSAL OF THE EUROPEAN
UNION TO ACT IN THIS CONTEXT
(EU SOFA)**

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION, MEETING WITHIN THE COUNCIL,

HAVING REGARD to the Treaty on European Union (TEU), and in particular Title V thereof;

WHEREAS:

(1) The European Council has decided, in pursuit of the Common Foreign and Security Policy (CFSP), to give the EU the capabilities required to take and implement decisions on the full range of conflict prevention and crisis management tasks defined in the TEU.

(2) National decisions to send forces from Member States of the European Union (hereinafter "Member States") into the territory of other Member States and to receive such forces from Member States in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises, will be taken in accordance with the provisions of Title V of the TEU, and in particular with Article 23(1) thereof, and will be the subject of separate arrangements between the Member States concerned.

(3) Specific agreements will have to be concluded with the third countries concerned in the case of exercises or operations taking place outside the territory of the Member States.

(4) Under the provisions of this Agreement, the rights and obligations of the parties under international agreements and other international instruments establishing international tribunals, including the Rome Statute of the International Criminal Court, will remain unaffected,

HAVE AGREED AS FOLLOWS:

¹Treaty Series No. 12 (1994) Cm 2485 and a consolidated version in Treaty Series No. 52 (1999) Cm 4434.

PART I

PROVISIONS COMMON TO ALL MILITARY AND CIVILIAN STAFF

ARTICLE 1

In this Agreement, the term:

1. "military staff " shall mean:
 - (a) military personnel seconded by the Member States to the General Secretariat of the Council in order to form the European Union Military Staff (EUMS);
 - (b) military personnel, other than personnel from the EU institutions, who may be drawn upon by the EUMS from the Member States in order to provide temporary augmentation if requested by the European Union Military Committee (EUMC), for activities in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises;
 - (c) military personnel from the Member States who are seconded to the headquarters and forces which may be made available to the EU, or personnel thereof, in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises;
2. "civilian staff " shall mean civilian personnel seconded by the Member States to EU institutions for activities in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises, or civilian personnel, with the exception of locally hired personnel, working with headquarters or forces or otherwise made available to the EU by the Member States for the same activities;
3. "dependant" shall mean any person defined or recognised as a member of the family or designated as a member of the household of the military or civilian staff member by the laws of the sending State. Where, however, such laws regard as a member of the family or a member of the household only a person living under the same roof as the military or civilian staff member, this condition shall be considered satisfied if the person in question is mainly dependent on that person;
4. "force" shall mean individuals belonging to, or entities made up of, military staff and civilian staff as defined in paragraphs 1 and 2, provided that the Member States concerned may agree that certain individuals, units, formations or other entities are not to be regarded as constituting or included in a force for the purposes of this Agreement;
5. "headquarters" shall mean headquarters, located within the territory of the

Member States, set up by one or several Member States or by an international organisation, and which may be made available to the EU in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises;

6. "sending State" shall mean the Member State to which the military or civilian staff member or the force belongs;

7. "receiving State" shall mean the Member State in the territory of which the military or civilian staff member, the force or the headquarters is located, whether stationed, deployed, or passing in transit, in connection with an individual or collective mission order or order of secondment to the EU institutions.

ARTICLE 2

1. Member States shall facilitate, if necessary, the entry, stay and departure of staff referred to in Article 1 for purposes of official business, and of their dependants. However, staff and dependants may be required to provide evidence that they fall within the categories described in Article 1.

2. For this purpose, and without prejudice to the relevant rules applicable to the free movement of persons under Community law, an individual or collective movement order or order of secondment to the EU institutions shall suffice.

ARTICLE 3

It is the duty of military and civilian staff as well as their dependants to respect the law of the receiving State, and to abstain from any activity inconsistent with the spirit of this Agreement.

ARTICLE 4

For the purposes of this Agreement:

1. Driving permits or licences issued by the military services of the sending State shall be recognised in the territory of the receiving State for comparable military vehicles.

2. Authorised personnel of any Member State may provide the personnel of the forces and headquarters of any other Member State with medical and dental care.

ARTICLE 5

Military staff, and any civilian staff concerned, shall wear uniform in accordance

with the regulations in force in the sending State.

ARTICLE 6

Vehicles bearing a registration plate specific to the armed forces or the administration of the sending State shall display, in addition to their registration number, a distinctive nationality mark.

PART II

PROVISIONS APPLICABLE ONLY TO MILITARY OR CIVILIAN STAFF SECONDED TO THE EU INSTITUTIONS

ARTICLE 7

Military or civilian staff seconded to the EU institutions may possess and carry arms in accordance with Article 13 when they are working with headquarters or forces which may be made available to the EU in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises, or when they participate in missions in connection with such tasks.

ARTICLE 8

1. Military or civilian staff seconded to the EU institutions shall enjoy immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them in the exercise of their official functions; that immunity shall continue even after their secondment has ceased.

2. The immunity referred to in this Article shall be granted in the interests of the EU, and not for the benefit of the staff concerned.

3. Both the competent authority of the sending State and the relevant EU institutions shall waive the immunity enjoyed by military or civilian staff seconded to the EU institutions where such immunity would impede the course of justice and where such competent authority and relevant EU institution may do so without prejudice to the interests of the European Union.

4. The EU institutions shall cooperate at all times with the competent authorities of the Member States in order to facilitate the smooth administration of justice and shall take action to prevent any abuse of the immunities granted under this Article.

5. Should a competent authority or a judicial body in a Member State consider that an abuse of an immunity granted under this Article has occurred, the competent authority of the sending State and the relevant EU institution shall, upon

request, consult the competent authority of the Member State concerned to determine whether such abuse has occurred.

6. If consultations fail to achieve a result satisfactory to both parties, the dispute shall be examined by the relevant EU institution with a view to reaching a settlement.

7. If it is not possible to settle such a dispute, the detailed arrangements for its settlement shall be adopted by the relevant EU institution. As far as the Council is concerned, it shall adopt such arrangements unanimously.

PART III

PROVISIONS APPLICABLE ONLY TO HEADQUARTERS AND FORCES AND TO THE MILITARY AND CIVILIAN STAFF WORKING WITH THEM

ARTICLE 9

In the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises, the headquarters and forces, and personnel thereof, referred to in Article 1 and their equipment shall be authorised to transit and temporarily deploy within the territory of a Member State subject to the agreement of the competent authorities of that Member State.

ARTICLE 10

Military and civilian staff shall receive emergency medical and dental care, including hospitalisation, under the same conditions as comparable personnel of the receiving State.

ARTICLE 11

Subject to agreements and arrangements already in force or which may, after the entry into force of this Agreement, be entered into or made between the authorised representatives of the sending and receiving States, the authorities of the receiving State shall assume sole responsibility for making suitable arrangements to make available to the units, formations or other entities the buildings and grounds which they require, as well as facilities and services connected therewith. These agreements and arrangements shall, as far as possible, comply with the regulations governing the accommodation and billeting of similar units, formations or other entities of the receiving State.

In the absence of a specific arrangement to the contrary, the laws of the receiving State shall determine the rights and obligations arising out of the occupation or use

of the buildings, grounds, facilities or services.

ARTICLE 12

1. The units, formations or entities normally made up of military or civilian staff shall have the right to police, by agreement with the receiving State, all camps, establishments, headquarters or other premises occupied exclusively by them. The police of such units, formations or entities may take all appropriate measures to ensure the maintenance of order and security on such premises.

2. Outside these premises, the police referred to in paragraph 1 shall be employed only subject to arrangements with the authorities of the receiving State and in liaison with those authorities, and in so far as such employment is necessary to maintain discipline and order among the members of the units, formations or entities.

ARTICLE 13

1. Military staff may possess and carry service arms, on condition that they are authorised to do so by their orders and subject to arrangements with the authorities of the receiving State.

2. Civilian staff may possess and carry service arms, on condition that they are authorised to do so under national regulations of the sending State and subject to the agreement of the authorities of the receiving State.

ARTICLE 14

Headquarters and forces shall benefit from the same post and telecommunications facilities, travelling facilities and concessions with regard to fares, as the forces of the receiving State in accordance with the rules and regulations of that State.

ARTICLE 15

1. The archives and other official documents of headquarters kept in premises used by those headquarters or in the possession of any properly authorised member of the headquarters shall be inviolable, unless the headquarters have waived this immunity. The headquarters shall, at the request of the receiving State and in the presence of a representative of that State, verify the nature of any documents to confirm that they are entitled to immunity under this Article.

2. Should a competent authority or a judicial body of the receiving State consider that an abuse of the inviolability conferred by this Article has occurred, the Council shall, upon request, consult the competent authorities of the receiving

State to determine whether such an abuse has occurred.

3. If consultations fail to achieve a result satisfactory to both parties concerned, the dispute shall be examined by the Council with a view to reaching a settlement. If it is not possible to settle such a dispute, the detailed arrangements for its settlement shall be adopted by the Council unanimously.

ARTICLE 16

With a view to avoiding double taxation, for the application of double taxation Conventions concluded between Member States and without prejudice to the right of the receiving State to tax military and civilian staff who are its nationals or who are ordinarily resident in the receiving State:

1. Where the legal incidence of any form of taxation in the receiving State depends upon residence or domicile, periods during which military or civilian staff are in the territory of that State by reason solely of their being military or civilian staff shall not be considered as periods of residence therein, or as creating a change of residence or domicile, for the purposes of such taxation.

2. Military and civilian staff shall be exempt from taxation in the receiving State on the salary and emoluments paid to them as such staff by the sending State or on any tangible movable property the presence of which in the receiving State is due solely to their temporary presence there.

3. Nothing in this Article shall prevent taxation of military or civilian staff with respect to any profitable enterprise, other than their employment as such staff, in which they may engage in the receiving State, and, except as regards their salary and emoluments and the tangible movable property referred to in paragraph 2, nothing in this Article shall prevent taxation to which, even if regarded as having their residence or domicile outside the territory of the receiving State, such staff are liable under the law of that State.

4. Nothing in this Article shall apply to duty. "Duty" shall mean customs duties and all other duties and taxes payable on importation or exportation, as the case may be, except dues and taxes which are no more than charges for services rendered.

ARTICLE 17

1. The authorities of the sending State shall have the right to exercise all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over military as well as over civilian staff where those civilian staff are subject to the law governing all or any of the armed forces of the sending State, by reason of their deployment with those forces.

2. The authorities of the receiving State shall have the right to exercise jurisdiction over military and civilian staff and their dependants, with respect to offences committed within the territory of the receiving State and punishable by the laws of that State.

3. The authorities of the sending State shall have the right to exercise exclusive jurisdiction over military as well as over civilian staff where those civilian staff are subject to the law governing all or any of the armed forces of the sending State, by reason of their deployment with those forces, with respect to offences, including offences relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

4. The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over military and civilian staff and their dependants with respect to offences, including offences relating to its security, punishable by its law but not by the law of the sending State.

5. For the purposes of paragraphs 3, 4 and 6, a security offence against a State shall include:

- (a) treason against the State;
- (b) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defence of that State.

6. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

- (a) the competent authorities of the sending State shall have the primary right to exercise jurisdiction over military as well as over civilian staff where those civilian staff are subject to the law governing all or any of the armed forces of the sending State, by reason of their deployment with those forces, in relation to:
 - (i) offences solely against the property or security of that State, or offences solely against the person or property of military or civilian staff of that State or of a dependant;
 - (ii) offences arising out of any act or omission done in the performance of official duty;
- (b) in the case of any other offence, the authorities of the receiving State shall have the primary right to exercise jurisdiction;
- (c) if the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give

sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

7. The provisions of this Article shall not imply any right for the authorities of the sending State to exercise jurisdiction over persons who are nationals of, or ordinarily resident in, the receiving State, unless they are members of the force of the sending State.

ARTICLE 18

1. Each Member State shall waive all its claims against any other Member State for damage to any property owned by it and used in connection with the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises, if such damage:

- (a) was caused by military or civilian staff from the other Member State in the execution of their duties in connection with the aforementioned tasks; or
- (b) arose from the use of any vehicle, vessel or aircraft owned by the other Member State and used by its services, provided either that the vehicle, vessel or aircraft causing the damage was used in connection with the aforementioned tasks, or that the damage was caused to property being so used.

Claims for maritime salvage by a Member State against any other Member State shall be waived, provided that the vessel or cargo salvaged was owned by a Member State and being used by its armed services in connection with the aforementioned tasks.

2. (a) In the case of damage caused or arising as stated in paragraph 1 with regard to other property owned by a Member State and located in its territory, the issue of the liability of any other Member State shall be determined and the amount of damage shall be assessed, unless the Member States concerned agree otherwise, by negotiation between those Member States.
- (b) However, each Member State shall waive its claim in any such case where the damage is less than an amount to be determined by a Decision of the Council acting unanimously.

Any other Member State whose property has been damaged in the same incident shall also waive its claim up to the abovementioned amount.

3. For the purposes of paragraphs 1 and 2, the term "owned by a Member State" in the case of a vessel includes a vessel on bare boat charter to that Member State

or requisitioned by it on bare boat terms or seized by it in prize, except to the extent that the risk of loss or liability is borne by some entity other than such Member State.

4. Each Member State shall waive all its claims against any other Member State for injury or death suffered by any military or civilian staff of its services while such staff were engaged in the performance of their official duties.

5. Claims (other than contractual claims and those to which paragraphs 6 and 7 apply) arising out of acts or omissions of military or civilian staff done in the performance of official duty, or out of any other act, omission or occurrence for which a force is legally responsible, and causing damage in the territory of the receiving State to third parties, other than any of the Member States, shall be dealt with by the receiving State in accordance with the following provisions:

- (a) claims shall be filed, considered and settled or adjudicated in accordance with the laws and regulations of the receiving State with respect to claims arising from the activities of its own armed forces;
- (b) the receiving State may settle any such claims, and payment of the amount agreed upon or determined by adjudication shall be made by the receiving State in its currency;
- (c) such payment, whether made pursuant to settlement or to adjudication of the case by a competent tribunal of the receiving State, or the final adjudication by such a tribunal denying payment, shall be binding and conclusive upon the Member States concerned;
- (d) every claim paid by the receiving State shall be communicated to the sending States concerned together with full particulars and a proposed distribution in conformity with subparagraph (e), points (i), (ii) and (iii). In default of a reply within two months, the proposed distribution shall be regarded as accepted;
- (e) the cost incurred in satisfying claims pursuant to subparagraphs (a), (b), (c) and (d) and paragraph 2 shall be distributed between the Member States, as follows:
 - (i) where one sending State alone is responsible, the amount awarded or adjudged shall be distributed in the proportion of 25 per cent chargeable to the receiving State and 75 per cent chargeable to the sending State;
 - (ii) where more than one State is responsible for the damage, the amount awarded or adjudged shall be distributed equally among them; however, if the receiving State is not one of the States responsible, its contribution shall be half that of each of the sending States;

- (iii) where the damage was caused by the services of the Member States and it is not possible to attribute it specifically to one or more of those services, the amount awarded or adjudged shall be distributed equally among the Member States concerned: however, if the receiving State is not one of the States by whose services the damage was caused, its contribution shall be half that of each of the sending States concerned;
- (iv) every half-year, a statement of the sums paid by the receiving State in the course of the half-yearly period in respect of every case regarding which the proposed distribution on a percentage basis has been accepted, shall be sent to the sending States concerned, together with a request for reimbursement. Such reimbursement shall be made within the shortest possible time, in the currency of the receiving State;
- (f) should the application of subparagraphs (b) and (e) cause a Member State serious hardship, it may request that the other Member States concerned settle the matter by negotiation between them on a basis of a different nature;
- (g) military or civilian staff shall not be subject to any proceedings for the enforcement of any judgment given against them in the receiving State in a matter arising from the performance of their official duties;
- (h) except in so far as subparagraph (e) applies to claims covered by paragraph 2, the provisions of this paragraph shall not apply to any claim arising out of, or in connection with, the navigation or operation of a ship or the loading, carriage or discharge of a cargo, other than claims for death or personal injury to which paragraph 4 does not apply.

6. Claims against military or civilian staff arising out of tortious acts or omissions in the receiving State not done in the performance of official duty shall be dealt with in the following manner:

- (a) the authorities of the receiving State shall consider the claim and assess compensation to the claimant in a fair and just manner, taking into account all the circumstances of the case, including the conduct of the injured person, and shall prepare a report on the matter;
- (b) the report shall be delivered to the authorities of the sending State, who shall then decide without delay whether they will offer an ex gratia payment, and if so, of what amount;
- (c) if an offer of ex gratia payment is made, and accepted by the claimant in full satisfaction of his claim, the authorities of the sending State shall make the payment themselves and inform the authorities of the

receiving State of their decision and of the sum paid;

- (d) nothing in this paragraph shall affect the jurisdiction of the courts of the receiving State to entertain an action against military or civilian staff unless and until there has been payment in full satisfaction of the claim.

7. Claims arising out of the unauthorised use of any vehicle of the services of a sending State shall be dealt with in accordance with paragraph 6, except in so far as the unit, formation or entity in question is legally responsible.

8. If a dispute arises as to whether a tortious act or omission of military or civilian staff was done in the performance of official duty or as to whether the use of any vehicle of the services of a sending State was unauthorised, the question shall be settled by negotiation between the Member States concerned.

9. The sending State shall not claim immunity from the jurisdiction of the courts of the receiving State for military or civilian staff in respect of the civil jurisdiction of the courts of the receiving State except to the extent provided in paragraph 5(g).

10. The authorities of the sending State and of the receiving State shall cooperate in the procurement of evidence for a fair hearing and disposal of claims with regard to which the Member States are concerned.

11. Any dispute relating to the settlement of claims which cannot be resolved by negotiations between the Member States concerned shall be submitted to an arbitrator selected by agreement between the Member States concerned from among the nationals of the receiving State who hold, or have held, high judicial office. If the Member States concerned are unable within two months to agree upon an arbitrator, each Member State concerned may request the President of the Court of Justice of the European Communities to select a person with the aforesaid qualifications.

PART IV

FINAL PROVISIONS

ARTICLE 19

1. This Agreement shall be subject to approval by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the approval of this Agreement.

3. This Agreement shall enter into force on the first day of the second month

following the notification by the last Member State of the completion of its constitutional procedures referred to in paragraph 2.

4. The Secretary-General of the Council of the European Union shall act as depository of this Agreement. The depository shall publish this Agreement in the Official Journal of the European Union, as well as information about its entry into force following the completion of the constitutional procedures referred to in paragraph 2.

5. (a) This Agreement shall be applicable only to the metropolitan territory of the Member States.

(b) Any Member State may notify the Secretary-General of the Council of the European Union that this Agreement shall also apply to other territories for whose international relations it is responsible.

6. (a) Provisions of parts I and III of this Agreement shall be applicable only to headquarters and forces, and personnel thereof, which may be made available to the EU in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises, in so far as the status of such headquarters or forces, and personnel thereof, is not regulated by another agreement.

(b) Where the status of such headquarters and forces, and personnel thereof, is regulated by another agreement and these headquarters and forces, and personnel thereof, are acting in the abovementioned context specific arrangements may be concluded between the EU and the States or Organisations concerned, in order to agree which agreement shall be applicable to the operation or exercise concerned.

(c) Where it has not been possible to conclude such specific arrangements, the other Agreement shall remain applicable to the operation or exercise concerned.

7. Where third countries participate in activities to which this Agreement is applicable, agreements or arrangements regulating such participation may include a provision stating that this Agreement is also applicable to those third countries in the context of those activities.

8. The provisions of this Agreement may be amended by unanimous written agreement between the representatives of the governments of the Member States of the European Union, meeting within the Council.

Done at Brussels on the seventeenth day of November in the year two thousand and three.

ANNEX

STATEMENTS

STATEMENT BY THE EU MEMBER STATES

After signature of this Agreement, Member States will make their best efforts to fulfil as soon as possible the requirements of their own constitutional procedures, in order to allow a prompt entry into force of the Agreement.

STATEMENT BY DENMARK

When signing this Agreement, Denmark recalled the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community. Danish approval of the Agreement will take place in observance of that Protocol, and any reservation or declaration which Denmark may have to make in this connection shall be limited to the scope of part II of the said Protocol and shall in no way prevent the entry into force of the Agreement and the full implementation of it by the other Member States.

STATEMENT BY SWEDEN

The Government of Sweden hereby declares that Article 17 of the present Agreement does not encompass a right for the sending State to exercise jurisdiction within the territory of Sweden. In particular, the said provision does not confer on the sending State the right to establish courts or to execute sentences within the territory of Sweden.

This does in no way affect the allocation of jurisdiction as between the sending and receiving State under Article 17. Nor does it affect the right of a sending State to exercise such jurisdiction within its own territory after the return to the sending State of the persons covered by Article 17.

Furthermore, this does not preclude that appropriate measures, which are immediately necessary to ensure the maintenance of order and security within the force, be taken by the military authorities of a sending State within the territory of Sweden.

STATEMENT BY IRELAND

Nothing in this Agreement, in particular Articles 2, 9, 11, 12, 13 and 17, shall authorise or require legislation or any other action by Ireland which is prohibited by the Constitution of Ireland and, in particular, Article 15.6.2 thereof.

STATEMENT BY THE REPUBLIC OF AUSTRIA
REGARDING ARTICLE 17 OF THE AGREEMENT

The acceptance of the jurisdiction by military authorities of the sending state in accordance with Article 17 of the “Agreement between the Member States of the European Union concerning the status of military and civilian staff on secondment to the Military Staff of the European Union, of the headquarters and forces which may be made available to the European Union in the context of the preparation and execution of the tasks referred to in Article 17(2) of the Treaty on European Union, including exercises, and of the military and civilian staff of the Member States put at the disposal of the European Union to act in this context (EU SOFA)” by Austria does not apply to the exercise, on the territory of Austria, of jurisdiction by courts of a sending state.



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