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The significance of autonomous interpretation of the term 'beneficiary' for the EU funds management system under the Cohesion Policy

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Abstract. Adoption of the EU budget involves drafting of EU regulations that provide a uniform framework for spending the allocated funds. Such was also the case in the current period of programming EU funds what are spent pursuant to regulations that are directly binding in all Member States. The Polish legislator has introduced domestic regulations which accommodate a number of legal definitions including one of the term 'beneficiary', which in essence refers to provisions laid down in EU regulations. As a consequence, it means that EU laws that are subject to officially binding interpretation of the Court of Justice should be applied accordingly. Earlier decisions which addressed both the rights and obligations of the 'beneficiary' must be recognized as at least substantiated for the needs of implementing the Cohesion Policy. This article aims to analyse and assess the practice of implementing the term 'beneficiary' in the European Union from the perspective of European Union law in the context of Cohesion Policy. It considers present Polish legislative changes which followed the changes in at the Union level in the area of Cohesion Policy concerning the term 'beneficiary'. The author mainly use the formal-dogmatic method typical to law studies. The author analyse the case-law concerning the term 'beneficiary' in Cohesion Policy. The analysis is based on the judgments of the Court of Justice of the European Union. The assessment includes only relevant judgements issued by the European Court Justice, which still play a significant role in present legislative changes driven at the Union level regarding Cohesion Policy. This text provides an overview of the general requirements for implementing European Law in accordance with the basic standards construed by the European Court of Justice. The paper deals with the autonomous interpretation of the term 'beneficiary' in the procedure of distributing EU in the field of Cohesion Policy. The author indicates the applicable interpretation of the scope of the term 'beneficiary' and

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outlines how the state administration bodies in the domestic legal system are charged with enforcing the term 'beneficiary'. In conclusion of this paper, the author points out that the European Court of Justice did not directly construe the legal definition 'beneficiary' existing in European law. However, the optimal functioning of administrative bodies of Member States should take into consideration some judgements of ECJ concerning the fore-mentioned term. Such proceedings can be helpful in adjusting the legal system of implementation of Cohesion Policy in every Member State. More precisely, such proceedings are necessary to adapt appropriately the provisions of the legislative changes existing in the present EU regulation on the Cohesion Policy. In consequence, it can also eliminate potential administrative barriers and give more protection to the actors applying for EU grants.

Keywords: European Union law, Cohesion Policy, Law Enforcement, Law Making, Procedural Law, Legal definition.

JEL Classification: K23, K40, K41, K42.

INTRODUCTION

Administration bodies of EU member states carry out their responsibilities that stem from their domestic laws and those that stem from the EU legislation alike (Jakubek-Lalik, 2016, p. 76-78). In certain fields of social and economic life covered by Union law, Member States have the obligation to provide remedies sufficient to ensure effective legal protection (Article 19 TEU). In practice, such a construction is called procedural autonomy of Member States (Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen v Stichting Pensioenfonds voor Fysiotherapeuten 1995; Peterbroeck, Van Campenhout & Cie SCS v Belgian State, 1995; Fazenda Pública v Câmara Municipal do Porto, 2000). These states were thus given a certain scope of discretion in introducing special regulations which are a foundation for implementing joint developmental goals agreed at the EU level. Given the lack of uniform EU procedural rules, the Union law may be applied in exercising procedural laws of Member States (Baran, 2014, p. 33). As a consequence, national administration bodies and national courts have the obligation to apply effective procedural regulations in the extent necessary to "enforce" Union law (Baran, 2014, 33). Such a normative construction is implemented on the basis of the principle of sincere cooperation (Article 4(3) TEU). On the other hand, establishing admissible rules of interpretation for provisions applicable in cases for financing from European funds is another issue. This situation applies to both domestic and Union's laws that introduce concepts necessary to transfer funds allocated for carrying out Union's policies incorporated by Member States (Tkaczyński & Świstak, 2015, p. 11 ff).When talking about them, we must point to the legal definition that specifies a 'beneficiary' of Union's funds allocated for the implementation of the Cohesion Policy. The purpose of this article is to point out what legal constructs we are dealing with and how the case law of the Court of Justice that specifies the position of a 'beneficiary' contributes to completing the legal definition of this same term in the system of managing EU funds. The method of interpretation of the law in force is used in this study.

THE ESSENCE OF LEGAL DEFINITIONS

Application of legal definitions in legal texts aims to specify how a given term is understood. At the same time, it lends itself to a certain specification, that is narrowing down the meaning so that it expresses specific designates and only such designates (Bremer, 2005, p. 61). The nature of a legal definition means that certain terms must be

read in the meaning given to them specifically by the legislator. The general point of legal definitions is to precisely define the meaning of a given "term in the most express way, introducing the highest degree of legal certainty (Pieńkoś, 1999, p. 90). The role of legal definitions in a narrower sense is to simplify legal norms (Patryas, 2001, p. 101). Whereas in a broader scope, legal definitions are supposed to strive to help achieve the assumed degree of legal transparency and certainty (Ziembiński, 1956, p. 60-75).

THE STRUCTURE OF THE INTRODUCED LEGAL DEFINITION OF A 'BENEFICIARY'

To create a framework that allows spending funds planned for the Cohesion Policy, the national legislator introduced the Act of 28 April 2022 on the procedure to carry out tasks co-financed from European funds in the financial perspective 2021-2027[1]. Such a regulation facilitates fuller application of the entire package of Union's regulations that are a foundation for spending Union's funds.[2] The national legislator reserved in this regard that the term 'beneficiary' used in the act means "an entity referred to in Article 2(9) of the General Regulation"[3]. At the same time, the domestic regulator explained what the term "General Regulation" used in the act means[4]. A legal definition construed this way may be treated as a kind of a legislative shortcut since in essence it is a reference to a specific EU regulation. Fundamentally, the national legislator applies a dynamic reference by pointing to a concrete legal act promulgated in an official journal with the proviso that it applies to the amended version. Therefore, there is no doubt that each time a national regulation must be applied, the currently applicable version of the regulation's provisions adopted by the EU legislator will be correct. However, the national lawmaker's use of a measure that involves a definition that refers to the Union's law requires a deeper reflection on the direct use of EU legislation. We cannot overlook the fact that the provisions of the EU law which do introduce a legal definition of a 'beneficiary' are binding in each Member State without having to be additionally implemented. However, it needs to be noted that laws should be applied automatically, thus irrespective of the reference used in the national legal order. It is because provisions of Union's regulations are a direct basis for national bodies to act, given their "direct applicability" (Winter, 1972, p. 425-438). In effect, we may assume that there would be no need to bring in referring provisions for the provisions of the referral to be applicable. It is worth making another note in this regard though. The legal definition of a 'beneficiary' of EU funds included in the referral's provisions was put forward for the needs of the application of the EU regulation.[5] Nevertheless, its very construction signals that such EU regulation was

[1] (Journal of Laws) of 2022 item 1079.

[2] 1) Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ J L 231, 30.6.2021, p. 159–706 and OJ L 261, 22.07.2021, p. 58); 2) Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund (OJ J L 231, 30.6.2021, p. 60–706 and OJ L 13, 20.01.2022, p. 74); 3) Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 (OJ J L 231, 30.6.2021, p. 21–706 and OJ L 421, 26.11.2021, p. 75); 4) Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund (OJ J L 231, 30.6.2021, p. 1–706 and OJ L 421, 26.11, 2021, p. 74); 5) Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (OJ L 231, 30.6.2021, p. 94–158).

[3] Article 2(1) of the act on principles of implementation of tasks financed from European funds.

[4] Pursuant to Article 2(28) of the act on principles of implementation of tasks financed from European funds, the General Regulation means the Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159, as amended).

[5] Pursuant to Article 2(9) of the General Regulation "For the purpose of this Regulation, the following definitions apply: 'beneficiary' means: a) a public or private body, an entity with or without legal personality, or a natural person, responsible for initiating or both

introduced with the intention to be used extensively for the needs of the entire legal system, thus with its application in domestic legal systems in mind. Such determinants, in consequence, mean that the Union's binding legislation remains the legal basis for resolving issues that concern the 'beneficiary' of EU funds.

AUTONOMOUS NATURE OF THE UNION'S LAW

The European legal tradition is a common basis of the Union law in its current shape (Kalisz, 2007, p. 152). The system of EU law, built on the foundation of establishing treaties, does remain, nevertheless, autonomous towards legal systems of Member States while at the same time being their part (Barents, 2004; Jedlecka, 2005, p. 113-128). However, in essence, the Union's law and the domestic law of Member States by operating within one legal order remain complementary towards one another given that there is no hierarchical positioning between them (Kenig-Witkowska, 2013, p. 139). The *Van Gend en Loos* case (*NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Nederlandse administratie der belastingen,* 1963) was the first time that such autonomous character of the Union's law towards legal systems of Member States was formulated in EU legislation. The foundation nature of the principle of autonomy of Community law was then sanctioned by the judgement in the *Flaminio Costa* case (*Flaminio Costa v E.N.E.L.*, 1964; Ghevontian, 2007, p. 92). In their light it is assumed that "Community law uses terminology characteristic of this law, but legal concepts may have different meanings in the Community law and in the law of individual states" (Babiarz-Mikulska, 2022, p. 62). In practice, such an autonomous system of the Union law has shaped its own concepts and principles of application (Doczekalska, 2006, p. 18). In many cases, a new meaning is introduced for terms already known in domestic legal systems of Member States (Doczekalska, 2006, p. 18). The unambiguous nature of specific concepts in the natural language, which often are given a new meaning, is irrelevant here. As a result, even terms with well-established meanings in legal systems of Member States may have a different meaning for the needs of application of the Union's law (Doczekalska, 2006, p. 18).

AUTONOMOUS INTERPRETATION OF THE UNION'S LAW

The interpretation of the Union's law made solely in the context of one of the domestic legal systems of Member States could lead to differences in classification results. In such a case, a similar situation would be treated differently in individual states. As a consequence, the scope of application of relevant regulations would also differ depending on the court adjudicating the case. Great differences in the application of the Union's laws are a basis to assign a leading role to their autonomous interpretation to mitigate the risk of too different scopes of understanding of the same regulations in similar situations, which are nevertheless processed in different legal systems of Member States. Thus, given the principle of uniform application of the Union's law, it would be reasonable to employ an autonomous interpretation (Doczekalska & Jaśkiewicz, 2014, p. 69). Such a construct is a consequence of an assumption that terms used by the EU legislator should not be understood differently in individual Member States, regardless of the scope of regulations in effect in the same matter in domestic legal systems (Unterschütz, 2022, p. 21-34). An autonomous classification of terms used in the Union's provision, therefore, lies in specifying the scope of their meaning regardless of measures put in place in domestic legal orders (*Martin Peters Bauunternehmung GmbH v Zuid Nederlandse Aannemers Vereniging.* 1983; *SPRL Arcado v SA Haviland.* 1988). In practice, adoption of autonomous

initiating and implementing operations; b) in the context of public-private partnerships ('PPPs'), the public body initiating a PPP operation or the private partner selected for its implementation; c) in the context of State aid schemes, the undertaking which receives the aid; d) in the context of *de minimis* aid provided in accordance with Commission Regulations (EU) No 1407/2013 (37) or (EU) No 717/2014 (38), the Member State may decide that the beneficiary for the purposes of this Regulation is the body granting the aid, where it is responsible for initiating or both initiating and implementing the operation; e) in the context of financial instruments, the body that implements the holding fund or, where there is no holding fund structure, the body that implements the specific fund or, where the managing authority manages the financial instrument, the managing authority.

interpretation means that a term defined in a way that corresponds to the needs of application and operation of the introduced regulation shall be used. Thus, provisions must not be interpreted "by themselves", without taking into consideration a broader context of introducing them to the Union's system of law. Thus, it requires that the system of a legal act in which they were introduced and the purpose of its introduction be taken into account at least.

AUTONOMOUS NATURE OF INTERPRETATION OF THE WORD 'BENEFICIARY'

The autonomous character of the Union's law also affects regulations that specify the legal definition of the "beneficiary". In consequence, such a legal definition, formulated by the EU legislator, is also subject to autonomous interpretation. It is too early in the current stage of programming the EU budget to turn to the case law for the interpretation of the definition of 'beneficiary' introduced for the needs of the current period of programming the EU budget. Still, this does not change the fact that it is possible to take into account the existing case law built with regard to the defined term "beneficiary" and it retains its validity to an adequate degree with regard to general rules of the distribution system of EU funds earmarked for the implementation of the Cohesion Policy. However, we must bear in mind that that in previous periods of programming the EU budget, the very legal definition of 'beneficiary' was not directly a subject of a binding interpretation of the Court of Justice. Nevertheless, the EU laws that addressed both the rights and obligations of a 'beneficiary' have been interpreted. They could be treated as automating interpretation guidelines worked out in the case law in a special general way (Nowak-Far, 2016, p. 306). This is why we must take into account that in each period of programming the EU budget it is necessary to create national management and review systems in which all entities that are granted financing will commit to fulfil obligations under laws. The laws interpreted should allow a clear and precise specification what criteria must be met to obtain the status of a 'beneficiary' and then, what his rights and obligations are. This requirement of legal certainty should be observed with a particular rigour for regulations that stipulate financial consequences (*Kingdom of the Netherlands v Commission of the European Communities,* 1987; *Emsland-Stärke GmbH v Landwirtschaftskammer Hannover*. 2006; *Koninklijke Coöperatie Cosun UA v Minister van Landbouw, Natuur en Voedselkwaliteit.* 2006). Requirements set for applicants requesting financial aid could in particular be treated as additional elements that complement each other to form part of the definition of a 'beneficiary' introduced by provisions of the EU law.

AUTONOMOUS REFERENCE OF THE CASE LAW TO FRAMEWORK REQUIREMENTS OF THE EU FUNDS MANAGEMENT SYSTEM

The principle of legal certainty should be realized in practice by its application. The entire aid system, specified by the Union's law and domestic regulations, covers in particular an array of obligations that must be met as a condition to be granted financial aid (*Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening* (C-383/06) and *Gemeente Rotterdam* (C-384/06) *v Minister van Sociale Zaken en Werkgelegenheid and Sociaal Economische Samenwerking West-Brabant* (C-385/06) v *Algemene Directie voor de Arbeidsvoorziening*. 2008). Domestic regulations should, therefore, also specify the conditions of granting aid subject to Article 107(1) TFEU. Basic requirements given to potential "beneficiaries" should be characterized precisely in the call's documentation. It is worth pointing out that a general construction has been developed here, which is applicable to all other proceedings for financing from public funds. In other words, a belief has been cemented that the procedure for obtaining the status of a 'beneficiary' by entities interested in receiving financing for a planned project involves certain stages. As a result, an agreement for financing a proposed project may be signed by the entity interested in receiving financial aid, who has prior to that applied for financing and has been successful in all stages of the competitive calls for proposals. In this way, the applicant first is granted the status of an entity seeking financing for the project from public community funds and only upon signing the project co-financing agreement does he gain the status of a 'beneficiary' of public funds. The 'beneficiary' performing obligations that entitle him to receive the planned financial aid is subject to assessment by the institution that grants the financing. Despite amending Union's regulations, the construction under which the managing authority decides

on establishing the possibility to acquire the status of 'beneficiary' by confirming that the applicant meets the requirements under applicable Union's law is still valid. Under procedures envisaged by domestic management and review systems, competent national authorities are responsible for ensuring that a given 'beneficiary' commits to meet these obligations. Already at the stage of granting financing, the managing authority is, for example, obliged to assess whether a given undertaking qualifies for receiving aid (*Magdeburger Mühlenwerke GmbH v Finanzamt Magdeburg,* 2013). Such a situation also covers the obligation to carry out a relevant assessment in the light of premises specified within the General block exemption Regulation.[6] Of course, such requirements may constitute only a part of conditions formulated before applicants who seek financing. The managing authority then also verifies the implementation of the project itself, according to the obligations adopted by the 'beneficiary'. However, in the event of failure to meet the requirements for the financing granted, the recipient cannot rely on "the principle of protection of legitimate expectations with a view to securing final payment of the full amount of assistance initially granted" (*Eugénio Branco, Ldª v Commission of the European Communities.* 1998, *Branco v Commission of the European Communities,* 1999; *Partex — Companhia Portuguesa de Serviços, SA v Commission of the European Communities*. 1999). This applies to failures to meet requirements specified under the financing granted for a particular project and requirements resulting directly from applicable laws. In particular, the "beneficiary", who has committed a manifest infringement of the rules in force cannot invoke the "principle of protection of legitimate expectations"(Sideradria SpA v Commission of the European Communities. 1985). For example, this may apply to obliging the 'beneficiary' to achieve a certain level of turnover in the co-financed project. Where the co-financed products or services related to the project were not delivered in their entirety by the 'beneficiary' this may mean that, consequently, the 'beneficiary' did not fulfil the obligation entitling it to receive the financial assistance provided for in accordance with EU law and the applicable national law (LSEZ SIA "*Elme Messer Metalurgs" v Latvijas Investīciju un attīstības aģentūra*, 2020). In effect, this may be a basis for the applicant who received co-financing for the project to lose the status of a "beneficiary". What is more, the concept of "collective insolvency proceedings" covers all insolvency proceedings, instituted ex officio or upon a motion from the undertaking, laid down in the national law (Article 1(7)(c) of the General block exemption Regulation). The "beneficiary's" "good faith" as to the his knowledge of conditions for granting the assistance received is also essential here (*Nerea SpA v Regione Marche*, 2017). The consequences of demonstrating a lack of good faith may be the deciding factor in losing the status of a 'beneficiary' as a result of infringement of the conditions of project implementation. As a matter of fact, the loss of the status of a 'beneficiary' may be down to questions associated with taking into consideration material requirements of the financing granted, which limit the freedom of actions taken by such 'beneficiary'. In such situations we must at the same time remember that the status of a 'beneficiary' may be then lost as Community interests in recovering the aid granted must be taken into consideration (*Republik Österreich v Martin Huber,* 2002). In the circumstances of a specific case, this may actually take place also for the "beneficiary's" good faith as to the requirements for granting co-financing. Maintaining the status of a 'beneficiary' also depends on regulations other than those that introduce its legal definition.

AUTONOMOUS REFERENCE OF THE CASE LAW TO PROCEDURAL REQUIREMENTS

EU laws do not stipulate procedural regulations on resolving disputes on granting and returning of wrongly paid assistance for co-financing projects. The Union's law may, however, provide a framework to specify a certain type of standards of ensuring due legal protection of both the entities seeking co-financing and "beneficiaries"

[6] Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 107 and 108 TFEU (Regulation 800/08 is no longer in force. Date of end of validity: 30/06/2014; Repealed by 32014R0651). Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. Text with EEA relevance.

themselves. Member States, therefore, remain entitled to equip national administration bodies with relevant procedural rights to enforce commitments from potential "beneficiaries" of financial aid pursuant to the Union law and competent domestic law. Domestic regulations have the job of making it possible to recover unduly granted financial aid or aid that has been misused. In essence, it is provisions of the domestic law that thus are to be a basis to carry out proceedings on returning unduly granted EU funds. Legal criteria laid down in the domestic law may not, however, stand in the way of granting or recovery of co-financing compared to regulations accommodated in the Union's laws. When applying the Union's law, national courts are obliged to take into consideration "all regulations and organizational rules and substantive regulations concerning legal measures that serve legal protection" (Kapteyn, & VerLoren van Themaat, 1998, p. 451). Interpretation of the legal definition of 'beneficiary' should be based in this regard on binding institutions of substantive law laid down in the EU legislation and on procedural institutions employed in the domestic law that facilitate implementation of relevant measures. Nevertheless, it is the national authorities that directly apply the Union and domestic laws on granting financial assistance to "beneficiaries". The matters of correct application of the domestic and Union law alike should be solved by domestic courts. When enforcing the Union law, the national judiciary is obliged to apply relevant national legal instruments (legal measures) to protect claims originating under the EU law (Baran, 2014). However, in the case of lack possiblity of applying domestic procedure regulation, national courts are entitled to take an proper action in creating adequate procedural solution (Van Cleynenbreugel, 2012, p. 92-94). Any possible disputes related to the recovery of funds wrongly granted should be then resolved in a dedicated procedure which is not discriminatory compared to procedures for deciding similar national disputes *(Deutsche Milchkontor GmbH and others v Federal Republic of Germany,* 1983; *Landbrugsministeriet - EF-Direktoratet v Steff-Houlberg Export I/S, Nowaco A/S, Nowaco Holding A/S and SMC af 31/12-1989 A/S*. 1998; *Republik Österreich v Martin Huber,* 2002). When interpreting provisions of substantive EU law, the national court should take into consideration the legislator's pursuit to ensure equality of rights and obligations to parties to proceedings pending in different states. At the same time, it should determine whether the criteria provided for in the domestic law concerning each 'beneficiary', laid down by the EU legislator, has been fulfilled. For example, it may involve being subject to collective insolvency proceedings that are directed at a specific 'beneficiary' of a grant received. Such actions of the national court are sufficient to make it practically impossible for a Member State to grant assistance to a particular undertaking or to conclude that such assistance should not have been granted despite the fact that the criteria were fulfilled on the day of granting the aid. A subsequent initiation of collective insolvency proceedings may not be the sole basis for withdrawing the financial aid granted to an undertaking (*Nerea SpA v Regione Marche*, 2017).

CONCLUSIONS

The EU regulations applied which address the legal definition of 'beneficiary' were subject to autonomous interpretation in previous years. It was intended to maintain a common understanding of specific terms to maintain a uniform standard in all Member States. Their adequate application in the current situation may provide a crucial interpretation guideline for the needs of maintaining uniform implementation of EU funds in today's financial perspective. Given that, such rulings are, undoubtedly, important for general requirements of the EU funds management system which in itself is a hybrid regulation that combines domestic and EU laws. The latter carry a particular gravity for all Member States when it comes to implementing EU funds. It is because they must also take into consideration general rules and standards of applicability of the EU law. Despite a lack of direct judicial decisions on the interpretation of the legal definition of 'beneficiary', we may consider, respectively, rulings that address rights and obligations of a 'beneficiary' in the context of upholding the developed rules and standards of the EU law. In essence, the responsibility to obtain a relevant confirmation by the 'beneficiary' of requirements resulting from applicable laws lies with the managing authority. Meeting the postulate of legal certainty here may have an impact on obtaining and, as a consequence, also maintaining the status of a 'beneficiary' by entities interested in

reaching for EU funds. Sometimes too the very observance of all requirements of the financing granting procedure may condition the entitled entities' correct use of the funds granted. General requirements that provide a framework for the EU funds distribution system do take into account the rules of an autonomous legal order worked out by Member States. In this way, an adequate application of the case law of the Court of Justice holds timeless validity.

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