

The Iran Nuclear Deal: Europe to the Rescue?

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Summary

Whether or not President Trump unilaterally withdraws from the Iran nuclear deal on 12 May, Europe will face an uphill battle to save it. If sanctions are applied immediately, or threatened every 120 days, that will undermine one of the fundamental tenets of the agreement. Businesses will be unwilling to risk investing in an economy under the threat of sanctions. This will mean Iran will be denied the benefits to which it is entitled to under the agreement and will have little incentive to continue complying with its nuclear obligations. In fact, current statements from Tehran indicate that Iran might walk away from the deal entirely. Europe is making last-ditch efforts to meet Trump's challenge but it needs a backup plan to salvage the nuclear deal if the U.S. withdraws or carries out its part of the bargain half-heartedly. This policy brief identifies a series of European options that will protect the JCPOA from both a U.S. withdrawal and continued uncertainty. It argues that a package of positive incentives aimed at persuading the Iranian leadership of the benefits of compliance with the JCPOA outweigh the potential costs of noncompliance and retaliation.

Trump vs. the JCPOA

U.S. President Donald Trump came into office as a staunch opponent of the Joint Comprehensive Plan

of Action (JCPOA). But he did not abrogate it immediately, in part because of warnings from his national security team about adverse diplomatic repercussions of a unilateral—and given Iran's compliance, unjustified—withdrawal. Another reason he waited was an inter-agency strategic review of U.S. policy toward Iran that took nearly ten months to complete. In the meantime, his administration issued periodic, congressionally mandated certifications of Iran's compliance and extended nuclear sanctions relief, while in parallel designating new non-nuclear U.S. sanctions and withholding licences for commercial agreements allowed under the JCPOA. In October, the strategic review unveiled a broadly pressure-centric policy toward Iran; in tandem, the president refused to certify the JCPOA on the grounds that sanctions relief had been disproportionate to steps Iran had taken to implement the deal.

This decision placed the deal's fate in the hands of the U.S. Congress, which could use an expedited process to restore U.S. nuclear-related sanctions by a simple majority. Yet Congress, reluctant to alienate such key U.S. allies as the E3 countries [Germany, France, and the UK], effectively threw the ball back into the E3's court, with the Republican leadership telling the administration

that if it reached a deal with the E3, they would legislate that agreement.

By January, Trump had run out of patience and his national security team seemingly out of excuses to buy time. While renewing U.S. sanctions waivers on 12 January, he declared that unless Congress and Europe addressed several “disastrous flaws” in the agreement, he would no longer extend sanctions relief but pull the U.S. out of the agreement. The announcement triggered a 120-day deadline to meet the White House’s terms to “fix” the JCPOA before 12 May 2018.

Seeking common ground across the Atlantic

President Trump’s ultimatum put the burden of alleviating the U.S. administration’s concerns on Europe’s shoulders. The E3 evinced surprise but believed that even if the path through which the U.S. could remain party to the deal was narrow, they had to explore whether a compromise consistent with the JCPOA was reachable. Between February and April, the U.S. and E3 negotiators met four times to address U.S. concerns within and beyond the JCPOA.

The talks revealed considerable common ground on curbing Iran’s ballistic missile program and pushing back against its Middle East policies. There is likewise an apparent consensus on steps related to efforts by the International Atomic Energy Agency (IAEA): that it should vigorously verify Iranian compliance; receive timely intelligence regarding suspicious activities at Iranian military or nuclear sites; and rigorously enforce the JCPOA’s access provisions. A senior European official said, “we are going very far but, honestly, it is justified, regardless of the JCPOA. We were awakened to the magnitude of what Iran is doing”.¹

The four countries also made progress on the trickiest issue, the JCPOA’s so-called sunset clauses—i.e., the fact that some restrictions on Iran’s nuclear program expire over time. Critics argue that the expiry provides Iran with an eventual pathway to building nuclear weapons. The U.S. has been seeking an E3 commitment to automatically reimpose sanctions if Iran, although acting in compliance with the JCPOA, expands its nuclear program after certain constraints go away. For the E3, however, this step would be tantamount to a violation of the JCPOA, which contemplates the normalisation of Iran’s civilian nuclear program after a confidence-building period that ends gradually between 2026 and 2031. As a French official put it, “it’s totally unrealistic to believe that Iran will accept perpetual limits on its sovereignty”.²

Instead, the E3 have said they are willing to reassert their determination not to allow Iran to acquire a bomb and to judge Tehran’s intentions by assessing a range of factors, including whether its nuclear program is commensurate with its civilian needs for nuclear fuel. In other words, the U.S. and E3 would seek to define indicators of a potential Iranian move toward nuclear weapons and agree on what they would or would not provide Iran in terms of nuclear-related technology after those constraints expire. Finally, they would consent to a joint review after a few years to assess Iran’s intent.

In return, the E3 wanted Washington to stabilise the JCPOA by ending the uncertainty around certifications of Iranian compliance or extension of sanctions relief at frequent intervals. They also want a U.S. commitment to issue licences for legitimate business in Iran and put a stop to U.S. Treasury officials explicitly discouraging such commerce, in contravention of the JCPOA.

By late April, a mutually acceptable compromise seemed within reach, but even if the differences

¹ Crisis Group interview, Berlin, April 2018.

² Crisis Group interview, Washington, 8 February 2018.

were bridged, it remains unclear whether a compromise would satisfy Trump. His April 2018 decision to bring John Bolton and Mike Pompeo, both ardent JCPOA opponents, into key national security posts bodes ill. As seen from Europe, these changes at the top portend a growing hawkishness and cast a shadow over the viability of a U.S.-E3 JCPOA compromise.

Some European officials are skeptical that the administration genuinely wants to improve the accord. They believe it's real aim is to restore maximum pressure on Iran to change not only that country's behaviour, but also its regime. In that reading of Trump's intentions, the JCPOA gets in the way. As a French official put it, "the truth is that the Trump administration's problem is not with the deal; it's with the Islamic Republic of Iran."³ Withdrawing from the JCPOA and increasing pressure on Iran might also satisfy the president's political base ahead of U.S. midterm elections in November. Should Trump decide to leave the JCPOA, his approach arguably would enable him to pin responsibility on the E3.

French President Emmanuel Macron launched a last-ditch effort to sway Trump during his visit to Washington, calling for building on, rather than destroying, the JCPOA. As he described it, the U.S., Europe, along with several other interested countries would seek to achieve a "new" broader agreement with Iran.

The idea was intriguing, but Macron quickly poured considerable cold water on his own proposal. As he was departing Washington, he said, "my view—I don't know what your president will decide—is that he will get rid of this deal on his own, for domestic reasons". He added that "his experience with North Korea is that when you are very tough, you make the other side move and you can try to go to a good deal or a better deal"—though he went on to say that "it can work in the

³ Crisis Group interview, Paris, 29 March 2018.

short term, but it's very insane in the medium to long term".⁴

Nonetheless, the idea of adding provisions to the JCPOA as a means of securing continued U.S. adherence to the deal has gained more currency within the E3. For its part, Iran seems loath to accept additional constraints on its nuclear program, but has declared itself ready to discuss regional issues.

Iranian reactions

Even prior to President Trump's refusal to certify the JCPOA in October 2017, Iranian officials complained of U.S. "bad-faith implementation". The leadership in Tehran, however, decided not to fall into what they viewed as a trap by announcing that Iran would not be the first to violate the agreement. But increased anxiety over the JCPOA's fate means that Iran has not reaped the foreign capital and investment it keenly anticipated and badly needs.

Iranian officials have been critical of the E3 for putting so much effort into reassuring the U.S., a senior Iranian diplomat complained, "the E3 are dead set on appeasing Trump, forgetting that we, who unlike the U.S. have fulfilled our JCPOA commitments, also have a contentious domestic atmosphere". A conservative lawmaker added, "the irony is that we signed the JCPOA to unshackle ourselves from sanctions. Now the Europeans are telling us, 'we have to sanction you to satisfy Trump and preserve the JCPOA'.⁵ They also reject any U.S.-E3 initiative to alter the deal or seek to negotiate a new one, as Macron proposed.

⁴ Julian Borger, "Donald Trump likely to scrap Iran deal amid 'insane' changes of stance, says Macron", *The Guardian*, 25 April 2018.

⁵ Crisis Group interview, Brussels, 28 March 2018. An Iranian official said, "the consensus around the JCPOA's utility for Iran has been shattered, and its proponents are in danger – not just politically, but even physically". Crisis Group interview, Brussels, April 2018. Reza Haghghatnejad, "Iran's nuclear negotiators discredited amid spy allegations", *IranWire.com*, 16 April 2018.

Iranian officials have warned that internal political imperatives will compel them to reject a joint U.S.-E3 agreement and to react even more strongly if the U.S. withdraws from the JCPOA. The nature of such a response is a subject of debate within the political elite. An increasingly narrow circle around President Rouhani argues that while it is important to rectify the European perception that Iran is willing to stay in the deal no matter what the circumstances or how meagre the economic dividends, Tehran should not play into the Trump administration's hands. In other words, it should remain committed to its JCPOA obligations, preserve the moral high ground, and seek to drive a wedge between the U.S. and other E3/EU+3 members to neutralise new or revived U.S. sanctions. This, however, would not be an option if Europe either fails to preserve as much of the deal's economic dividends for Iran as possible or joins the U.S. in slapping sectoral sanctions on Iran. The bleak economic situation has rendered this posture difficult to sustain for JCPOA supporters in Tehran. One official predicted that the nuclear dossier might be reassigned to the Supreme National Security Council, where the deal's sceptics have more sway.

A second group, apparently comprising the majority of national security decision-makers, argues that if the E3 impose sectoral sanctions on Iran or fail to stand up to the U.S. in case the latter violates the JCPOA, Iran should retaliate with its own JCPOA violations. These could include stepping up its nuclear research and development, resuming enrichment at the Fordow bunker facility up to 20 per cent and/or halting voluntary cooperation with the IAEA (thus limiting the agency's access to Iran's non-nuclear sites). It could also hit back through non-nuclear/indirect measures across the Middle East. Finally, the most dramatic step would be to walk away from the JCPOA altogether.

The third group, which is now gaining momentum, consists of even more hard-line political elements and some within the Islamic Revolutionary Guard

Corps (IRGC). The response to a U.S. withdrawal from the JCPOA that they advocate is pulling out of not just the JCPOA, but also the Nuclear Non-Proliferation Treaty (NPT), allowing Iran to resuscitate its enrichment program at full speed and changing its nuclear doctrine to pursue weaponisation. They point to the Trump administration's desire to engage with North Korea as evidence that Iran can only deal with the U.S. from a position of strength with the ultimate deterrent in hand. Pursuing this option would allow them to close the door on any further improvement in Iran's relations with the West, which they view as a threat to their economic interests and loathe for its cultural subversion; it would also further discredit the Rouhani administration ahead of the 2020 parliamentary and 2021 presidential elections, with the supreme leader's succession additionally looming on the horizon.

It is difficult to predict the outcome of this debate though a dash to nuclear breakout capability—let alone the pursuit of a bomb—is far from the most likely response. The Iranians also see merit in trying to get Europe to side with it against Trump, rather than with the U.S. against the Islamic republic. But complacency would be ill-advised: Iran's response will be informed both by domestic politics and by the supreme leader's determination not to project weakness in the face of what he considers U.S. bullying.

Worryingly, the JCPOA's apparent demise is occurring amid rising tensions between Iran, the U.S. and their respective Middle Eastern allies. As detailed in Crisis Group's Iran-U.S. Trigger List⁶, an incident at any one of the points of friction between the parties could easily spiral into military confrontation. Paradoxically, one result of the Macron visit to Washington appears to have been to bolster Trump's resolve to counter Iran in Syria—in other words, and contrary to the French

⁶ These flashpoints can be monitored on Crisis Group's Iran-U.S. Trigger List: <https://www.crisis.group.org/trigger-list/iran-us-trigger-list>.

president's hope, we could find ourselves with a more bellicose U.S. posture and without the JCPOA.

In late April, President Macron said there was no "plan B" if the JCPOA collapses. He might have said that to warn the U.S. against a unilateral withdrawal or because he knows Europe cannot defy the U.S. with contingency measures to protect the deal. Or he might have had both factors in mind.

Elements of an E3-U.S. understanding

For these reasons, the E3 are endeavouring to keep the U.S. in the agreement. Yet, while the odds seem long, there could still be a joint U.S.-E3 understanding that would signal to Washington the E3's willingness to act on issues of mutual concern regarding Iranian behaviour, without violating a multilateral agreement with which Tehran continues to comply. It could also bring a degree of reassurance for foreign capital and technology to flow into Iran. As a stepping stone toward a broader agreement with Iran to address its ballistic missile program and regional activities, such an understanding could include:

- A permanent commitment to prevent Iran from manufacturing or acquiring nuclear weapons; this could apply specifically to the list in the JCPOA's Section T concerning activities that could contribute to the design and development of a nuclear explosive device,⁷ as well as regular U.S./E3 assessments of the growth and evolution of Iran's uranium enrichment activities and their commensurability with the country's civilian nuclear fuel needs;
- A commitment to seek a supplemental agreement among JCPOA signatories to address all parties' concerns. Talks could begin once confidence in the JCPOA's implementation

⁷ Crisis Group interviews, European officials, Paris and Berlin, April 2018. The NPT fails to define what is entailed in manufacturing a nuclear weapon. The JCPOA's Section T closes that loophole in the case of Iran by explicitly banning certain activities and dual-use material related to nuclear weaponisation

has been restored, optimally two years prior to the JCPOA's Transition Day in October 2023;⁸

- A commitment to consider Iran's acquisition of long-range intercontinental ballistic missiles a threat to international peace and security, and grounds for imposing targeted sanctions;
- Enforce strict export controls and impose targeted sanctions against individuals and entities engaged in the production of missiles that are designed to be nuclear capable, specifically Ghadr medium-range missiles, as well as anyone engaged in transferring ballistic missile technology to non-state actors in the region⁹;
- Dedicate additional intelligence resources to, and share information about, suspicious activities at Iranian nuclear and non-nuclear sites; assess and fulfil the funding needs of the IAEA; and underscore the IAEA's full authority under the JCPOA's Section Q to inspect non-nuclear sites in Iran;
- A statement of policy by the Trump administration to adhere to U.S. commitments under the JCPOA, as long as the IAEA has verified Iran to be complying with the JCPOA's terms; to refrain from discouraging business that is permissible under the JCPOA; and to issue licences for legitimate trade with Iran, including those related to civilian aircraft, in a timely manner; White House support for congressional action to amend existing Iran sanctions statutes by removing the periodic waiver requirements and replacing them with a bill pursuant to which sanctions would be reimposed if the executive branch reports to Congress a significant JCPOA violation by Iran, as verified by the IAEA; and support for congressional action to replace the Iran Nuclear Agreement Review Act's 90-day certification requirement on Iran's JCPOA compliance with an executive branch report to

⁸ For details see Annex V, Section D of the JCPOA.

⁹ See Michael Elleman and Mark Fitzpatrick, "Are Iran's ballistic missiles designed to be nuclear capable?" International Institute for Strategic Studies, 28 February 2018.

Congress in case of a significant JCPOA violation by Iran, as verified by the IAEA.¹⁰

In parallel, the E3/EU could launch an effort to prevent the proliferation of dual-use nuclear fuel cycle technology in the Gulf region by proposing a joint venture enrichment plant among countries in the region; multinationalising Iran's enrichment program by staffing its facilities with technicians and experts from Iran and the EU countries to add another layer of monitoring; and/or establishing a nuclear fuel bank for use by Iran and other countries in the region before the JCPOA's Transition Day to discourage enrichment activities on their soil.

The E3's negotiating position is complicated by the uncertainty over what Trump will decide in May—he could reach an agreement with the E3, waive sanctions, bring the U.S. into compliance with the JCPOA and shift the focus of his and Europe's pressure strategy to Iran's regional activities; waive sanctions again to give the U.S.-E3 talks more time to yield results while maintaining uncertainty about the JCPOA's fate; reimpose nuclear-related sanctions but not enforce them in order to grant negotiations more time; or reimpose sanctions and enforce them as soon as bureaucratically possible.

A European Plan B

Neither unilateral U.S. withdrawal from the JCPOA nor protracted uncertainty about Washington's stance is desirable. To minimise the damage, the E3 should broaden its approach, developing a plan B that might induce Iran to continue respecting the JCPOA's terms even if the U.S. stops doing so, whether entirely or in part.

If the U.S. withdraws, and the nuclear agreement no longer can be maintained as an E3/EU+3 arrangement, Europe might still be able to salvage

it. This would require presenting an economic and political package to Tehran whereby as many of the benefits envisioned by the JCPOA for Iran as possible would be preserved. This could help Iranian policymakers justify restraint in the face of U.S. non-compliance, prevent renewed nuclear crisis over Iran's nuclear program and allow continued EU-Iran dialogue on Iran's ballistic missile program, regional policies and human rights situation, as well as the fate of dual nationals arrested in Iran on dubious charges. If the U.S. remains party to the JCPOA but in a grudging or fleeting way, adopting parts of the package could offset continued uncertainty and tackle existing bottlenecks in permissible trade.

While there is no sure way to protect Iran's economy completely from the repercussions of a U.S. exit or from continued uncertainty, the E3 could develop a package whose political and economic value would be greater than the sum of its individual elements. The package could contain short- and medium-term measures:

Short-term measures designed to provide immediate reassurance to European businesses interested in entering the Iranian market, while empowering those in the Iranian leadership who advocate continued compliance with the deal:

- The E3 and European Council would publish a statement reiterating their strong support for the JCPOA;
- In an effort to minimise the effects of U.S. secondary sanctions on Iran's ability to export oil and repatriate its revenue, the EU would protect energy companies with a small footprint in the U.S. to continue purchasing Iranian oil and gas, and empower pertinent European central banks to process related payments;
- The EU could publish a general licence describing an acceptable standard for due diligence and regulatory compliance for its companies to conduct legitimate business with Iran, thus providing them with a legal shield

¹⁰ This should include reiteration of the JCPOA's paragraph 28, which notes that the U.S. should make its "best efforts in good faith to sustain [the] JCPOA and prevent interference with realization of the full benefits by Iran of the sanctions lifting".

against secondary U.S. sanctions; Brussels could also negotiate with the U.S. Treasury Department to retain General License H, which authorises U.S.-owned or controlled foreign entities to engage in certain Iran-related transactions¹¹;

- In parallel, the EU could negotiate with the U.S. to acquire special protection for a set of its industries or companies that do business with Iran, threatening to impose tariffs on U.S. exports to the EU if such carve-outs are not granted¹²;
- The EU could replace its so-called 1996 Blocking Statute that prohibited European companies from complying with secondary U.S. sanctions imposed on Iran with legislation that supports its companies when they press charges against U.S. regulators at the International Court of Justice or International Chamber of Commerce¹³. It could also establish a “clawback” clause for recovery of damages incurred for alleged sanctions violations through imposing tariffs on U.S. exports to the EU.
- The E3 – along with other willing EU member states – could announce a joint effort by their state-owned export credit or investment agencies to cover the risks, including those related to sanctions, that their companies might face in trading with Iran¹⁴;

¹¹ “General License H”, Iranian transactions and sanctions regulations, 31 C.F.R. Part 560, Office of Foreign Assets Control, U.S. Treasury Department.

¹² Such negotiations should not occur before the U.S. withdraws from the agreement, as they could make it easier for the Trump administration to contemplate withdrawal. “Oil major Total to seek waiver if U.S. reimposes Iran sanctions: UAE newspaper”, Reuters, 18 March 2018.

¹³ Council Regulation (EC) 2271/96, “Protecting against the Effects of the Extra-territorial Application of Legislation Adopted by a Third Country ...”, 22 November 1996. The legislation was designed to resist U.S. extraterritorial sanctions against Iran and Cuba. It effectively deterred Washington from enforcing those sanctions for more than a decade

¹⁴ Italy’s Invitalia Global Investment signed a master credit agreement with two Iranian banks on 11 January 2018 for up to €5 billion. “Italy and Iran sign a master credit agreement for investments in Iran,” press release, Italian Ministry of Economy and Finance, 11 January 2018. Bpifrance intends to provide €1.5 billion in export guarantees by the end 2018. “France to

□ France’s Agence Française de Développement, Germany’s Kreditanstalt für Wiederaufbau and the UK’s Department for International Development could launch a joint effort to support infrastructural development projects in Iran and enter into negotiations with Tehran to select projects and extend loans as soon as possible; and

□ The E3 could more readily facilitate visas for Iranian students and entrepreneurs.

Medium-term measures could signal the seriousness of the European commitment to the JCPOA as well as to developing a cooperative and mutually beneficial relationship with Iran:

- The EU could create a multilateral Euro-denominated trading bank comprising state-owned and medium-size to smaller private banks. It would pool these institutions’ resources and share risks, process payments, and provide credit guarantees and insurance services to European private-sector firms seeking to trade with or invest in Iran, and share due diligence and compliance information¹⁵;
- The European Commission could move Iran from the list of potentially eligible to fully eligible countries for receiving loans from the European Investment Bank to finance large public or private sector projects, and negotiate a framework for the bank’s operations in Iran¹⁶;
- The EU and Iran could negotiate and sign a long-term energy partnership, which in return for Iranian natural gas supplies to Europe via existing or new pipelines would provide Iran

finance exports to Iran, aims to sidestep U.S. sanctions”, Reuters, 1 February 2018.

¹⁵ For more background, see Crisis Group Middle East and North Africa Report N°173, *Implementing the Iran Nuclear Deal: A Status Report*, 16 January 2017.

¹⁶ On 8 February 2018, the European Parliament passed a resolution noting that “Iran should be added to the list of potentially eligible regions and countries”; the European Council followed up on 27 February with a regulation that confirmed Iran as “potentially eligible” for European Investment Bank loans. Crisis Group interviews, Brussels, March 2018.

with access to cutting-edge renewable energy technologies;

- The EU and Iran could support the establishment of an Iran-EU chamber of commerce; and
- The EU and Iran could enhance civil nuclear cooperation, including construction of new civilian nuclear power reactors, in return for an agreement to turn Iran's enrichment plants into joint European-Iranian ventures, or staff them with European nationals.

Of course, such measures would have to be conditioned on Iran sticking to its JCPOA commitments. If Iran resuscitates its nuclear activities, the E3 almost certainly would themselves end their support for the JCPOA and back the reimposition of multilateral nuclear-related sanctions. Furthermore, Iran could not benefit from the banking mechanisms described above if it fails to take additional steps to reform its finance and banking sectors, including outstanding areas of its action plan with the Financial Action Task Force (FATF).

A genuine Iranian effort to de-escalate tensions in the region, along the lines Crisis Group recommended in an April 2018 report¹⁷, is equally critical. Given the perception of its ascendancy in the region, the onus is on Iran to act first if it wants the E3's help in preserving the JCPOA. By taking the first step, Tehran would demonstrate the value of engaging it versus coercing it to play a more constructive regional role.

Moreover, Tehran should agree to future negotiations over a supplemental agreement that could alleviate concerns about the eventual expansion of Iran's nuclear fuel cycle activities and set in place regional limits on range and payload of ballistic missiles in return for reciprocal steps—e.g. the lifting in whole or in part of U.S. primary sanctions that, as the JCPOA's

implementation record proves, hinder Iran's reintegration in the global financial system.

Conclusion

In conclusion, the E3 now find themselves caught between trying to placate the U.S. by "fixing" the JCPOA and ensuring that, in so doing, they do not prompt Iran to walk away. They face the additional challenge of ensuring that other EU member states accept what they propose.

The E3 have made it clear that the JCPOA can be neither renegotiated nor reinterpreted with only partial participation of its stakeholders. Nonetheless, the E3 engaged the Trump administration in an effort to accommodate its principal concerns in order to keep it in the JCPOA. The question is not only whether this can be done, but also whether it can be done in a manner that will not push Iran out of the deal and is not just a temporary reprieve. The goal – aside from the declared aim of achieving stronger transatlantic consensus on how to address Iran's ballistic missile program and regional activities – should be to stabilise the JCPOA by allowing Iran the economic dividends to which it is entitled.

The time is thus ripe for Europe to devise a plan that would seek to protect the JCPOA from both a U.S. withdrawal and continued uncertainty. This aim could be achieved through a package of incentives aimed at persuading the Iranian leadership that the benefits of remaining compliant with the JCPOA outweigh the potential costs of noncompliance and retaliation. If the E3 preserve their current unified position and, if need be, chart a path independent of the U.S. to salvage the nuclear deal while leaving the door open for a future U.S. return, they potentially could help avert the reignition of the nuclear crisis in a Middle East in turmoil.

¹⁷ Crisis Group Middle East and North Africa Report N°184, *Iran's Priorities in a Turbulent Middle East*, 13 April 2018.

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