A PROGRESSIVE APPROACH TO THE CONFERENCE ON THE FUTURE OF EUROPE

Summary

The Conference on the Future of Europe is the widest process of engagement with citizens, besides elections, that the European Union has ever undertaken, but as such it has enormous potentials as well as risks. The main risk will be to result in a big disappointment, if proposals supported by citizens will be not followed up by the European institutions. However, it can also offer a great opportunity to progressives to introduce largely-needed changes in the European construction, enhancing the European Union's capacity to act and deliver in a number of cross-border sectors (from healthcare to climate change, from economic justice to migration), and strengthening its democratic accountability and transparency. This Policy Brief offers some proposals, among the many that could and will be discussed, that could be embraced by European progressives and that may help to make the European Union and its institutions increasingly understandable to European citizens.

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1. Introduction

The Conference on the Future of Europe has enormous potential – but also risks.

It is the widest process of engagement with citizens that the European Union has ever organised outside of elections, involving deliberative discussions and consultation exercises in all member states, an interactive Multilingual Digital Platform on which any citizen or group of citizens may place their contribution and comment on those of others and national and pan-European Citizens' Panels with randomly selected participants. These will all feed ideas and proposals into a Conference Plenary, where representatives from the citizens panels, social partners and civil society representatives will meet with elected representatives from the national parliaments, European Parliament, national governments, and regions, to try to secure broad political backing for the most supported ideas coming up from citizens.

It therefore has the potential to engage a vast number of citizens in informed debate about the EU and its future, and to distil broadly accepted demands about EU priorities and the way it works. It will be the first joint public reflection on the future of the EU since the Convention on the Future of Europe 20 years ago. It would be surprising if it doesn't produce some follow-up – every previous major exercise of reflection and reform (from the joint Parliamentary Assizes in 1990 to the 1996 Reflection Group to the 2010-11 Convention) has eventually led to some significant changes to the EU, even if they fell short of some expectations.

There are also risks: that there are technical problems with the platform or with the citizens' panels (neither of which have been attempted before on such a scale); or that there is a cacophony of ideas with little consensus; or alternatively that a widely agreed set of conclusions are subsequently not (or not sufficiently) followed up by the EU institutions or member states, causing widespread disappointment.

The latter is perhaps the greatest risk. The final report of the conference will be finalised by 'consensus' of an Executive Board in which three representatives each of the European Commission, the Council and the European Parliament must all agree. Above all, its recommendations need subsequent follow up: any of them that require unanimous approval of member states (such as any modification to the field of competence of the EU, any change in its budgetary resources, any reallocation of the main spending priorities defined in the EU's multiannual financial framework, or any change in the EU's powers or decision-taking procedures) face this high hurdle. Some governments currently say that they do not support making changes to the EU treaties.

We should also be aware that the Conference will be the target of campaigns of various kinds: some promoting a specific policy, others a particular institutional change – but also some that want to discredit the whole exercise because they oppose the EU and do not want anything that might lead to its success. It may well be targeted by extremist groups or foreign powers.

This paper looks at how to make a success of the process from a progressive perspective and at how those who are constructively critical of aspects of the EU can turn it into an opportunity to press for change.

2. From policy goals to capacity to deliver

Initial debates under the umbrella of the Conference are likely to focus on policies and political priorities for EU action: what do citizens think we should be doing together at EU level (and what we should not), what should be the EU's priorities, where should its policies be strengthened: *climate change and the environment? health? economic fairness? protecting rights and the rule of law? security? migration? education? foreign policy? defence?* Indeed, the Digital Platform and the Citizens' Panels are mostly organised around such subjects.

There will be plenty for progressives to say on these subjects. The economic, environmental, and social interdependence of our group of neighbouring countries, which already share a highly integrated single market, a customs union, a security community and much else, and which proclaim common values on human rights, democracy and the rule of law, means that common action is essential for achieving results in many fields. The case for enhanced EU action in several areas is likely to find support. Climate change and most environmental questions cannot be solved at national level. Healthcare was previously thought of as a national responsibility, but the Covid-19 pandemic dramatically illustrated that there are cross-border issues where EU level action is potentially helpful or even necessary. An integrated single market needs common rules to protect consumers, workers and the environment, and to ensure social justice. It also means that specific issues such as tax fairness require common action to ensure that multinational companies and rich oligarchs cannot avoid tax by playing one country off against another.

Stronger and more *solidaire* economic management tools are especially needed among those member states sharing a common currency. The protection of rights and fundamental values is a growing priority, especially when these are seen as being under threat. Large-scale migration to Europe has revealed a plethora of problems that can only be made worse if member states act unilaterally and try to pass on difficulties onto their neighbours. And external political, economic, security and environmental challenges in an increasingly volatile world, including political instability and military threats at our doorstep, also plead in favour of stronger common external action by the EU.

But any honest assessment of the EU's performance, or of its potential, in these fields must rapidly lead to a discussion about its **capacity to act**.

The key step that will be needed as this debate progresses, is to show how policy outcomes depend on changes to the competences, resources, powers, and procedures of the EU:

- To enable the EU to address **cross-border aspects of health**, not least during pandemics, we need to expand its executive capacity. The EU has traditionally been focused on legislation and setting rules. The Covid-19 crisis revealed a lack of capacity in marshalling resources, organising procurement, distributing protective equipment, ventilators and vaccines. This is a field where much can be done, without changing the treaties, by strengthening the executive capacity (budget, staff, authority to act) of the Commission and the European Medicines Agency.

- To do more on **climate change**, we need commitment to an ambitious programme. This needs political will, which is largely there and is growing. But action is currently handicapped by the requirement for unanimity within the EU Council to adopt common environmental measures when they concern land use, water resources, energy supplies and fiscal incentives.

- To strengthen t**he capacity of governments to take action on the economy to secure jobs and growth**, a number of joint actions are required, not least implementing the recently agreed Next Generation EU enhancement of the EU budget and the creation of a significant borrowing facility for the EU. But at a time when governments are going to need greater resources to finance public services and investment, we need to tackle the enormous problem of tax evasion and tax avoidance by multinational companies and by rich oligarchs, and also tackle tax havens. EU action in this area could lessen the ability of multinational companies to avoid tax by transferring profits to the

jurisdiction with the lowest tax rates (or the feeblest enforcement). It could also limit the damage caused by 'tax competition' which encourages countries to offer tax breaks to multinationals in return for an investment. The free movement of capital within the EU makes it difficult for countries to take individual action on these matters. Collective EU level action, whether that is setting common rules and standards, minimum rates of corporate taxation, or making companies pay tax where they make their profits (country by country reporting), are currently frustrated by the need for unanimity in the Council on tax matters.

- To ensure **fairness and economic justice** in the EU's highly integrated single market, we need to strengthen social corrections to the market. Most such corrections are at national level (notably the provision of welfare, social services, education, healthcare, fiscal redistribution) and some at EU level (rules for consumer protection, the environment, and workers' rights). But to be effective, and not undercut by unfair competition, some EU-wide standards for the national measures are needed. That requires the capacity to set EU minimum standards for national minimum wages (at, perhaps, 50% of the national average salary), for child benefits for employees, for safe working conditions, for training standards, for gender equality and the other issues headlined in the European Pillar of Social Rights, agreed in principle at the 2017 Gothenburg summit, and reaffirmed at the Social Summit in Porto on 7-8 May 2021, but which now requires vigorous implementation. The Conference should be a vehicle for endorsing the idea that the EU should be an engine of social progress.

- To better guarantee the **rule of law and respect for human rights and for minorities** in every member state, you cannot rely on a rule that requires unanimity (of every other national government) to take the decisive measures when a member state is in serious and persistent breach of its obligations. We now know that two states in the same situation will back each other and prevent any action, rendering the EU incapable of suspending a member state that becomes a dictatorship, or an 'illiberal democracy' crushing the rights of ethnic, linguistic and sexual minorities or suppressing press freedoms or judicial independence. That is simply not acceptable in a Europe that is supposed to be based on shared values, enshrined in a treaty that all have ratified. At the very least, stronger legislative measures requiring conditionality for receiving EU funding should be introduced and used. Still better would be to amend Article 7 TEU treaty to replace the unanimity requirement.

- To better address the issue of **migration** into Europe – a cross-border issue by any definition – a combination of measures is needed, giving a stronger capacity to take common action at EU level, both in terms of helping those in need and in terms of fighting the gangs of traffickers who ruthlessly exploit both refugees and those tempted for economic reasons to come to Europe. Some of those measures are budgetary or legislative, but a wider legal base in the treaties would help.

- If the EU is to have any **credibility in world affairs**, it cannot afford to have a situation where even issuing a joint statement is vulnerable to the veto of

a single member of the Council. In a world where the United States, Russia, China and India will have far greater clout than any individual European country, the EU's limited ability to take common positions and undertake joint actions will leave Europe irrelevant on the sidelines. Much of the infrastructure is there: the External Action Service under a Vice President of the Commission (High Representative), one of the widest diplomatic networks across the world, the ability to adopt sanctions and to deploy a degree of military capacity. But if all that is subject to lowest common denominator decision taking, vulnerable to the most reticent member state (or even to a member state under the influence of an external power), it will be of little use. The need for unanimity in the Council must go.

- If the EU is to be able to finance the policies requested of it that need spending, it will have difficulty to do so within its current budgetary constraints. Both the ceiling on its 'own resources', and the ceilings on specific categories of expenditure laid down in the Multiannual Financial Framework, require unanimity to raise or change them. So does the creation of new 'own resources', some of which have the potential to lessen the perception that the EU is financed by contributions from national budgets. The argument needs to be made that spending jointly at EU level can save money at national level (through economies of scale or by avoiding duplications). It is in the interests of member states to raise the ceilings and create new resources for the Union. And even a limited increase in flexibility (qualified majority voting within certain limits) would avoid the deadlocks over relatively small amounts that are currently a time-

consuming frequent feature of EU 'crisis summits'.

Such changes to enhance the capacity of the EU to deliver are even more necessary as we head towards a Union of over 30 member states. It is important to keep the long term in mind, rather than go for short term fixes.

3. Capacity needs accountability

A greater capacity for EU-level action and decision taking requires looking again at the question of its democratic accountability.

The EU has come a long way over the last three decades in this respect. To adopt almost any EU legislation (as well as the budget and international agreements), you now need the approval of both the elected European Parliament and the Council whose members are accountable to national parliaments (a kind of bicameral legislature at EU level). Commission proposals for legislation are first sent directly to national parliaments, enabling them to shape the position taken by their minister in the Council. The Commission can take office only with a vote of confidence from the European Parliament (which first conducts public hearings with all nominees), which also has the right to dismiss it. The President of the Commission is elected by the European Parliament following the European parliamentary elections, and most European parties have developed the practice of announcing, ahead of the elections, who their candidate is for this post (who have become known as the *Spitzenkandidaten*, of which more below).

But there are nonetheless gaps and shortcomings. Some national parliaments pay little attention to draft European legislation. There are still some fields where the European Parliament has only a consultative role on legislation. It takes a two-thirds majority in the EP to dismiss the Commission mid-term. When powers to implement legislation are conferred upon the Commission, the procedures used are complex and opaque and lack democratic safeguards. And while parties put up their

candidates for President of the Commission ahead of the elections, it is easy for a minority within the European Council to prevent the nomination of any such candidate even if s/he has, or could, secure a parliamentary majority.

The whole system can also appear distant and complex. Distance is unavoidable: EU institutions are inevitably further away than local and national institutions. That is why we have the principle of subsidiarity: only act at European level where necessary or where there is a major advantage in doing so. A degree of complexity perhaps also unavoidable, in a diverse Union of nearly 30 member states. But it could be simplified in ways that would make it more readily understandable for citizens. And citizens need to know that there is accountability, that their views are heard, and that the choices they make in elections matter.

3.1 The veto (again)

We saw above how the biggest single factor preventing the EU from taking effective action is the veto given to each single member of the Council in areas that require unanimity. That is not just a question of capacity to act, it is also a question of democracy, when the will of an overwhelming majority is thwarted by a tiny minority. Any true reform of the EU must address this central issue, at the very least by using the '*passerelle* clauses' (Article 48(7) and various specific clauses allowing a decision by the European Council to transfer a matter from the field of unanimity to the field of qualified majority voting), or else by amending the treaties. The fallback solution of enhanced cooperation whereby a (large) group of states may decide to proceed among themselves is not satisfactory but is better than deadlock.

3.2 Full European and national parliamentary scrutiny of legislation

The anomalies in the treaties where the Council may adopt legislation without the approval of the European Parliament is a clear democratic deficit. Here too, the *passerelle*

clauses or treaty change should be used to rectify the situation.

Parliamentary powers are also unsatisfactory when it comes to implementing powers conferred on the Commission. Whereas delegated acts are subject to examination and possible rejection by Parliament or Council, implementing acts (*try to explain the difference to a non-specialist!*) are not. Instead, committees of national officials advise the Commission and can sometimes block it without any role at all for the Parliament other than to be informed, and to object if it goes beyond the remit of the Commission. All this is laid down in EU Regulation 182/2011 which can be changed through the ordinary legislative procedure. Why not provide for the democratic safeguard of allowing Parliament, by a majority of its members, to trigger at least a retrospective review of such decisions?

Another way to enhance parliamentary powers without treaty change, concerns how national parliaments make use of the three-month period they have to examine legislative proposals before the Council takes a position on them. Ostensibly, this is to conduct a 'subsidiarity check' – to verify that the proposal does not violate the principle of subsidiarity: if a third of national chambers raise an objection, the proposal must be re-examined by the Commission and withdrawn, modified, or justified. In practice, subsidiarity is hardly ever a problem (in over a decade, only three yellow cards have been triggered) and the period is used instead by some national parliaments to examine the substance of a proposal and to advise their minister as to the position he/she should take in the Council. This process was pioneered by the Danish and other Nordic parliaments but is not universal. Some national parliaments pay little attention to EU legislation (until they sometimes find reason to complain after its adoption). The Conference could invite them all to do so.

3.3 Citizens' initiatives

Among the political rights conferred directly on EU citizens by the EU treaties is the European Citizens' Initiative (ECI) whereby a million

citizens from a quarter of the member states can submit a proposal for a legislative act to the European Commission to consider. In practice, this has been a big disappointment. The organisational hurdles involved mean that only half a dozen initiatives have ever reached the threshold, and the fact that anything that gathers over a million signatures is an idea likely to already be in the public domain and already considered, means that it is not an effective way to put new ideas on the table. And if a citizen has a good idea that is genuinely new, why should s/he have to find a million other signatures to be able to put it to the Commission? Why not scrap it and replace it with a simple undertaking from the European Commission to consider *any* petition that appears (without needing to double check thousands of individual signatures) to have significant support? It would not be too onerous for the Commission to do that – certainly far less onerous than the complex hurdles (which have often triggered legal challenges) involved in the current procedure! No doubt, these laxer requirements mean that many proposals would be dismissed as not feasible or desirable – but the authors can always campaign in other ways (such as with MEPs) for support.

3.4 Elections and appointments

Democracy is not just about legislative procedures. It is also about how people are elected or appointed to positions of responsibility. It is likely that the Conference process will reveal some public dissatisfaction in that respect.

Of course, the European Parliament is elected directly by citizens (of which more below) and the Council and European Council are elected indirectly (in that their membership is a consequence of the results of national elections). But the composition of the European Commission was until recently not connected at all to the outcome of the European elections and is now only partly so, despite the first item of business on a newly elected Parliament's agenda being the vote on the president of the Commission.

Since 2009, the Treaty says that the European Parliament elects the president of the Commission, on a proposal of the European Council which has to take into account the results of the European elections in making its nomination. Since then, ahead of each election, European political parties have announced their candidates for president of the Commission (called *Spitzenkandidaten* by the media) with the presumption that the candidate of the largest party – or the one able to assemble a coalition that secures a majority in the European Parliament – should normally become president.

This is, after all, something that the public is familiar with in national elections in most member states. Ahead of national parliamentary elections, parties normally make clear who they would put forward to be head of government if they win the election or be best placed to lead a coalition. That is frequently (but not always) the party leader. The head of state, when choosing a potential prime minister after the election, has to look at who can secure a parliamentary majority.

That is frequently, but not always, one of these party candidates. Take, for example, Italy. Every party has a candidate for prime minister ahead of national parliamentary elections, which sometimes results in one of them being proposed to parliament by the head of state and securing a majority (eg Berlusconi in 2008), but can equally lead to a compromise name being found (eg in 2018, when Giuseppe Conte was chosen as prime minister, plucked from academia without even having been a candidate in the elections at all, because none of the party candidates could build a majority, and a compromise had to be found).

It could be argued that that is what happened at EU level. After the 2014 elections, the European Council (acting as a sort of collective head of state) proposed the candidate from the largest party, the European People's Party (EPP), to become the president of the Commission and Jean Claude Juncker (after some negotiations on his programme), secured the necessary parliamentary majority. But in

2019, none of the *Spitzenkandidaten* looked likely to secure a majority and Ursula von der Leyen was picked from nowhere to be the compromise candidate. In 2024, parties will again put forward candidates for president of the Commission. If they do not, then some in the public and media will accuse them of wanting to keep it secret until after the election, to be settled behind closed doors.

But will the European Council subsequently propose one of them? This is not something you can easily legislate for. National constitutions do not explicitly *require* the head of state to propose as prime minister the candidate of the largest party or the one capable of assembling a majority coalition – a flexibility that can be important. But there is, in most countries an *expectation* that the starting point is with such candidates, especially as they will have featured prominently in the election campaign.

At the very least, the Conference can underline that this should be the normal expectation at European level too. It could be made clear that citizens expect the European Council to first put forward the *Spitzenkandidat* who seems most likely to obtain a parliamentary majority.

Two procedural changes could further facilitate this, but they both require treaty change:

- The need for a **qualified majority in the European Council** to formally propose the candidate to European Parliament: could this not be a simple majority? At present, whatever the election results, a blocking minority within the European Council can prevent the process from working.
- The need for and **absolute majority of all members of the European Parliament** to then elect the candidate (meaning that any absences or abstentions count against) – could this not be a simple majority of those voting?

3.5 Transnational lists in a pan-EU constituency

The idea of transnational lists – electing a number (perhaps 30 to 50) MEPs in a single EU-wide constituency in which the European-level political parties would put up candidates in a proportional 'list' election – has been suggested. Voters would have two votes: one in their national or regional constituency (as now) and a second one for the European level contest. It is argued that this would highlight the European dimension of European elections and reinforce the European public sphere. It might at the same time give a higher profile to the party candidates for President of the Commission (the *Spitzenkandidat*), whom parties could place at the top of their European level list of candidates.

However, using the Conference as a vehicle for pushing this idea may be difficult.

It is an idea pushed mostly by (some) politicians and academics, which sits uneasily in a conference that is supposed to be driven by ordinary citizens. They are unlikely to do so, as it is not a widely known feature of electoral systems. Most federal systems do not have federal level constituencies or party lists: in Germany, India, Switzerland, Canada, and so on, all members are elected to parliament in their constituency or region, not directly at federal level. Also, the idea has little consensus in political circles. Even the European Parliament position is not exactly one of overwhelming support for the idea. Nor is it popular among member states: the smaller ones worry that parties will mostly choose candidates from the more populous member states for obvious electoral reasons (there are ways around that – and Parliament's rapporteur on the electoral law, Domènec Ruiz Devesa, has proposed a clever way to do that – but they risk being seen as contrived and complicated). Those who want to make this a key issue for the Conference may find it to be an uphill struggle.

3.6 Other ways of improving European elections

There are other ways in which European elections can be improved and made more accessible for people.

Some of these are of a more general nature and apply to national elections too: all studies show there is a social inequality in electoral participation, with lower turnout of poorer voters. Across the Atlantic, we have witnessed blatant attempts at 'voter suppression' – making it more difficult for certain categories of voters to exercise their rights – and there are fears that similar practices could be used in Europe. A citizens-led conference should surely call for stronger protection of democracy at all levels.

Some specific things can also be done regarding European electoral law. The European character of the election would be enhanced if the names and logos of the European political parties appeared on the ballot, as was agreed in principle but not yet ratified in member states.

3.7 Simplifying

Perceptions in some parts of public opinion that the EU is a distant bloated bureaucracy are exaggerated, if not entirely an example of fake news. But why not cut bureaucracy where it is not absolutely necessary? Why does the Court of Auditors have 27 full members at political level, each with their own private office (cabinet)? What it might need is more actual professional auditors on its staff, but not top-heavy political management. Similarly, why 27 Commissioners, when in reality there are about a dozen genuine portfolios?

In both those cases, national balance can be achieved in other ways than every country having one member each: balance can be achieved overall across institutions (not within each one) and/or over time (rotation).

More importantly, while Brussels insiders (mostly) understand the nuances of the different roles of the president of the Commission and the president of the European Council, the wider public does not. Why two presidents? One chairs the institution that has the right of initiative to propose new policies, and the other chairs the institution that sets the defines "the general political directions and priorities" of the Union. They both represent

the Union externally, confusing interlocuters (as recently illustrated in the 'sofagate' affair) and annoying partners (as at G7 summits, where the EU alone has two representatives at the table in addition to the three from its member states, making five EU representatives and four others).

The Treaty left open the possibility of appointing the same person to both positions. And why not? The role of the president of the European Council at its meetings is to persuade, cajole and find compromises that take the EU forward – exactly what the president of the Commission is doing at such meetings. The exact division of tasks between them when representing the EU externally is hard to delimit. Above all, having a single face would be easier for public understanding.

4. How to get these points across

The above reflections contain some ideas that progressive Europeans might want to propose in the context of the Conference. There will no doubt be others. And, of course, it is a citizens-led debate and we must look at all the suggestions that emerge.

But if the above ideas are felt to be worthwhile contributions, then the first step is to get them noticed, discussed, and supported in local events and above all on the digital platform, where there is unavoidably a bit of a numbers game: the more people supporting any particular idea, the more likely it is to make progress in the Conference process.

5. Conclusion

The Conference on the Future of Europe has the potential to shape the priorities of the European Union over the next decade. But to do so, it must make the link between desirable policy objectives and ensuring that the Union has the capacity to deliver on them. And any such capacity requires in turn that decisions taken at European level are democratic, through accountable institutions and understandable procedures in which citizens can have confidence. To be a success, the Conference must make those links.

ABOUT THE AUTHOR

Richard Corbett was a Member of the European Parliament (1996-2009 and 2014-20). During that period, he was for ten years the Coordinator for the S&D Group on constitutional questions. He was the European Parliament's co-rapporteur on the Constitutional Treaty and on the Lisbon Treaty. He was the UK Labour Party's leader in the European Parliament. He was also senior advisor on constitutional questions to the President of the European Council, Herman Van Rompuy (2010-14). Prior to becoming an MEP, he worked with Altiero Spinelli on Parliament's proposal for a Treaty on European Union. He later drafted proposals incorporated in the Maastricht and Amsterdam treaties, not least the first draft of what is now the EU's Ordinary Legislative Procedure (co-decision procedure). He has several times been the rapporteur on rewriting the Parliament's Rules of Procedure. He has written extensively on European affairs, including a number of academic textbooks and was a visiting professor at the College of Europe in Bruges.

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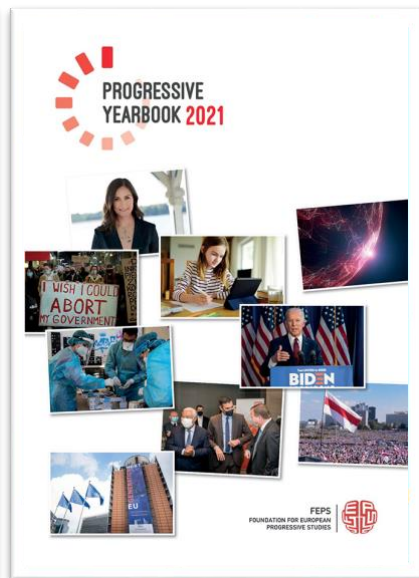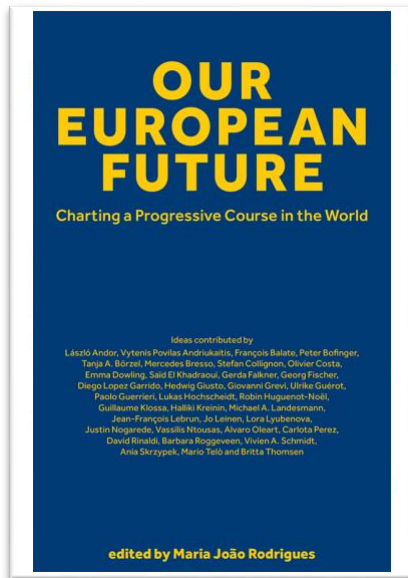
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