

P382 'Amendments to the BSC to reflect the United Kingdom's withdrawal from the European Union without a deal'

The Balancing and Settlement Code (BSC) contains multiple references to European Union (EU) legislation and bodies. Additionally, it also contains text introduced as a result of implementing various EU legislation. Retaining these references and text following the United Kingdom's (UK's) withdrawal from the EU without a deal ('no-deal Brexit') will mean that the BSC is no longer technically accurate.



ELEXON recommends P382 is progressed directly to the Report Phase with an initial recommendation to approve

This Modification is expected to impact:

- BSCCo

Contents

1	Why Change?	3
2	Solution	5
3	Proposed Progression	9
4	Likely Costs and Impacts	11
5	Recommendations	12
	Appendix 1: Glossary & References	13

About This Document

This document is an Initial Written Assessment (IWA), which ELEXON will present to the Panel on 14 March 2019. The Panel will consider the recommendations and agree how to progress P382.

There are three parts to this document:

- This is the main document. It provides details of the Modification Proposal, an assessment of the potential impacts and a recommendation of how the Modification should progress, including the Workgroup's proposed membership and Terms of Reference.
- Attachment A contains the P382 Proposal Form.
- Attachment B contains the proposed draft legal text to deliver the P382 solution.



Contact

Chris Wood

020 7380 4142

chris.wood@elexon.co.uk



288/04

P382
Initial Written Assessment

7 March 2019

Version 1.0

Page 2 of 15

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1 Why Change?

Background

N.B. At the time of submitting this IWA on 7 March 2019, all statements of fact in this document are considered true.

The UK is due to withdraw from the EU at 23:00:00 BST on 29 March 2019 (exit day) unless otherwise agreed by the UK and EU. The UK and EU have not agreed their relationship post exit day, meaning that the UK will leave the EU without continuance of previously applicable EU legislation – a ‘no-deal Brexit’.

In this situation, from 23:00:01 BST on 29 March 2019 EU legislation will no longer apply in the UK and EU bodies will no longer have authority in the UK. However, the [European Union Withdrawal Act \(2018\)](#) (‘the Withdrawal Act’) means that most EU legislation will continue to be operative after exit day until such time that said EU legislation is amended by UK law. The Withdrawal Act incorporates EU legislation into UK law (essentially ‘cut and pasted’) other than where the government has decreed that specific legislation will not be retained, for example, the Capacity Allocation Congestion Management (CACM) regulations will not be retained. The Withdrawal Act also allows the government to exclude specific articles within EU legislation i.e. designate specific Articles within EU legislation that will not apply in the event of ‘no-deal’. The government is exercising its powers not to retain specific legislation and to modify retained EU legislation through Secondary Legislation: Statutory Instruments¹ (SIs).

Retention of EU legislation

The Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS), in exercising powers conferred by the Withdrawal Act, has laid five SIs before Parliament that apply to the Electricity Industry (and impact the Balancing and Settlement Code (BSC)):

- [Electricity and Gas \(Powers to Make Subordinate Legislation\) \(Amendment\) \(EU Exit\) Regulations 2018](#)
- [Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019²](#)
- [Electricity and Gas \(Market Integrity and Transparency\) \(Amendment\) \(EU Exit\) Regulations 2019](#)
- [Electricity Network Codes and Guidelines \(Markets and Trading\) \(Amendment\) \(EU Exit\) Regulations 2019](#)
- [Electricity Network Codes and Guidelines \(System Operation and Connection\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)

Of these five, the Powers to Make Subordinate Legislation SI (bullet one) has already been made (i.e. passed into UK law). The other four are still laying before Parliament awaiting debate, which has not yet happened. The Electricity and Gas (amendments) SI (bullet two) will amend the Electricity Act whereas the others will amend or revoke (not retain) EU legislation.

288/04

P382
Initial Written Assessment

7 March 2019

Version 1.0

Page 3 of 15

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¹ <https://www.parliament.uk/about/how/laws/secondary-legislation/>

² This SI will amend the Electricity Act, others will amend EU regulations

The Treasury has also laid several SIs. The one that impacts the BSC is the [‘Value Added Tax \(Miscellaneous Amendments and Revocations\) \(EU Exit\) Regulations 2019’](#). This SI has been made.

Unless referred to in any of the above SIs, any retained EU legislation affecting the BSC will be retained and essentially ‘cut and paste’ into UK law.

Changes to legislation impacting the BSC – i.e. where legislation is not retained		
Statutory Instrument	EU Regulation	Name used to cite EU Regulation within the SI
Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018	Regulation (EC) No 714/2009	the Electricity Regulation
	Regulation (EU) No 1227/2011	REMIT
The Electricity and Gas (Market Integrity and Transparency)(Amendment) (EU Exit) Regulations 2019	Regulation (EU) No 1227/2011	REMIT
	Regulation (EU) No 543/2013	the Transparency Regulation

The ‘Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019’ amends an existing UK Order; [The Value Added Tax \(Place of Supply of Goods\) Order 2004](#) (which has been amended), by replacing ‘situated within the territory of a member State’ with ‘in the United Kingdom’ in relation to the place of Supply of Electricity for Value Added Tax purposes.

What is the issue?

The Withdrawal Act will allow the BSC to remain operative immediately following exit day. However, there will be technical inaccuracies, which may lead to confusion for anyone not familiar with the relevant Brexit legislation as described above and will need updating as soon as possible.

The BSC will not reflect where SIs have revoked EU legislation either completely or partially. References to EU Regulations will not reflect that they may have been amended by SIs and references to EU bodies will not be correct. However, it may be appropriate to retain EU legislation that is revoked for the sake of efficiency where it is ‘dormant’ now but may become ‘active later’ dependant on the relationship agreed between the EU and UK following exit day. This is discussed further below.

It should be noted that this is only an issue should the UK leave the EU without a deal. Should a deal be reached between the EU and the UK before exit day whereby all EU legislation pertaining to the BSC remains extant, then this Modification will no longer be needed. The Proposer will withdraw the Modification if the IWA has not yet been presented to the Panel (or if the Panel has decided to send the Modification to Assessment Procedure), or the Proposer will recommend that the Panel reject the Modification if moved to the Report Phase.

288/04

P382
Initial Written Assessment

7 March 2019

Version 1.0

Page 4 of 15

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Proposed solution

The BSC will be amended to reflect where EU regulations will not be retained in EU law and where those changes will make the BSC ambiguous or confusing. Similarly, where appropriate, references to EU legislation will be amended to include the SI that has amended them (i.e. not all articles have been retained into UK law).

Analysis of the BSC and Code Subsidiary Documents

We have analysed the BSC and Code Subsidiary Documents (CSDs) to identify where amendments and/or deletions are needed. In doing this we have taken a multi-directional approach to ensure that all avenues have been covered:

- Trawl of BSC and CSDs for key terms e.g. 'Commission' 'Europe' and 'Regulation';
- Review of draft SIs to identify where the proposed changes to EU legislation may affect the BSC; and
- Review of all Modifications and Change Proposals (CPs) raised to implement EU legislation and whether the legal text and redlining implemented as part of those Mods and CPs will remain extant after exit day.

The summation of this analysis is that some references to EU legislation need to be removed and/or amended. The legal text implemented for some Modifications needs adjusting. However, no redlining pertaining to CPs, or CSDs amended by Modifications, needs to be adjusted.

Retaining parts of the BSC contrary to revocation of EU legislation

Some revocations of EU legislation require the BSC to be amended but we will not be doing so. The areas concerned are:

- Project TERRE and wider access;
- Capacity Allocation and Congestion Management; and
- Transparency and reporting of data by BSC Systems.

In all three cases, retaining the relevant parts of the BSC and maintaining the BSC System will not have a detrimental effect on the operation of the BSC.

Project TERRE

[P344 'Project TERRE'](#) is being implemented in two stages. The first stage, implemented on 28 February 2019, delivered the legal text and switched on the registration provisions. The second stage will be implemented on 7 November 2019 as part of the November 2019 BSC Release and will deliver the core TERRE functionality.

P344 is being implemented to deliver TERRE but will also offer wider access to the balancing market for GB Market Participants. GB will not be able to participate in TERRE after exit day. However, the BSC, in support of National Grid ESO (NGESO), will still be able to offer wider access to GB participants. Untangling the TERRE and wider access

components of P344 will be complicated and will need to be done in collaboration with NGESO.

Post exit day the P344-related text in the BSC will in effect, become dormant while NGESO and we establish how to facilitate wider-access. Another alternative is that the UK will negotiate participation in TERRE as a non-EU (third country) participant, similar to Switzerland. Given the investment to date and complexities of unravelling that work it would be more efficient to deal with P344 separate to this Modification and a separate Modification will be raised once a way ahead has been determined.

Capacity Allocation and Congestion Management

[Commission Regulation \(EU\) No 2015/1222 'Establishing a guideline on capacity allocation and congestion management \(CACM\)'](#) aims to promote effective cross-border competition in generation, trading and supply of electricity by establishing new cross-border EU electricity markets in the day-ahead and intraday timeframes.

To date, only one BSC Modification has been implemented to facilitate CACM – [P356 'Aligning the BSC with Grid Code Modification GC0099 'Establishing a common approach to interconnector scheduling consistent with the single intraday market coupling processes set out within Regulation \(EU\) 2015/1222 \(CACM\)'](#). Regulation 2015/1222 will not be retained in UK law³.

P356 was implemented to allow for Cross-Border Intraday Trading (XBID) from a Settlement perspective. XBID is an EU-wide project but GB Interconnectors are yet to participate due to uncertainties around Brexit. This means that the relevant parts of the BSC have remained dormant since their implementation in November 2018. Given uncertainty around the UK's relationship with the EU's Internal Energy Market (IEM) post exit day we do not know if this part of the BSC will be required or not. Given this, and the fact that it is not doing any harm now, we do not see any need to amend the BSC in respect of the text implemented by P356.

Transparency reporting service

The Balancing Mechanism Reporting Service (BMRS) reports insider trading information on behalf of NGESO. One of BMRS's functions is to report certain transparency data to ENTSO-E⁴

The obligation to report data to ENTSO-E will no longer exist after exit day. However, as there is still uncertainty about our future relationship with the IEM and no requirement for BMRS to stop transmitting data, we have taken the view that it is more efficient to continue as we are rather than switching it off now to switch back on later. We will review this after exit day once our future relationship with the IEM becomes known.

Cross-Code collaboration

Ofgem's expectation is that all Code Administrators (CAs) will have Modifications raised similar to this Proposal to modify their respective Codes. Every effort (at both CACoP

³ The SI Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019 revokes Commission Regulation 2015/1222

⁴ European Network Transmission System Operators – Electricity. The organisation that co-ordinates inter-TSO cooperation across the EU

meetings and Ofgem arranged meetings) has been made by CAs to ensure consistency between the Codes and as such, we do not envisage any cross-Code impacts.

However, ELEXON will continue to liaise with other CAs to ensure that this remains the case. If conflicts do arise, we will make the Panel aware and recommend an appropriate cause of action to resolve the matter.

Applicable BSC Objectives

The Proposer believes that this Modification will better facilitate Applicable BSC Objectives (a), (d) and (e).

Applicable BSC Objective (a)

The Transmission Licence requires that the BSC facilitate Settlement. If there is confusion in the BSC caused by defunct references then it will not be allowing NGENSO to discharge Section C2 of their Transmission Licence. P382 will therefore facilitate the discharge of the Transmission Licence.

Applicable BSC Objective (d)

There is potential for confusion if the BSC contains defunct references to EU Legislation and bodies and such. This in turn could lead to reduced efficiency in implementing Balancing and Settlement arrangements. P382 will therefore better facilitate efficiency in the implementation of the BSC.

Applicable BSC Objective (e)

This Objective will be retained in the event of a no-deal Brexit. The Electricity Regulation and other regulations will remain as part of UK law but be amended from time to time by UK legislation for GB (we expect that the draft legal text will refer to 'The Electricity Regulation as amended by...'). As such, the BSC will be required to comply with the Electricity Regulation. In the event of a no-deal Brexit, the Electricity Regulation will be amended and P382 will allow the BSC to comply with the amended Electricity Regulation and will therefore better facilitate Objective (e).

The Proposer believes that this Modification will have no impact on the other Applicable BSC Objectives.

Implementation approach

Subject to P382 being treated as a Self-Governance Modification Proposal, P382 is proposed for implementation on 7 May 2019, the Working Day after the Self-Governance appeal window is due to close.

The Proposer requested that this Modification should be implemented on the later of:

- Sixteen Working Days following the final determination on whether to approve this Modification (in accordance with the Self-Governance Modification window);



What are the Applicable BSC Objectives?

(a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence

(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System

(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

(d) Promoting efficiency in the implementation of the balancing and settlement arrangements

(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]

(f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation

(g) Compliance with the Transmission Losses Principle

288/04

P382

Initial Written Assessment

7 March 2019

Version 1.0

Page 7 of 15

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- The day following the UK's formal withdrawal from the EU without a deal i.e. if exit day is delayed from 29 March 2019 (exit day at the time of the Proposal's submission) to a date after the Self-Governance Modification window.

The BSC does not allow Modifications to be approved subject to a specified condition, for example, if a no-deal departure from the EU is delayed. Instead, BSC Modifications can either be approved for implementation on an Implementation Date or rejected.

Parliament is due to vote on various outcomes on 12 and, potentially, 13 March 2019. If, by the Panel meeting on 14 March 2019:

- Parliament vote to accept a deal, and this is agreed by the EU; or
- Parliament vote to revoke Article 50 (i.e. the UK will remain an EU member)

P382 will have no legal basis for progressing and the Proposer has indicated they will withdraw P382.

If however, exit day is delayed prior to the Panel meeting on 14 March such that it is after 7 May 2019, then P382 will need to be either:

- Withdrawn and raised again at a later time with a new recommended Implementation Date once the new exit day is set; or
- Placed into Assessment Procedure. In this scenario, we would not conduct any Workgroup meetings but use this as a procedural mechanism to, essentially, put P382 on hold.

If the SIs relating to P382 have not been made, or have been made such that the change affects the impacts on the BSC and requires changes to the draft legal text, prior to the Panel making their decision to implement on 11 April 2019, we would recommend that the Panel reject P382 at that meeting. If this occurs, we will discuss raising a new Modification with the Proposer, with a proposed Implementation Date reflective of the SIs being made.

Legal text

Proposed changes to the BSC to deliver P382 are in Attachment A.

3 Proposed Progression

Next steps

This Modification should:

- Be sent directly into the Report Phase.

As it is evident what changes need to be made there is nothing that a Workgroup will be able to offer, so there is no reason not to proceed directly to Report Phase.

Each Industry Code needs to be updated following the UK's withdrawal from the EU. Ofgem has stated⁵ that it expects changes akin to P382 'to be raised through the industry-led code Modification process and, where appropriate, to follow the Self-Governance route'. This is in line with recent publications by code administrators⁶.

The Withdrawal Act will allow any European legislation enacted into UK law to continue to be operative following the UK's withdrawal from the EU. This means that, in the event of a no-deal Brexit, the BSC will continue to be operative even if the BSC retains references to EU legislation and bodies that are no longer applicable following withdrawal, as the UK legislation prevails. Because of this, there is no immediate need to remove the references from the BSC following withdrawal from the EU. This means that P382 should proceed as a standard (non-Urgent) Modification.

Self-Governance

P382 will not require the Gas and Electricity Market Authority (GEMA) approval because, thanks to the Withdrawal Bill, Settlement operations will not be affected, and therefore there will be no impact on Market Participants or consumers. This in turn means that there will be no impact on competition or how the Total System is operated. Similarly, the Withdrawal Bill will mean that there will be no effect on:

- Sustainable development;
- Safety or security of Supply; or
- The management of market or network emergencies.

P382 will have no effect on BSC governance and will not discriminate between different classes of Parties in any way. Consequently, P382 meets the Self-Governance Criteria and should be progressed as a Self-Governance Modification. Further, this is the approach being taken by other similarly impacted Codes.

Timetable

In the event that a no-deal Brexit is ruled out, this Proposal will no longer be required. The Proposer will withdraw the Modification if the Initial Written Assessment has not yet been presented to the Panel (or in Assessment Procedure), or the Proposer recommends that the Panel reject the Modification if moved to the Report Phase.



What is the Self-Governance Criteria?

A Modification that, if implemented:

- (a) is unlikely to have a material effect on:
- (i) existing or future electricity consumers; and
 - (ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
 - (iii) the operation of the national electricity transmission system; and
 - (iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - (v) the Code's governance procedures or modification procedures; and

(b) is unlikely to discriminate between different classes of Parties.

288/04

P382
Initial Written Assessment

7 March 2019

Version 1.0

Page 9 of 15

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⁵ <https://www.ofgem.gov.uk/publications-and-updates/update-preparing-eu-exit-licence-and-industry-code-modifications>

⁶ <https://www.elexon.co.uk/news/code-administrators-preparing-brexit/>

Proposed Progression Timetable for P382	
Event	Date
Present Initial Written Assessment to Panel	14 March 2019
Report Phase Consultation (10 Working Days)	18 March 2019 – 29 March 2019
Present Draft Modification Report to Panel	11 April 2019
Issue Final Modification Report	15 April 2019
Self-Governance Appeal Window closes	3 May 2019
Implement changes (assuming exit day remains 29 March 2019 - see comments above)	7 May 2019

288/04

P382
Initial Written Assessment

7 March 2019

Version 1.0

Page 10 of 15

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4 Likely Costs and Impacts

Estimated central implementation costs of P382

ELEXON's costs to implement P382 are approximately £240. This cost is one day's effort to implement document changes to the BSC.

Indicative industry costs of P363/4

We do not expect P382 to impact industry in any way and therefore there will be no associated implementation costs.

Impact on BSC Parties and Party Agents

Party/Party Agent	Potential Impact
Parties / Party Agents	No Impact

Impact on Transmission Company

No impact

Impact on BSCCo

Area of ELEXON	Potential Impact
Change	Ongoing analysis of emerging relationship between UK and EU
Releases	Implementation of legal text

Impact on BSC Systems and processes

BSC System/Process	Potential Impact
All BSC Systems	No impact

Impact on a Significant Code Review (SCR) or other significant industry change projects

No impact on SCRs expected – we requested Ofgem treat P382 as an SCR Exempt Modification on 7 March 2019

5 Recommendations

We invite the Panel to:

- **AGREE** that P382 progresses directly to the Report Phase;
- **AGREE** that P382:
 - **DOES** better facilitate Applicable BSC Objective (a);
 - **DOES** better facilitate Applicable BSC Objective (d); and
 - **DOES** better facilitate Applicable BSC Objective (e);
- **AGREE** an initial recommendation that P382 should be **approved**;
- **AGREE** an initial Implementation Date of 7 May 2019, the day after the closure of the Self-Governance appeals window;
- **AGREE** the draft legal text;
- **AGREE** an initial view that P382 should be treated as a Self-Governance Modification; and
- **NOTE** that ELEXON will issue the P382 draft Modification Report (including the draft BSC legal text) for a 10 Working Day consultation and will present the results to the Panel at its meeting on 11 April 2019.

Appendix 1: Glossary & References

Acronyms

Acronyms used in this document are listed in the table below.

Acronym	
Acronym	Definition
BEIS	Business, Energy and Industrial Strategy
BMRS	Balancing Mechanism Reporting Service
BSC	Balancing and Settlement Code
BSCCo	BSC Company
BST	British Summer Time
CA	Code Administrator
CACM	Capacity Allocation Congestion Management
CACoP	Code Administrator's Code of Practice
CP	Change Proposal
CSD	Code Subsidiary Document
ENTSO-E	European Network of Transmission System Operators – Electricity
ESO	Electricity System Operator
GEMA	Gas and Electricity Markets Authority
IEM	Internal Energy Market
IWA	Initial Written Assessment
NGESO	National Grid ESO
REMIT	Regulation on wholesale Energy Market Integrity and Transparency
SCR	Significant Code Review
SI	Statutory Instrument
SoS	Secretary of State
TERRE	Trans-European Replacement Reserve Exchange
XBID	Cross Border Intraday
GB	Great Britain
EU	European Union
UK	United Kingdom
EC	European Commission

External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

288/04

P382

Initial Written Assessment

7 March 2019

Version 1.0

Page 13 of 15

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External Links		
Page(s)	Description	URL
4	European Union Withdrawal Act (2018)	http://www.legislation.gov.uk/ukpga/2018/16/contents
4	Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018.	http://www.legislation.gov.uk/uksi/2018/1286/contents/made
4	Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019	https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-and-gas-etc-amendment-etc-eu-exit-regulations-2019
4	Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019	https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-and-gas-market-integrity-and-transparency-amendment-eu-exit-regulations-2019
4	Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019	https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-network-codes-and-guidelines-markets-and-trading-amendment-eu-exit-regulations-2019
4	Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019	https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-network-codes-and-guidelines-system-operation-and-connection-amendment-etc-eu-exit-regulations-2019
5	'Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019'	https://www.gov.uk/government/publications/statutory-instruments-relating-to-eu-exit/vat-statutory-instruments
5	The Value Added Tax (Place of Supply of Goods) Order 2004	http://www.legislation.gov.uk/uksi/2004/3148/contents/made
6	P344 'Project TERRE'	https://www.elexon.co.uk/mod-proposal/p344/
7	Commission Regulation (EU) No 2015/1222 'Establishing a guideline on capacity allocation and congestion management (CACM)'	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1222

288/04

P382
Initial Written Assessment

7 March 2019

Version 1.0

Page 14 of 15

© ELEXON Limited 2019

External Links		
Page(s)	Description	URL
7	P356 'Aligning the BSC with Grid Code Modification GC0099 'Establishing a common approach to interconnector scheduling consistent with the single intraday market coupling processes set out within Regulation (EU) 2015/1222 (CACM)''	https://www.elexon.co.uk/mod-proposal/p356/

288/04

P382
Initial Written Assessment

7 March 2019

Version 1.0

Page 15 of 15

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