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Subject : Amended proposal for a Directive of the European Parliament and of the Council
amending Directive 1999/32/EC as regards the **sulphur content of marine fuels**
– Political agreement

Following the session of the Council (Environment) on 28 June 2004 and the meeting of the Working Party on the Environment on 8 July 2004, please find attached the consolidated text of the agreement which, once translated, will be forwarded to the legal linguistic experts for finalisation.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 1999/32/EC as regards the sulphur content of marine fuels**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the opinion of the Economic and Social Committee ²,

Having regard to the opinion of the Committee of the Regions ³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁴,

WHEREAS:

- (1) The Community's environmental policy, as set out in the action programmes on the environment and, in particular, in the Sixth Environmental Action Programme ⁵, on the basis of principles enshrined in Article 174 of the Treaty, aims to achieve levels of air quality that do not give rise to unacceptable impacts on, and risks to, human health and the environment.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ Adopted by Decision 1600/2002/EC of the European Parliament and of the Council (OJ L 242, 10.9.2002, p. 1).

- (2) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC⁶ lays down the maximum permitted sulphur content of heavy fuel oil, gas oil and marine gas oil used in the Community.
- (3) Article 7(3) of Directive 1999/32/EC requires the Commission to consider which measures could be taken to reduce the contribution to acidification of the combustion of marine fuels other than marine gas oils and, if appropriate, make a proposal.
- (4) Emissions from shipping due to the combustion of marine fuels with high sulphur content contribute to air pollution in the form of sulphur dioxide and particulate matter. This damages the environment through acidification, as well as harming human health, property and cultural heritage, particularly around coastal areas and in ports.
- (5) The measures in this directive reducing emissions from shipping in international waters complement Member States' national measures to achieve emissions ceilings for atmospheric pollutants set out in Directive 2001/81/EC.
- (6) Reducing fuel sulphur content has certain advantages for ships, in terms of operating efficiency and maintenance costs, and facilitates the effective use of certain emissions abatement technologies such as selective catalytic reduction.
- (7) Article 299 of the Treaty requires that consideration be given to the special characteristics of the outermost regions of the Community, namely the French overseas departments, the Azores, Madeira and the Canary Islands.
- (8) In 1997, a diplomatic conference adopted a Protocol to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (hereinafter "MARPOL 73/78"). This Protocol adds a new Annex VI to MARPOL 73/78, containing regulations for the prevention of air pollution from ships. The 1997 Protocol, and consequently Annex VI to MARPOL 73/78, [will] enter[ed] into force on 19 May 2005.

⁶ OJ L 121, 11.5.1999, p.13.

- (9) Annex VI to MARPOL 73/78 makes provision for certain areas to be designated as Sulphur Oxide Emission Control Areas (hereinafter “SOx Emission Control Areas”). It already designates the Baltic Sea as such an area. Discussions within the IMO have resulted in agreement on the principle of the designation of the North Sea, including the English Channel, as a SOx Emission Control Area following entry into force of Annex VI.
- (10) Enforcement of the obligations with regard to the sulphur content of marine fuels will be necessary to achieve the aims of this Directive. Effective sampling and dissuasive penalties throughout the Community are necessary to ensure credible implementation. Member States should take enforcement action with respect to vessels flying their flag and vessels visiting their ports. It is also appropriate for Member States to co-operate closely to take additional enforcement action with respect to other vessels in accordance with international maritime law.
- (11) To allow sufficient time for the maritime industry to enable technical adaptation to a maximum limit of 0.1% sulphur by weight for marine fuels used by inland waterway vessels and vessels at berth in Community ports, the date of application of this requirement should be 1 January 2010. Since this deadline might present technical problems to Greece, a temporary derogation is appropriate for some specific ferries operating within the territory of Greece.
- (12) It is essential to reinforce Member States' positions in IMO negotiations, in particular to promote, in the revision phase of Annex VI to MARPOL 73/78, the consideration of more ambitious measures as regards tighter sulphur limits for heavy fuel oils burned by ships and the use of equivalent alternative abatement measures.
- (13) In its resolution A.926(22), the IMO Assembly invited Governments, particularly those in regions where SOx Emission Control Areas have been designated, to ensure the availability of low sulphur bunker fuel oil in areas within their jurisdiction.

- (14) The IMO has adopted guidelines for the sampling of fuel oil for determination of compliance with Annex VI to MARPOL 73/78, and is due to develop guidelines on exhaust gas cleaning systems and other technological methods to limit SO_x emissions in SO_x Emission Control Areas.
- (15) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants⁷ recasts Directive 88/609/EEC. Directive 1999/32/EC should be revised accordingly, as provided for in its Article 3(4).
- (16) It is appropriate for the existing Committee on Safe Seas and the Prevention of Pollution from Ships to assist the Commission in the context of the approval of emission abatement technologies.
- (17) Abatement technologies, provided they have no adverse effect on ecosystems and are developed subject to appropriate approval and control mechanisms, can provide at least equivalent or even greater emissions reductions than using low sulphur fuel. It is essential that the correct conditions exist to promote the emergence of new abatement technologies.
- (18) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁸.
- (19) The European Maritime Safety Agency shall provide assistance to the Commission and Member States, as appropriate, in monitoring the implementation of this Directive.
- (20) Directive 1999/32/EC should therefore be amended accordingly.

⁷ OJ L 309, 27/11/2001, p. 1 – 21.

⁸ OJ L 184, 17.7.1999, p. 23.

Article 1

Directive 1999/32/EC shall be amended as follows:

(1) Article 1(2) shall be replaced by the following:

"Reductions in emissions of sulphur dioxide resulting from the combustion of certain petroleum-derived liquid fuels shall be achieved by imposing limits on the sulphur content of such fuels as a condition for their use within Member States' territory, territorial seas and exclusive economic zones or pollution control zones.

The limitations on the sulphur content of certain petroleum-derived liquid fuels as laid down in this Directive shall not, however, apply to:

- (a) fuels intended for the purposes of research and testing;
- (b) fuels intended for processing prior to final combustion;
- (c) fuels to be processed in the refining industry;
- (d) fuels used and placed on the market in the outermost regions of the Community provided that the relevant Member States ensure that, in those regions:
 - air quality standards are respected;
 - heavy fuel oils are not used if their sulphur content exceeds 3% by mass;
- (e) fuels used by warships and other vessels on military service. However, each Member State shall endeavour to ensure, by the adoption of appropriate measures not impairing the operations or operational capability of such ships, that these ships act in a manner consistent, so far as is reasonable and practical, with this Directive;

- (f) any use of fuels in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea;
- (g) any use of fuels in a ship necessitated by damage sustained to it or its equipment, provided that all reasonable measures have been taken after the occurrence of the damage to prevent or minimise excess emissions and that measures are taken as soon as possible to repair the damage. This shall not apply if the owner or master acted either with intent to cause damage, or recklessly;
- (h) fuels used on board vessels employing approved abatement technologies in accordance with Article 4c."

(2) Article 2 shall be amended as follows:

(a) In paragraph 1, the first indent shall be replaced by the following:

"*heavy fuel oil* means:

- any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 51 to 2710 19 69^{*}, or".

(b) In paragraph 2, the first subparagraph shall be replaced by the following:

"*gas oil* means:

- any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 45, 2710 19 49 or 2710 19 25 or 2710 19 29^{*}; or
- any petroleum-derived liquid fuel, excluding marine fuel, of which less than 65% by volume (including losses) distils at 250 °C and of which at least 85% by volume (including losses) distils at 350 °C by the ASTM D86 method."

(c) Paragraph 3 shall be deleted and the following paragraphs 3a to 3n inserted:

"3a. *marine fuel* means any petroleum-derived liquid fuel intended for or in use on board a vessel, including those defined in ISO 8217;

3b. *marine diesel oil* means any fuel intended for marine use which has a viscosity or density falling within the ranges of viscosity or density defined for DMB and DMC grades in Table I of ISO 8217;

3c. *marine gas oil* means any fuel intended for marine use which has a viscosity or density falling within the ranges of viscosity or density defined for DMX and DMA grades in Table I of ISO 8217;

* These CN codes are specified in the Common Customs Tariff as amended by Commission Regulation (EC) No 2031/2001 (OJ L 279, 23.10.2001, p. 1).

- 3d. *MARPOL* means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;
- 3e. *MARPOL Annex VI* means the annex, entitled Regulations for the Prevention of Air Pollution from Ships, that the Protocol of 1997 adds to MARPOL;
- 3f. *SOx Emission Control Areas* means sea areas defined as such by the International Maritime Organisation under MARPOL Annex VI;
- 3g. *passenger ships* means ships that carry more than 12 passengers, where a passenger is every person other than:
- (i) the master and the members of the crew or other person employed or engaged in any capacity on board a ship on the business of that ship, and
 - (ii) a child under one year of age;
- 3h. *regular services* means a series of passenger ship crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:
- (i) according to a published timetable, or
 - (ii) with crossings so regular or frequent that they constitute a recognisable schedule;
- 3i. *warship* means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline;

- 3j. *ships at berth* means ships which are securely moored or anchored in a Community port while they are loading, unloading or hotelling, including the time spent when not engaged in cargo operations;
- 3k. *inland waterway vessel* means a vessel particularly intended for use on an inland waterway as defined in Directive 82/714/EEC, including all vessels which carry:
- a Community inland navigation certificate, as defined in Directive 82/714/EEC,
 - a certificate issued pursuant to Article 22 of the Revised Convention for the Navigation of the Rhine;
- 3l. *placing on the market* means supplying or making available to third persons, against payment or free of charge, anywhere within Member States' jurisdictions, marine fuels for on-board combustion. It excludes supplying or making available marine fuels for export in ships' cargo tanks;
- 3m. *outermost regions* means the French overseas departments, the Azores, Madeira and Canary Islands, as set out in Article 299 of the Treaty;
- 3n. *abatement technology* means an exhaust gas cleaning system, or any other technological method that is verifiable and enforceable;"

(d) Paragraph 6 shall be deleted.

(3) Article 3 shall be replaced by the following:

"Article 3

Maximum sulphur content of heavy fuel oil

1. Member States shall take all necessary steps to ensure that, as from 1 January 2003, heavy fuel oils are not used within their territory if their sulphur content exceeds 1% by mass.
2. (i) Subject to appropriate monitoring of emissions by competent authorities this requirement shall not apply to heavy fuel oils used:
 - (a) in combustion plants which fall within the scope of Directive 2001/80/EC, which are considered new in accordance with the definition given in Article 2(9) thereof and which comply with the sulphur dioxide emission limits for such plants set out in Article 4 of that Directive and Annex VI thereto;
 - (b) in combustion plants which fall within the scope of Directive 2001/80/EC, which are considered existing in accordance with the definition given in Article 2(10) thereof, where the sulphur dioxide emissions from these combustion plants are equal to or less than 1700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis, and where, from 1 January 2008, the emissions of sulphur dioxide from combustion plants subject to Article 4(3)(a) of Directive 2001/80/EC are equal to or less than those resulting from compliance with the emission limit values for new plants contained in Part A of Annex IV to that Directive and where appropriate applying Articles 5, 7 and 8 thereof;

- (c) in other combustion plants which do not fall under (a) or (b), where the sulphur dioxide emissions from those combustion plants are equal to or less than 1700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis;
 - (d) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all plants in the refinery, irrespective of the type of fuel or fuel combination used, are within a limit to be set by each Member State, which shall not exceed 1700 mg/Nm³. This shall not apply to combustion plants which fall under (a) or, from 1 January 2008, to those which fall under (b).
- (ii) Member States shall take necessary measures to ensure that any combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 shall not be operated without a permit issued by a competent authority, which specifies the emission limits.
3. The provisions of paragraph 2 shall be reviewed and, if appropriate, revised in the light of any future revision of Directive 2001/80/EC."

(4) Article 4 shall be amended as follows:

- (a) With effect from 1 January 2010:
 - (i) in paragraph 1, the words "including marine gas oils" shall be deleted;
 - (ii) paragraph 2 shall be deleted.
- (b) With effect from ...^{*}, paragraphs 3 and 4 shall be deleted.

^{*} Date of entry into force of this Directive.

(5) The following Article 4a shall be inserted:

"Article 4a

**Maximum sulphur content of marine fuels used in SO_x Emission Control Areas
and by passenger ships operating on regular services to or from ports
in the European Community**

1. Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones falling within SO_x Emission Control Areas if the sulphur content of those fuels exceeds 1.5% by mass. This shall apply to all vessels of all flags, including vessels whose journey began outside the Community.
2. The application dates for paragraph 1 shall be as follows:
 - (a) for the Baltic Sea area referred to in regulation 14(3)(a) of MARPOL Annex VI,
...^{*};
 - (b) for the North Sea and any other sea areas, including ports, that the International Maritime Organization subsequently designates as SO_x Emission Control Areas in accordance with regulation 14(3)(b) of MARPOL Annex VI:
 - 12 months after entry into force of that designation, or
 - ...^{**},whichever is the later.

* 19 May 2006 or, if later, 12 months after entry into force of this Directive.

** 12 months after entry into force of this Directive.

3. Member States shall be responsible for the enforcement of paragraph 1 at least in respect of:
 - vessels flying their flag; and
 - in the case of Member States bordering SOx Emission Control areas, vessels of all flags while in their ports.

Member States may also take additional enforcement action in respect of other vessels in accordance with international maritime law.

4. Member States shall take all necessary measures to ensure that, from the date referred to in paragraph 2(a), marine fuels are not used in their territorial seas, exclusive economic zones and pollution control zones by passenger ships operating on regular services to or from any Community port if the sulphur content of those fuels exceeds 1.5% by mass. Member States shall be responsible for the enforcement of this requirement at least in respect of vessels flying their flags and vessels of all flags while in their ports.
5. From the date referred to in paragraph 2(a), Member States shall require the correct completion of ships' logbooks, including fuel-changeover operations, as a condition of ships' entry into Community ports.
6. Member States shall ensure that, with effect from the date referred to in paragraph 2(a), the sulphur content of all marine fuels sold in their territory is documented by the supplier on a bunker delivery note, accompanied by a sealed sample.
7. Member States shall ensure that marine diesel oils are not placed on the market in their territory as from the date referred to in paragraph 2(a) if the sulphur content of those marine diesel oils exceeds 1.5% by mass.
8. The Commission shall notify Member States of the application dates mentioned in paragraph 2(b) and publish the said dates in the Official Journal of the European Union."

(6) The following Article 4b shall be inserted:

"Article 4b

**Maximum sulphur content of marine fuels used by inland waterway vessels
and vessels at berth in Community ports**

1. With effect from 1 January 2010, Member States shall take all necessary steps to ensure that the following vessels do not use marine fuels with a sulphur content exceeding 0.1% by mass:
 - (a) inland waterway vessels; and
 - (b) ships at berth in Community ports, allowing sufficient time for the crew to complete any necessary switch from or to other fuels as soon as possible after arrival at berth and as late as possible before departure.

Member States shall require the time of any fuel-changeover operation to be recorded in ships' logbooks.

2. Paragraph 1 shall not apply:
 - (a) whenever, according to published timetables, ships are due to be at berth for less than two hours;
 - (b) to inland waterways vessels that carry a certificate proving conformity with the International Convention for the Safety of Life at Sea, 1974, as amended, while those vessels are at sea;
 - (c) until 1 January 2012 for the vessels listed in the Annex and operating exclusively within the territory of Greece.
3. With effect from the date referred to in paragraph 1, Member States shall ensure that marine gas oils are not placed on the market in their territory if the sulphur content of those marine gas oils exceeds the limit set out in that paragraph."

(7) The following Article 4c shall be inserted:

"Article 4c

Trials and use of new abatement technologies

1. Member States may, in co-operation with other Member States, as appropriate, approve trials of ship emission abatement technologies on vessels flying their flag, or in sea areas within their jurisdiction. During these trials the use of marine fuels meeting the requirements of Articles 4a and 4b shall not be mandatory, provided that:
 - the Commission and any port State concerned are notified in writing at least 6 months before trials begin;
 - permits for trials do not exceed 18 months in duration;
 - all ships involved install tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period;
 - all ships involved achieve emissions reductions which are at least equivalent to those which would be achieved through the fuel sulphur limits specified in this Directive;
 - there are proper waste management systems in place for any waste generated by the abatement technologies throughout the trial period;
 - there is an assessment of impacts on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries throughout the trial period; and
 - full results are provided to the Commission, and made publicly available, within 6 months of the end of the trials.

2. Abatement technologies for EU flagged ships shall be approved in accordance with the procedure referred to in Article 3(2) of Regulation (EC) No 2099/2002, taking into account:
 - guidelines to be developed by the International Maritime Organization;
 - results of any trials conducted under paragraph 1;
 - effects on the environment, including achievable emissions reductions, and impacts on ecosystems in enclosed ports, harbours and estuaries;
 - feasibility of monitoring and verification.
3. Criteria shall be established for the use of abatement technologies by ships of all flags in enclosed ports, harbours and estuaries in the European Union in accordance with the procedure referred to in Article 9(2). The Commission shall communicate these criteria to the International Maritime Organization.
4. As an alternative to using low sulphur marine fuels meeting the requirements of Articles 4a and 4b, Member States may allow ships to use an approved abatement technology, provided that these ships:
 - achieve emissions reductions which are at least equivalent to those which would be achieved through the fuel sulphur limits specified in this Directive; and
 - document thoroughly that any waste streams discharged into enclosed ports, harbours and estuaries have no impact on ecosystems, based on criteria communicated by authorities of port States to the International Maritime Organization."

(8) Article 6 shall be amended as follows:

(a) The following paragraph 1a is inserted:

"1a. Member States shall take necessary measures to check that the sulphur content of marine fuels complies with the relevant provisions of Articles 4a and 4b.

Each of the following means of sampling, analysis and inspection shall be used as appropriate:

- sampling of the fuel oil for on-board combustion while being delivered to ships, following IMO guidelines, and analysis of its fuel content;
- sampling and analysis of the sulphur content of fuel oil for on-board combustion contained in tanks, where feasible, and in sealed bunker samples on board ships;
- inspection of ships' log books and bunker delivery notes.

Sampling shall commence on the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out with sufficient frequency, in sufficient quantities, and in such a way that the samples are representative of the fuel examined, and of the fuel being used by ships while in relevant sea areas, ports and inland waterways.

Member States shall also take reasonable measures, as appropriate, to monitor the sulphur content of marine fuels [...] other than those to which Articles 4a and 4b apply.

(b) In paragraph 2, point (a) shall be replaced by the following:

"(a) ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and marine fuels;"

(9) Article 7 shall be replaced by the following:

"Article 7

Reporting and review

1. On the basis of the results of the sampling, analysis and inspections carried out in accordance with Article 6, Member States shall by 30 June of each year provide the Commission with a short report on the sulphur content of the liquid fuels falling within the scope of this Directive and used within their territory during the preceding calendar year. That report shall include a record of the total number of samples tested by fuel type and shall indicate the corresponding quantity of fuel used, and the calculated average sulphur content. Member States shall also report on the number of inspections made on board ships, and record the average sulphur content of marine fuels used in their territory which do not currently fall within the scope of the Directive.

2. On the basis, *inter alia*, of:
 - (a) annual reports submitted in accordance with paragraph 1;
 - (b) observed trends in air quality, acidification, fuel costs and modal shift; and
 - (c) progress in reducing emissions of sulphur oxides from ships through IMO mechanisms following Community initiatives in this regard,
 - (d) a new cost-benefit analysis, including direct and indirect environmental benefits, of measures contained in Article 4a (4).

the Commission shall, by 2008, submit a report to the European Parliament and to the Council.

The Commission may submit with its report proposals for revising this Directive, in particular as regards a second stage of sulphur limit values laid down for each fuel category and, taking account of work within the IMO, the sea areas where low sulphur marine fuels are to be used.

3. By 31 December 2005, the Commission shall report on the possible use of economic instruments – including, *inter alia*, mechanisms such as differentiated dues and kilometre charges, tradable emission permits and offsetting.
4. Any amendments necessary to make technical adaptations to Article 2, paragraphs (1) to (3c) and (4), or Article 6(2) in the light of scientific and technical progress shall be adopted in accordance with the procedure referred to in Article 9(2). Such adaptations shall not result in any direct changes to the scope of this Directive or to fuel sulphur limits."

(10) Article 9 shall be replaced by the following:

"Article 9

Regulatory Committee

1. The Commission shall be assisted by a committee composed of representatives of Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC * shall apply, having regard to the provisions of Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure."

(11) The Annex to this Directive shall be added.

* Council Decision 1999/468/EC of 28 June 1999 (OJ L 184, 17.7.199, p. 23).

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...* at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

* 12 months after entry into force of this Directive.

GREEK VESSELS

VESSEL'S NAME	DELIVERY YEAR	IMO NUMBER
ARIADNE PALLAS	2002	9221310
ICAROS PALLAS	1997	9144811
KNOSSOS PALLAS	2001	9204063
OLYMPIA PALLAS	2001	9220330
PASIPHAË PALLAS	1997	9161948
FESTOS PALLAS	2001	9204568
EUROPE PALLAS	2002	9220342
BLUE STAR I	2000	9197105
BLUE STAR II	2000	9207584
BLUE STAR ITHAKI	1999	9203916
BLUE STAR NAXOS	2002	9241786
BLUE STAR PAROS	2002	9241774
HELLENIC SPIRIT	2001	9216030
OLYMPIC CHAMPION	2000	9216028
LEFKA ORI	1991	9035876
SOPHOKLIS VENIZELOS	1990	8916607

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