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## **Working Party on Inland Water Transport**

### **Fifty-sixth session**

Geneva, 10–12 October 2012

Item 8 (a) of the provisional agenda

**Harmonization of the pan-European legal framework for inland navigation:**

**Status of international conventions and agreements affecting inland navigation**

## **Strasbourg Convention of 2012 on the Limitation of Liability in Inland Navigation (CLNI 2012)**

### **Note by the Central Commission for the Navigation of the Rhine (CCNR)**

1. Please find enclosed the English text of the Strasbourg Convention of 2012 on the Limitation of Liability in Inland Navigation (CLNI 2012), as adopted at the Diplomatic Conference on 27 September 2012. The Convention was made in four authentic versions in the official languages of CCNR, i.e. French, English, German and Dutch.

**Strasbourg Convention of 2012**  
**on the Limitation of Liability in Inland Navigation**  
**(CLNI 2012)**

The States Parties to this Convention,

having recognised the desirability of determining by agreement certain uniform rules relating to the limitation of liability in inland navigation on all inland waterways,

considering that it is desirable to modernise the 1988 Strasbourg Convention on the Limitation of Liability in Inland Navigation,

have agreed as follows:

**Chapter I**

**The right of limitation**

**Article 1**

**Persons entitled to limit liability; definitions**

1. Vessel owners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term:
  - (a) "vessel owner" shall mean the owner, hirer or charterer entrusted with the use of the vessel, as well as the operator of a vessel;
  - (b) "vessel" shall mean an inland navigation vessel used for commercial navigational purposes and shall also include hydrofoils, ferries and small craft used for commercial navigational purposes but not air-cushion vehicles. Dredgers, floating cranes, elevators and all other floating and mobile appliances or plant of a similar nature shall also be considered vessels;
  - (c) "salvor" shall mean any person rendering services in direct connection with salvage or assistance operations. These operations shall also include operations referred to in Article 2, paragraph 1 (d), (e) and (f);
  - (d) "dangerous goods" shall mean dangerous goods within the meaning of Chapter 3.2 of the Regulations annexed to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) in force at the time;
  - (e) "waterway" shall mean any inland waterway, including any lake.
3. If any claims set out in Article 2 are made against any person for whose act, neglect or default the vessel owner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.
4. In this Convention, the liability of a vessel owner shall include liability in an action brought against the vessel herself.

5. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.
6. The act of invoking limitation of liability shall not constitute an admission of liability.

## **Article 2**

### **Claims subject to limitation**

1. Subject to Articles 3 and 4, the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:
  - (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins, waterways, locks, weirs, bridges and aids to navigation) occurring on board or in direct connection with the operation of the vessel or with salvage operations, and consequential loss resulting therefrom;
  - (b) claims in respect of loss resulting from delay in the carriage of cargo, passengers or their luggage;
  - (c) claims in respect of other loss resulting from infringement of rights other than contractual rights and occurring in direct connection with the operation of the vessel or with salvage or assistance operations;
  - (d) claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board the vessel;
  - (e) claims in respect of the removal, destruction or rendering harmless of the cargo of the vessel;
  - (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.
2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims under paragraph 1 (d), (e) and (f) shall not be subject to limitation of liability in so far as they relate to remuneration under a contract with the person liable.

## **Article 3**

### **Claims excepted from limitation**

The rules of the present Convention shall not apply to:

- (a) claims for assistance or salvage, including, if applicable, special compensation relating to salvage operations in respect of a vessel which in itself or its cargo threatened to cause damage to the environment;
- (b) claims for contributions in general average;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the owner of a nuclear vessel for nuclear damage;
- (e) claims by servants of the vessel owner or salvor whose duties are connected with the vessel or with the salvage or assistance operations, including claims of their heirs, dependants or other persons entitled to

make such claims if, under the law governing the contract of service between the vessel owner or salvor and such servants, the vessel owner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that calculated in accordance with Article 6 or, for claims within the meaning of Article 7, to an amount greater than the limit of liability calculated in accordance with Article 7.

#### **Article 4**

##### **Conduct barring limitation**

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

#### **Article 5**

##### **Counterclaims**

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

### **Chapter II**

#### **Limits of liability**

#### **Article 6**

##### **The general limits**

1. The limits of liability for claims other than those mentioned in Articles 7 and 8, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury:

- (i) for a vessel not intended for the carriage of cargo, in particular a passenger vessel, 400 units of account per cubic metre of displacement at maximum permitted draught, increased for vessels equipped with mechanical means of propulsion by 1 400 units of account per kW of power of the propulsion machinery;
- (ii) for a vessel intended for the carriage of cargo, 400 units of account per tonne of the vessel's deadweight, increased for vessels equipped with mechanical means of propulsion by 1 400 units of account per kW of power of the propulsion machinery;
- (iii) for a pusher or tug, 1 400 units of account per kW of power of the propulsion machinery;
- (iv) for a pusher which, at the time the damage was caused, was coupled to barges in a pushed train, the limit of liability calculated in accordance with sub-paragraph (iii) shall be increased by 200 units of account per tonne of deadweight of the pushed barges; this increase shall not apply in so far as it can be proved that the pusher has rendered salvage or assistance services to one or more of these barges;

- (v) for a vessel equipped with mechanical means of propulsion which at the time the damage was caused was providing propulsion for other vessels coupled to this vessel, the limit of liability calculated in accordance with sub-paragraphs (i), (ii) or (iii) shall be increased by 200 units of account per tonne of deadweight or cubic metre of displacement of the other vessels; this increase shall not apply in so far as it can be proved that this vessel has rendered salvage or assistance services to one or more of the coupled vessels;
  - (vi) for floating and mobile appliances or plant within the meaning of the second sentence of Article 1, paragraph 2 (b), their value at the time of the occurrence;
- (b) in respect of all other claims, half of the limit of liability calculated in accordance with paragraph (a);
  - (c) when the limit of liability calculated in accordance with paragraph (a) is insufficient to pay the claim mentioned therein in full, the limit of liability calculated in accordance with paragraph (b) shall be available for payment of the unpaid balance of claims under paragraph (a) and such unpaid balance shall rank rateably with claims mentioned under paragraph (b);
  - (d) in no case shall the limits of liability be less than 400 000 units of account for claims in respect of loss of life or personal injury or less than 200 000 units of account for all other claims.
2. However, without prejudice to the rights related to claims for loss of life or personal injury in accordance with paragraph 1 (c), a State Party may provide in its national law that claims in respect of damage to harbour works, basins, waterways, locks, weirs, bridges and aids to navigation shall have such priority over other claims under paragraph 1 (b) as is provided by that law.
3. The limits of liability mentioned in paragraph 1 (d) shall also apply to any salvor rendering salvage or assistance services to a vessel and not operating from any inland navigation vessel or seagoing vessel, and to any salvor operating solely on the vessel to which he is rendering salvage or assistance services.

## **Article 7**

### **The limits applicable to claims for damage arising from the carriage of dangerous goods**

1. The limits of liability for a vessel carrying dangerous goods in respect of claims arising in respect of damage resulting directly or indirectly from the dangerous nature of the goods shall be calculated as follows:
- (a) in respect of claims for loss of life or personal injury: twice the limit of liability calculated in accordance with Article 6, paragraph 1 (a), but no less than 10 million units of account;
  - (b) in respect of all other claims, twice the limit of liability calculated in accordance with Article 6, paragraph 1 (b), but no less than 10 million units of account.
2. Where the limit of liability calculated in accordance with paragraph 1 (a) is insufficient to pay the claims mentioned therein in full, the limit of liability calculated in accordance with paragraph 1 (b) shall be available for payment of the unpaid balance of claims under paragraph 1 (a) and such unpaid balance shall rank rateably with claims mentioned in paragraph 1 (b).

## **Article 8**

### **The limit applicable to passenger claims**

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a vessel, the limit of liability for such vessel shall be an amount of 100 000 units of account multiplied by:
- (a) the number of passengers which the vessel is authorised to carry according to the vessel's certificate, or,

- (b) if the number of passengers which the vessel is authorised to carry is not prescribed, the number of passengers actually carried by the vessel at the time of the occurrence.

The limit of liability shall, however, not be less than 2 million units of account.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a vessel" shall mean any such claims brought by or on behalf of any person carried in that vessel:

- (a) under a contract of passenger carriage, or,
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

## **Article 9**

### **Unit of account**

1. The unit of account referred to in Articles 6 to 8 and 10 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 to 8 and 10 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund is constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.

2. The value of a national currency of a State Party in terms of Special Drawing Rights shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions.

3. The States Parties may, on the basis of the method of calculation mentioned in paragraph 1, establish the equivalent of the amounts mentioned in Articles 6 to 8 and 10 in their national currency in round figures. When, following a change in the value of the national currency in terms of Special Drawing Rights, the amounts expressed in such currency differ by more than 10 per cent from the real value expressed in Special Drawing Rights in Articles 6 to 8 and 10, the said amounts shall be adapted to the real value. States Parties shall communicate to the Depositary the sums expressed in the national currency and any modification of those sums.

## **Article 10**

### **Aggregation of claims**

1. Without prejudice to paragraph 2, the limits of liability calculated in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:

- (a) against the person or persons mentioned in Article 1, paragraph 2 (a), and any person for whose act, neglect or default they are responsible; or
- (b) against the owner of a vessel rendering salvage or assistance services from that vessel and the salvor or salvors operating from such vessel and any person for whose act, neglect or default they are responsible; or
- (c) against the salvor or salvors who are not operating from an inland navigation vessel or a seagoing ship or who are operating solely on the vessel to which the salvage or assistance services are rendered and any person for whose act, neglect or default they are responsible.

2.

- (a) When, in conformity with Article 6, paragraph 1 (a) (iv), the limit of liability for a pusher which, at the time the damage was caused, was coupled to barges in a pushed train is increased in respect of claims arising out of the occurrence by 200 units of account per tonne deadweight of the pushed barges, the limit of liability for each of the barges is reduced, in respect of claims arising out of the said occurrence, by 200 units of account for each tonne deadweight of the pushed barge.
- (b) When, in conformity with Article 6, paragraph 1 (a) (v), the limit of liability for a vessel equipped with mechanical means of propulsion which, at the time the damage was caused, was providing propulsion for other vessels coupled to it, is increased in respect of claims arising out of the occurrence by 200 units of account per tonne deadweight or cubic metre of displacement of the coupled vessels, the limit of liability for each coupled vessel shall be reduced, in respect of claims arising out of the said occurrence, by 200 units of account for each tonne deadweight or each cubic metre of displacement of the coupled vessel.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* for the limits of liability calculated in accordance with Article 7. However, paragraph 2 shall be applied provided that instead of 200 units of account 400 units of account shall be used as a basis.

4. The limit of liability calculated in accordance with Article 8 shall apply to the aggregate of all claims arising on any distinct occasion against the person or persons mentioned in Article 1, paragraph 2 (a), in respect of the vessel referred to in Article 8 and any person for whose act, neglect or default they are responsible.

#### **Article 11**

##### **Limitation of liability without constitution of a limitation fund**

1. Limitation of liability may be invoked even if a limitation fund as mentioned in Article 12 has not been constituted. However, a State Party may provide in its national law that, where an action is brought in its courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 13 shall apply.

#### **Chapter III**

##### **The limitation fund**

#### **Article 12**

##### **Constitution of the fund**

1. Any person alleged to be liable may constitute one or more funds with the competent court or other competent authority in any State Party in which legal proceedings are instituted in respect of a claim subject to limitation, or, if no legal proceedings are instituted, with the competent court or other competent authority in any State Party in which legal proceedings may be instituted for a claim subject to limitation. Each fund must be constituted for the amount of the limits of liability calculated in accordance with Articles 6 to 8 and 10 as are applicable to claims for which the person constituting the fund(s) may be liable, together with interest

thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. A fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the court or other competent authority.

3. A fund constituted by one of the persons mentioned in Article 10, paragraph 1 (a), (b) or (c) or paragraph 4 or his insurer shall be deemed constituted by all the persons mentioned in Article 10, paragraph 1 (a), (b) or (c) or paragraph 4.

### **Article 13**

#### **Distribution of the fund**

1. Subject to the provisions of Article 6, paragraphs 1 and 2 as well as to those of Articles 7, 8 and 10, the fund shall be distributed among the claimants in proportion to the amount of their established claims against the fund.

2. If, before the fund is distributed, the person liable or his insurer has settled a claim against the fund, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those mentioned above in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

### **Article 14**

#### **Effects of the constitution of the fund**

1. Where a fund has been constituted in accordance with Article 12, any person who can make a claim effective against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a fund has been constituted in accordance with Article 12, any vessel or other property belonging to a person on behalf of whom the fund has been constituted which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, shall be released by order of the court or other competent authority of such State.

3. The provisions of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the fund before the court administering that fund and the fund is actually available and freely transferable in respect of that claim.

## Chapter IV

### Scope of application

#### Article 15

1. This Convention shall apply to the limitation of liability of the vessel owner or a salvor at the time of the incident giving rise to the claims where:

- (a) the vessel was being operated on a waterway located on the territory of a State Party,
- (b) salvage or assistance services had been rendered along one of the said waterways to a vessel in danger or to the cargo of such a vessel, or
- (c) a vessel sunk, wrecked, stranded or abandoned along one of the said waterways or the cargo of such a vessel had been raised, removed, destroyed or rendered harmless.

This Convention shall also apply to the limitation of liability of a salvor rendering salvage or assistance services from an inland navigation vessel to a sea-going vessel in danger along one of the said waterways or in respect of the cargo of such a vessel.

2. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any subsequent time, exclude the application of this Convention by sending a declaration to the Depositary in cases where the waterway referred to in paragraph 1:

- (a) is situated within its territory, and
- (b) is not listed in Annex I of the European Agreement on Main Inland Waterways of International Importance (AGN).

The waterway to be excluded must be clearly specified in the declaration.

3. Any State may, at the time of signature, ratification, acceptance, approval or accession, exclude application of this Convention for a maximum of eight years after the entry into force of this Convention by notifying the Depositary that the Convention shall not apply to small craft exclusively used in internal traffic. A small craft within the meaning of sentence 1 is a craft whose hull has a length of not more than 20 meters without rudder or bowsprit, except for:

- (a) a ferry,
- (b) a pushed barge,
- (c) a craft authorised to tug, to push or to provide propulsion for another vessel coupled to this craft, provided that such vessel is not a small craft, or
- (d) a craft authorised to carry more than 12 passengers.

4. The exclusion shall take effect on the first day of the month following the expiry of a period of three months following notification of the declaration referred to in paragraph 2 or, if this Convention has not yet entered into force, on its entry into force. This Convention shall not apply to claims arising from an occurrence that took place while the vessel was using an excluded waterway. Exclusion shall not apply in respect of occurrences taking place before the declaration takes effect.

5. A State which has made a declaration under paragraph 2 may withdraw it at any time by means of a declaration of withdrawal notified to the Depositary. The withdrawal shall take effect three months as from the date of the notification of the declaration of withdrawal or on any subsequent date specified in the

declaration of withdrawal. Withdrawal shall not have any effect on the limitation of liability in respect of claims arising from an occurrence that takes place before the withdrawal takes effect.

## **Chapter V**

### **Final clauses**

#### **Article 16**

##### **Signature, ratification and accession**

1. This Convention shall be open for signature by any State at the Strasbourg headquarters of the Central Commission for the Navigation of the Rhine from 27 September 2012 to 26 September 2014.
2. Each State may express its consent to be bound by this Convention by:
  - (a) signature without reservation as to ratification, acceptance or approval, or
  - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval, or
  - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument with the Secretary General of the Central Commission for the Navigation of the Rhine.

#### **Article 17**

##### **Entry into force**

1. This Convention shall enter into force on the first day of the month following the expiry of a period of one year from the date on which four States have deposited their instruments of ratification, acceptance, approval or accession, or on the date on which the 1988 Strasbourg Convention on the Limitation of Liability in Inland Navigation (CLNI) ceases to be in force, whichever date is the later.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession after the conditions governing the entry into force of this Convention have been met, the Convention shall enter into force on the first day of the month following the expiry of a period of three months from the date on which that State deposited its instrument. By way of derogation from the first sentence, the Convention shall enter into force in that State on the day on which the Convention enters into force in accordance with paragraph 1 if the instrument of ratification, acceptance, approval or accession has been deposited at least three months before the entry into force of the Convention in accordance with paragraph 1.

#### **Article 18**

##### **Reservations**

1. Any State may, at the time of signature, ratification, acceptance, approval or accession and at any subsequent time, reserve the right to exclude the application of the rules of this Convention in their entirety or in part in respect of:
  - (a) claims for damage due to a change in the physical, chemical or biological quality of the water;

- (b) claims mentioned in Article 7, in so far as they are governed by an international convention or domestic regulations excluding the limitation of liability or setting limits of liability higher than provided for in this Convention;
  - (c) claims mentioned in Article 2, paragraph 1 (d) and (e) of this Convention;
  - (d) lighters exclusively used in ports for transshipments.
2. A State that avails itself of the option provided for in paragraph 1(b) shall notify the Depositary of the applicable limits of liability or of the fact that no such limits exist.
  3. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
  4. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Depositary. The withdrawal shall take effect on the date the notification is received or on a later date specified therein.
  5. Reservations other than those provided for in this Convention shall not be admissible.

## **Article 19**

### **Denunciation**

1. This Convention may be denounced by a State Party by means of a notification addressed to the Depositary, at any time after one year from the date on which the Convention entered into force for that Party.
2. Without prejudice to Article 20, paragraph 3, the denunciation shall take effect on the first day of the month following the expiry of a period of six months from the date on which the notification is received or after such longer period as may be specified therein.

## **Article 20**

### **Simplified procedure for amending limits of liability**

1. The Depositary shall review the amounts set out in Articles 6 to 8 and 10 at five-year intervals, the first such review to take place on 31 December 2017. The review shall be based on an inflation factor which corresponds to the accumulated rate of inflation since the date of the last notification referred to in paragraph 2 of a review resulting in an amendment of the limits of liability or, on the occasion of the first review, since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in Article 9, paragraph 1.
2. If the review referred to in paragraph 1 concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify the Contracting States of the amended amounts calculated on the basis of the inflation factor. The amended amounts shall be deemed to have been adopted on expiry of a period of one year from the date of notification unless, within this period, one third of the Contracting States have notified the Depositary by means of a declaration of their refusal to accept this amendment. .
3. An amendment deemed to have been adopted by virtue of paragraph 2 shall enter into force nine months after its adoption for each State party to this Convention on that date, unless it denounces the Convention in accordance with Article 19, paragraph 1 no later than three months before the amendment enters into force. The denunciation shall be effective from the date on which the amendment enters into

force. The amendment shall be binding on any State becoming a party to this Convention after adoption of the amendment.

4. Without prejudice to paragraph 1, the procedure referred to in paragraph 2 may be applied at any time at the request of one third of the Contracting States if, since the previous review or, if there has been no such review, since the date of entry into force of this Convention, the inflation factor referred to in paragraph 1 is greater than 5 per cent. Subsequent reviews carried out in accordance with the procedure described in paragraph 1 shall be made every five years, the first such review to take place at the end of the fifth year following a review carried out in accordance with the present paragraph.

## **Article 21**

### **Depositary**

1. This Convention shall be deposited with the Secretary General of the Central Commission for the Navigation of the Rhine, who shall be the Depositary thereof.

2. The Depositary shall:

- (a) transmit certified true copies of this Convention to all Signatories and all other States that accede to this Convention;
- (b) inform all States which have signed or acceded to this Convention of:
  - (i) each new signature and each deposit of an instrument and any declaration or reservation thereto together with the date thereof;
  - (ii) the date of entry into force of this Convention;
  - (iii) any denunciation of this Convention and the date on which it is to take effect;
  - (iv) the date of the coming into force of any amendment in accordance with Article 20, paragraph 3;
  - (v) any declaration called for by any provision of this Convention.

## **Article 22**

### **Languages**

This Convention is established in a single original in the Dutch, English, French and German languages, each text being equally authentic.

In witness whereof the undersigned, duly authorised for the purpose by their respective Governments, affix their signature to this Convention.

Done at Strasbourg on 27 September 2012.

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