

Brussels, 12 July 2017 (OR. en)

11209/17

EUROJUST 119 DAPIX 258

COVER NOTE

From:	Mr Rajko Pirnat, Chair of Joint Supervisory Body of Eurojust
date of receipt:	7 July 2017
То:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
Subject:	2016 Activity Report of the Joint Supervisory Body of Eurojust

Delegations will find attached a letter from the Chair of Joint Supervisory Body of Eurojust transmitting its 2016 Activity Report.

Mr Jeppe Tranholm-Mikkelsen Secretary-General Council of the European Union Rue de la Loi 175/Wetstraat 175 1048 Brussels Belgium

The Hague, 7 July 2017

2016 Activity Report of the Joint Supervisory Body of Eurojust

Dear Mr Tranholm-Mikkelsen,

On behalf of the Joint Supervisory Body of Eurojust, I am pleased to present the Activity Report of the Joint Supervisory Body of Eurojust for 2016 in accordance with Article 23(12) of the Eurojust Decision.

In line with the procedure outlined in Article 10(1) of the Act of the Joint Supervisory Body, the report has been submitted to the College of Eurojust. The College considered the report at its plenary meeting on 4 July 2017 but does not wish to deliver any opinion.

If you are interested in receiving further information about the work of the Joint Supervisory Body of Eurojust, please do not hesitate to contact me through the JSB Secretariat.

Yours sincerely,

Rajko Pirnat

Chair

Joint Supervisory Body of Eurojust

Rollio Street

Enc. 2016 Activity Report of the Joint Supervisory Body of Eurojust

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2016

ActivityReport

of the Joint

Supervisory Body

of

Eurojust

Data protection

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Foreword

As chair of the Joint Supervisory Body of Eurojust since 31 May 2016, when I took over from my fellow member, Mr Wilbert Tomesen, as current chair of the Joint Supervisory Body of Eurojust, I have the pleasure to present the 14th Activity Report of the JSB for 2016. I have now had the honour to serve as a permanent member of the JSB troika for almost 10 years.

Over the years it has been clear to me that the composition of the JSB and its structure has proven to be a very easy-going and workable authority in facilitating quick decision-making, non-bureaucratic communication and cost-effective functioning.

This year we have continued to monitor Eurojust's implementation of the recommendations of the last general inspection. In this process we have had the benefit again to have with us

Mr Peter Michael, Data Protection Secretary at the General Secretariat of the Council of the European Union.

 Working with my fellow members of the troika, Mr Carlos Campos Lobos, Mr Wilbert Tomesen and Rajko Pirnat, has been a great pleasure. I therefore would like to warmly thank them for their commitment and expert input to the work of the JSB. I would also like to thank the Presidency and College as well as the staff of Eurojust for their contributions to our activities. In particular, I wish to thank the Data Protection Officer, Diana Alonso Blas, her staff members Vaida Linartaitė-Gridziuškienė and Xavier Tracol, and the secretary to the JSB, Fiona Coninx, for their much appreciated assistance to the JSB.

Hans Frennered

Chair

Joint Supervisory Body of Eurojust



Photo: current JSB permanent members June 2017: from left to right Hans Frennered (Sweden), Rajko Pirnat (Slovenia - Chair) and Wilbert Tomesen (Netherlands)



Photo: JSB permanent members May 2016: from left to right Carlos Campos Lobo (Portugal), Hans Frennered (Sweden - Chair) and Wilbert Tomesen (Netherlands)

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1. Introduction

This 14th annual activity report of the Joint Supervisory Body of Eurojust (JSB) provides a summary of the JSB's main activities during 2016.

The JSB was established in Article 23 of the Eurojust Decision ¹ as an independent body to monitor the activities of Eurojust involving the processing of personal data. It aims to ensure that these activities are carried out in accordance with the Eurojust Decision in full compliance with the rights of data subjects. One of the JSB's tasks is to examine appeals from members of the public against decisions of Eurojust on their requests for access to personal data that might be held by Eurojust and to discover whether this information is being lawfully and accurately processed. In addition, the JSB monitors the permissibility of the transmission of data from Eurojust to third parties and issues opinions on data protection provisions of draft agreements being negotiated between Eurojust and third States/parties. The JSB also bears the obligation to carry out controls and audits at Eurojust to check whether Eurojust processes personal data in accordance with the Eurojust Council Decision.

The data protection regime of Eurojust, reinforced by tailor-made rules and internal and external supervisory schemes, is a robust, strong and effective one, offering a high level of protection of personal data and legal certainty for individuals while respecting the operational needs of the organisation. Major developments in terms of the new EU data protection legal framework took place in 2016. On 4 May 2016, the General Data Protection Regulation (GDPR) and the Directive for data protection in the police and justice sectors were published in the Official Journal. This momentum marked the finalisation of the Data Protection Reform, launched by the Commission already in January 2012² and the beginning of new era for fundamental rights in the digital age. Both instruments will affect in one way or another the future of Eurojust's data protection regime, still under discussion with the EU legislature. The establishment of the EPPO will most likely have an impact on the data protection supervision scheme of Eurojust as well. With all the challenges ahead, the ISB Eurojust remains committed to continue effective supervision, to actively contribute to the discussions about the future data protection regime, including the supervision, in the draft Eurojust Regulation, offering its full assistance and expertise.

 $^{^1}$ 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 63 p. 1,6.3.2003 amended by Council Decision 2009/526/JHA of 16 December 2008 on the strengthening of Eurojust, OJ L 138 p. 14, 4.6.2009

² http://ec.europa.eu/justice/data-protection/reform/index en.htm

2. Budget and costs

During the year 2016 the ISB continued to closely monitor and implement effectively the allocated budget.

In 2016 the ISB received an amount of €30,400 from Eurojust's budget to cover its administrative costs, including the travel expenses of appointees for participation in meetings at Eurojust and the logistical organisation of meeting. A total of €26,253 was spent.

In 2015 the ISB received an amount of €46,400. The allocated budget for 2016 represented a decrease of 34.4% in comparison to the 2015 budget. Such decrease was the result of overall Eurojust's budgetary restrictions.

In accordance with Eurojust's annual planning cycle, the JSB submitted a plan of its objectives and activities for 2018.

3. Meetings and elections

The JSB permanent members met at Eurojust on 22 January, 14 April, 30 May, 13 October and

15 December, providing an opportunity for a regular exchange of views and information with the Presidency and Administration of Eurojust. A plenary meeting of the appointees took place on 31 May, at which elections were held for a new permanent member. Mr Wilbert Tomesen (Netherlands) elected by acclamation for a further three year term. Mr Hans Frennered (Sweden), in the



third year of his mandate, took over as Chair in accordance with Article 3(2) of the Act of the Joint Supervisory Body of Eurojust.

Plenary meeting June 2016

Mr Carlos Campos Lobo's mandate as appointee for Portugal came to an end in November. However, he continued his duties as a judge for the duration of an ongoing appeal case in accordance with Article 23(5)³ of the Eurojust Decision. The procedure for the election of a new permanent member was launched at the beginning of 2017.

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³ "The composition of the JSB shall remain the same for the duration of an appeals procedure even if the permanent members have reached the end of their of office pursuant to §3."

At least once a year the ISB members meet with the College of Eurojust which contributes to an excellent communication with Eurojust. This time the JSB met with the College of Eurojust on 6 December 2016. On this occasion Mr Tomesen, the Chair of the JSB, expressed "[...] concerns about alarming information regarding the negative impact that the establishment of the EPPO might have on the resources and budget of Eurojust and about the data protection supervisory schemes of both Eurojust and the EPPO. The ISB underscored that the EPPO may not be established to the detriment of Eurojust by compelling it to reduce its human resources whilst assigning additional tasks to Eurojust. Doing so would be inconsistent with the need to increase the level of security and justice to the benefit of all citizens in the EU, in a balanced system, especially in a context where Eurojust already has to deal with an increasing casework with limited budgetary and human resources. Furthermore and even more important, such reduction in combination with additional tasks will most likely negatively affect the capabilities of Eurojust to uphold a strong data protection regime [...]."

The full statement given by Mr Tomesen on this occasion can be found here.

4. Data Protection Commissioners' conferences

The JSB Eurojust has been an accredited member of the European Conference of Data Protection Commissioners since April 2011⁴ and the International Conference of Data Protection and Privacy Commissioners since October 2010⁵. Mr Tomesen attended the European Conference of Data Protection Commissioners in May in Hungary and the International Conference of Data Protection and Privacy Commissioners in October (Morocco). The latter adopted an International Competency Framework on Privacy Education; a Resolution on developing new metrics of data protection regulation; it endorsed the work of human rights defenders by adopting a resolution, agreed to continue encouraging efforts to bring about more effective cooperation in cross-border investigation and enforcement in appropriate cases. More information can be found here⁶.

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⁴ http://www.eurojust.europa.eu/<u>doclibrary/Eurojust-</u> framework/jsb/jsb/JSB%20Accreditation%20Resolution%20(2011)/JSB-Accreditation-Resolution-2011-04-05-EN.pdf

⁵ http://www.eurojust.europa.eu/doclibrary/Eurojustframework/jsb/jsb/JSB%20Accreditation%20Resolution%20(2010)/JSB-Accreditation-Resolution-2010-10-29-EN.pdf

https://icdppc.org/document-archive/adopted-resolutions/

5. Supervisory work

In accordance with Article 7 of the Act of the JSB concerning checks on location and experts, the JSB has carried out several inspections at Eurojust in recent years, thus building up an excellent understanding of the core business of Eurojust. The inspections are one of the main tasks of the JSB's close monitoring of how Eurojust processes personal data.

The JSB carried out its sixth inspection on 10-12 February 2016. The main objective of this inspection was to check the follow-up to some of the recommendations of the JSB's inspections of 2013 and 2015, in particular concerning Eurojust's Case Management System (CMS) and the Human Resources Unit. The inspection team was composed of legal and technical experts from national data protection authorities and the Data Protection Secretariat of the Council of the European Union. The JSB submitted its final report to the College of Eurojust in June.

On the basis of the successful technical meeting held in May 2015, the JSB and Eurojust held a similar meeting in December to discuss in detail the technical aspects of the open recommendations and the practical implementation of some of the findings of the inspection report. The JSB expressed its satisfaction with the considerable progress being made by Eurojust.

At its meeting with the College of Eurojust in December, the JSB provided the following feedback on its inspection findings: "This inspection aimed to check the follow-up of key recommendations made by the JSB in its reports on the inspections that took place in 2013 and 2015 concerning the use of the CMS and the recommendations made in an inspection report of 2012 concerning the data processing activities of the Human Resources Unit. Overall, the JSB was favourably impressed by the considerable improvement in Eurojust's common culture since the last inspection in 2015. In particular, concerning the use of the CMS, the JSB found progress in Eurojust's compliance with the obligations pursuant to the Eurojust Decision and the recommendations made by the JSB. In fulfilling the more technical recommendations, the JSB noted the clear and positive approach of Eurojust towards compliance with these recommendations. The JSB drew a similar conclusion on the activities of the Human Resources Unit which has successfully fulfilled most of the recommendations."

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6. Cooperation with the Data Protection Officer of Eurojust

The Data Protection Officer (DPO) is fundamental in ensuring the respect of data protection principles across the organisation. As the one responsible for ensuring that Eurojust complies with DP rules, the DPO is the JSB's closest partner. The JSB's cooperation with the DPO of Eurojust brings necessary synergies in ensuring effective data protection compliance in practice. In accordance with Article 6(6) of the Act of the ISB⁷, the ISB collaborated closely with and supported Eurojust's Data Protection Officer throughout 2016.

A key part of the DPO's work is an annual survey of data protection compliance at Eurojust carried out in accordance with Article 27(1) of the Eurojust Decision. The DPO's Annual Survey for 2014 was presented to the JSB at its plenary meeting in May. The ISB expressed its recognition of the importance of this survey and satisfaction that the necessary checks and supervision had been regularly made. The ISB appointees were invited to gather what had been done in terms of the annual survey and to convey the main points to their national authorities in preparation for 2018 when public authorities would need to have an established DPO post as foreseen in the General Data Protection Regulation (to apply from 25 May 2018).

7. Reorganisation of Eurojust's Administration

Eurojust regularly updated the JSB on the ongoing reorganisation of Administration. The reorganisation was initiated in order to optimise the use of resources and the creation of synergies to support the operational needs of Eurojust.

8. ICT projects

The ISB followed closely the latest developments in the main information and communication technology (ICT) projects involving the processing of personal data. Eurojust regularly provided updates about the latest developments in the main projects. Thus it was ensured that ICT projects met data protection requirements and complied with the Eurojust Council Decision and applicable rules. Some of the projects deserve to be named specifically:

- > CMS 4.2 development project, the scope of which included e-mail management, a recommendation stemming from the JSB 2015 inspection;
- > CMS 4.2.5 development project, which included an updated Article 13 form (comprising structured data exchange, a new PDF and an updated import mechanism for the CMS);

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⁷ "The Joint Supervisory Body will liaise with the Data Protection Officer of Eurojust where appropriate".

- > implementation of an automated deletion of log file entries older than three years in SIS II:
- > an e-Recruitment interagency application being developed;
- > the implementation of a requirement for access to multiple mailboxes from Eurojust mobile devices.

9. Opinions

In accordance with Article 26(2) of the Eurojust Council Decision⁸, Eurojust reported regularly to the ISB on the status of negotiations between Eurojust and third States and parties.

9.1 Opinion on the draft Memorandum of Understanding between Eurojust and eu-LISA

On 13 October, the JSB issued a positive opinion⁹ on the draft Memorandum of Understanding between eu-LISA and Eurojust. The JSB welcomed in particular the wording used in its Article 2(2) which provided that the "Exchange of information or experience provided for in this Memorandum of Understanding shall not include the transmission of operational information, including data relating to an identified or identifiable person. Accordingly, the draft Memorandum does not include any legal basis to exchange personal data."

9.2 Data protection processing in European Public Prosecutor's Office

On 8 January, the JSB issued an Opinion on the protection of personal data in the Proposal for a Regulation on the Establishment of the European Public Prosecutor's Office (EPPO)¹⁰ which was circulated to key policy makers in the data protection field. In this opinion, the ISB emphasised the need to ensure that the Regulation complies with all applicable fundamental data protection principles; that the EPPO efficiently and reliably receives case-related personal data from relevant prosecutorial authorities of Member States and has a secure information technology system to carry out its mandate. The JSB highlighted two main issues: first, access of the EPPO to the CMS and second, relations of the EPPO with Eurojust. The JSB emphasised the need for an integrated supervisory scheme and underlined that "consistency in the data protection supervision of the EPPO is best served by the

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^{8 &}quot;[...] Such agreements or working arrangements may only be concluded after consultation with the Joint Supervisory

http://www.eurojust.europa.eu/doclibrary/Eurojustframework/jsb/opinions/Opinion%20of%20the%20JSB%20of%20Eurojust%20on%20the%20dr aft%20Memorandum%20of%20Understanding%20between%200HIM%20and%20Eurojust%20[2015)/Opinion%20of%20JSB%20on%20MoU%20between%20OHIM%20and%20Eurojust%20(2 015).pdf

¹⁰ http://www.eurojust.europa.eu/doclibrary/Eurojust- $\underline{framework/jsb/opinions/Opinion\%20of\%20the\%20JSB\%20on\%20the\%20protection\%20of\%20personal\%20data\%20ing/scholarsetting/schola$ %20the%20Proposal%20for%20a%20Regulation%20on%20the%20EPPO%20(2016)/Opinion%20of%20the%20JSB%20 on%20the%20protection%20of%20personal%20data%20on%20the%20EPPO 2016 EN.pdf

creation of an independent and effective joint supervisory structure – Cooperation Board – with the equal, structural participation of national authorities and the EDPS. Extensive national experience with how to deal with law enforcement information, as well as thorough and authoritative knowledge of data protection, is essential." The JSB expressed its keenness to actively participate in discussions with the EU legislature about the protection of personal data in the Proposal for a Regulation on the Establishment of the EPPO.

On 26 October, the JSB wrote a letter to Mr Axel Voss, MEP and Rapporteur on the EPPO¹¹, raising its concerns about the impact that the establishment of the EPPO might have on Eurojust and about the data protection supervisory schemes of both Eurojust and the EPPO. The JSB plans to organise a meeting on these issues with Mr Voss in 2017. At its meeting with the College of Eurojust in December, the JSB emphasised that "the EPPO may not be established to the detriment of Eurojust by compelling it to reduce its human resources whilst assigning additional tasks to Eurojust. Doing so would be inconsistent with the need to increase the level of security and justice to the benefit of all citizens in the EU, in a balanced system, especially in a context where Eurojust already has to deal with an increasing casework with limited budgetary and human resources. Furthermore and even more important, such reduction in combination with additional tasks will most likely negatively affect the capabilities of Eurojust to uphold a strong data protection regime."

10. Appeals

One of the main tasks of the JSB is to examine appeals submitted to it in accordance with Articles 19(8) and 20(2) of the Eurojust Council Decision¹². If the JSB considers that a decision taken by Eurojust on the processing of data is not compatible with the Eurojust Decision, it shall refer the matter to Eurojust for reconsideration. The JSB received two appeals in 2016, both of which met the requirements to be considered admissible.

The first case, submitted in March 2016, concerned a data subject's appeal against the decision of Eurojust of 25 February 2016 regarding his/her request of 18 November 2015 to have access to possible personal information held about him/her at Eurojust. The JSB issued its final decision¹³ on 30 May 2016, in which it concluded that Eurojust's decision was in conformity with Article 19 of the Eurojust Decision.

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http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/meetings/Letter%20from%20the%20Chair%20of%20JSB%20Eurojust%20to%20Axel%20Voss%202016-10-16/161026%20Letter%20from%20the%20Chair%20of%20JSB%20Eurojust%20to%20Axel%20Voss.pdf

^{12 &}quot;The JSB shall examine appeals submitted to it in accordance with Articles 19(8) and 20(2) of the Eurojust Decision".

¹³ http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/appealdecisions/Appeal%20Decision%202016-05-30/JSB-Appeal-Decision-2016-05-30-EN.pdf

The second case, submitted to the ISB in October 2016, concerned a data subject's appeal against the decision of Eurojust of 15 September 2016 regarding his/her request of 15 June 2016 to access possible personal information stored about him/her at Eurojust. The ISB issued its final decision¹⁴ on 20 January 2017, informing that Eurojust's decision of 15 September was in conformity with Article 19 of the Eurojust Decision.

11. Max Planck Institute research project

In September 2016, the JSB nominated Mr Xavier Tracol, Senior Legal Officer with the Data Protection Service of Eurojust, to take part in a research project of the Max Planck Institute of Luxembourg on boards of appeal and other similar appellate bodies of EU agencies. The aim of this APPEAL project was to identify common best practices and issues in the activities of boards of appeal, with the aim to stimulate reflection by academics and practitioners and to prompt some reform proposals. Mr Tracol attended an APPEAL Seminar in February in Luxembourg and reported back to the ISB on the main outcomes in April.

12. Transparency

The JSB aims to be open and transparent about all its activities and publishes the highlights of its meetings, opinions, decisions on appeals on its webpage¹⁵. In accordance with Article 23(12) of Eurojust Decision, the ISB submits its annual activity report to the Council and publishes this on the webpage as well. Due to budgetary reductions, the JSB's annual activity report 2015 was not translated into other languages.

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¹⁴ http://www.eurojust.europa.eu/doclibrary/Eurojustframework/isb/appealdecisions/Appeal%20Decision%202017-01-20/JSB-Appeal-Decision-2017-01-20-EN.pdf

¹⁵ http://www.eurojust.europa.eu/about/structure/jsb/Pages/independent-joint-supervisory-body.aspx.

13. Future supervisory mechanism

Eurojust is now entering a crucial phase of development, with the foreseen adoption of a Regulation on Eurojust and the establishment of a European Public Prosecutor's Office in 2017. During this transitional period, the JSB will continue to give its input to all the ongoing discussions with the EU legislature, to ensure that the best possible data protection supervision mechanism is put in place at Eurojust combined with the knowledge and expertise acquired through more than a decade of work done by the JSB Eurojust.

At its plenary meeting in June, the JSB emphasised how important it was for the supervisory schemes of the EPPO and Eurojust to be organised along similar lines, maintaining their expertise and independence. The support of JSB appointees in influencing decision-makers in their home countries concerning the JSB's expressed position on the EPPO will be essential in the future discussions.

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Annex 1: Appointees of the Joint Supervisory Body in 2016

Member State	Appointee	Date of appointment
Belgium	Ms Nicole LEPOIVRE	09/01/2003
Bulgaria	Ms Pavlina PANOVA	04/07/2007
Croatia	Mr Ratko Šćekić	01/10/2013
Czech Republic	Mr Jindřich URBÁNEK	01/01/2015 -
Denmark	Ms Birgit KLEIS	27/03/2013
Germany	Ms Yvonne OTT	24/03/2015-
Estonia	Mr Pavel GONTŠAROV	25/10/2004
Ireland	Delegated representative: Ms Eunice DELANEY	07/12/2015
Greece	Mr Ioannis ANGELIS	02/03/2012-
Spain	Ms Mar ESPAÑA MARTI	25/07/2015-
France	Mr Jean-François BOHNERT	20/06/2014
Italy	Mr Alberto PIOLETTI	14/06/2010
Cyprus	Ms Irene LOIZIDOU NICOLAIDOU	21/12/2015
Latvia	Ms Zane PĒTERSONE	27/09/2004
Lithuania	Ms Laureta ULBIENĖ	31/05/2012
Luxembourg	Ms Lotty PRUSSEN	06/05/2002
Hungary	Mr Tibor KATONA	23/06/2008
Malta	Mr Saviour CACHIA	25/03/2014
Netherlands	Mr Wilbert TOMESEN	01/06/2012
Austria	Mr Gerhard KURAS	06/02/2010
Poland	Ms Katarzyna NASZCZYŃSKA	11/05/2015
Portugal	Mr Carlos CAMPOS LOBO Mr Joao Filipe MONTEIRO MARQUES	01/04/2006- 17/11/2016 17/11/2016
Romania	Ms Laura-Marina ANDREI	01/10/2007
Slovenia	Mr Rajko PIRNAT	23/03/2005
Slovak Republic	Mr Dušan ĎURIAN	22/03/2012
Finland	Ms Anne HEIMOLA	01/01/2008

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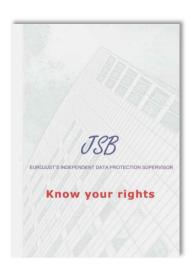
Sweden	Mr Hans FRENNERED	01/07/2002
United	Delegated representative:	01/06/2016
Kingdom	Mr Steve WOOD	01/06/2016

Annex 2: Publications

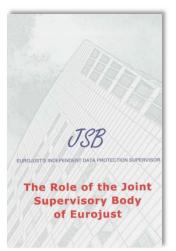
The following publications can be requested from the JSB Secretariat, PO Box 16183, 2500 BD The Hague, Netherlands, e-mail: jsb@eurojust.europa.eu.



Data Protection at Eurojust booklet, available in English, French, German and Spanish. Thanks to the EUfunded IPA project, the booklet has also been translated into Albanian, Bosnian and the language of the Former Yugoslav Republic of Macedonia.



Leaflet 1: *Know your rights*, printed version available in English, French, German and Spanish.



Leaflet 2: The Role of the Joint Supervisory Body of Eurojust, printed version available in English, French, German and Spanish.

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