EU: Case C-402/20 P

Celex No. 62020CJ0402

European Union Cases
Court of Justice

Lípidos Santiga v Commission Case C-402/20 P
(Appeal Case before the General Court T-561/19)

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(Appeal – Energy – Directive (EU) 2018/2001 – Promotion of the use of energy from renewable sources – Limit on use of biofuels produced from food and feed crops – Delegated Regulation (EU) 2019/807 – Definition of high indirect land-use **change** (ILUC) risk feedstock – Palm oil – Action for annulment – Condition that a natural or legal person must be directly concerned – Inadmissibility)

JUDGMENT OF THE COURT (Eighth Chamber)

21 October 2021 * Language of the case: English.

In Case C#402/20 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 24 August 2020,

Lípidos Santiga SA, established in Santa Perpètua de Mogoda (Spain), represented by P. Muñiz Fernández, abogado,

appellant,

the other party to the proceedings being:

European Commission, represented by B. De Meester and K. Talabér-Ritz, acting as Agents,

defendant at first instance,

THE COURT (Eighth Chamber),

composed of J. Passer (Rapporteur), President of the Seventh Chamber, acting as President of the Eighth Chamber, F. Biltgen and N. Wahl, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal, Lípidos Santiga SA seeks to have set aside the order of the General Court of the European Union of 11 June 2020, Lípidos Santiga v Commission (T#561/19, not published, 'the order under appeal', EU:T:2020:266), by which that court dismissed its action for partial annulment of Commission Delegated Regulation (EU) 2019/807 of 13 March 2019 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council as regards the determination of high indirect land-use **change**-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed and the certification of low indirect land-use **change**-risk biofuels, bioliquids and biomass fuels (OJ 2019 L 133, p. 1).

Legal context

Directive (EU) 2018/2001

2 Recital 81 of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82) states:

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'… Indirect land-use change occurs when the cultivation of crops for biofuels, bioliquids and biomass fuels displaces traditional production of crops for food and feed purposes. Such additional demand increases the pressure on land and can lead to the extension of agricultural land into areas with high-carbon stock, such as forests, wetlands and peatland, causing additional greenhouse gas emissions. …

While the level of greenhouse gas emissions caused by indirect land-use change cannot be unequivocally determined with the level of precision required to be included in the greenhouse gas emission calculation methodology, the highest risks of indirect land-use change have been identified for biofuels, bioliquids and biomass fuels produced from feedstock for which a significant expansion of the production area into land with high-carbon stock is observed. It is therefore appropriate, in general, to limit food and feed crops-based biofuels, bioliquids and biomass fuels promoted under this Directive and, in addition, to require Member States to set a specific and gradually decreasing limit for biofuels, bioliquids and biomass fuels produced from food and feed crops for which a significant expansion of the production area into land with high-carbon stock is observed. Low indirect land-use change-risk biofuels, bioliquids and biomass fuels should be exempt from the specific and gradually decreasing limit.'

3 Article 3 of that directive, entitled 'Binding overall [EU] target for 2030', provides, in paragraph 1 thereof:

'Member States shall collectively ensure that the share of energy from renewable sources in the Union's gross final consumption of energy in 2030 is at least 32%. The Commission shall assess that target with a view to submitting a legislative proposal by 2023 to increase it where there are further substantial costs reductions in the production of renewable energy, where needed to meet the Union's international commitments for decarbonisation, or where a significant decrease in energy consumption in the Union justifies such an increase.'

4 Article 25 of that directive, entitled 'Mainstreaming renewable energy in the transport sector', provides, in paragraph 1 thereof:

'In order to mainstream the use of renewable energy in the transport sector, each Member State shall set an obligation on fuel suppliers to ensure that the share of renewable energy within the final consumption of energy in the transport sector is at least 14% by 2030 (minimum share) in accordance with an indicative trajectory set by the Member State and calculated in accordance with the methodology set out in this Article and in Articles 26 and 27. …

…'

5 Article 26 of that directive, entitled 'Specific rules for biofuels, bioliquids and biomass fuels produced from food and feed crops', provides, in paragraph 2 thereof:

'For the calculation of a Member State's gross final consumption of energy from renewable sources referred to in Article 7 and the minimum share referred to in the first subparagraph of Article 25(1), the share of high indirect land-use change-risk biofuels, bioliquids or biomass fuels produced from food and feed crops for which a significant expansion of the production area into land with high-carbon stock is observed shall not exceed the level of consumption of such fuels in that Member State in 2019, unless they are certified to be low indirect land-use change-risk biofuels, bioliquids or biomass fuels pursuant to this paragraph.

From 31 December 2023 until 31 December 2030 at the latest, that limit shall gradually decrease to 0%.

…

By 1 February 2019, the [European] Commission shall adopt a delegated act in accordance with Article 35 to supplement this Directive by setting out the criteria for certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels and for determining the high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed. The report and the accompanying delegated act shall be based on the best available scientific data.

…'

Delegated Regulation 2019/807

6 Article 3 of Delegated Regulation 2019/807 , entitled 'Criteria for determining the high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed', provides:

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'For the purpose of determining the high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed, the following cumulative criteria shall apply:

(a) the average annual expansion of the global production area of the feedstock since 2008 is higher than 1% and affects more than 100 000 hectares;

(b) the share of such expansion into land with high-carbon stock is higher than 10%, in accordance with the following formula:

[Graphic not reproduced]

where

xhcs = share of expansion into land with high-carbon stock;

xf = share of expansion into land referred to in Article 29(4)(b) and (c) of Directive (EU) 2018/2001 ;

xp = share of expansion into land referred to in Article 29(4)(a) of Directive (EU) 2018/2001 including peatland;

PF = productivity factor.

PF shall be 1.7 for maize, 2.5 for palm oil, 3.2 for sugar beet, 2.2 for sugar cane and 1 for all other crops.

The application of the criteria in points (a) and (b) above shall be based on the information included in the Annex, as revised in accordance with Article 7.'

7 Articles 4 to 6 of Delegated Regulation 2019/807 lay down criteria for certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels.

8 The Annex to that delegated regulation provides, as regards 'palm oil':

Average annual expansion of production area since 2008 (kha)

Background to the dispute

9 The appellant is a company incorporated under Spanish law, the main activity of which is the importation and the processing on Spanish territory of various raw materials, including palm oil, intended for the production of biofuels.

10 On 13 March 2019, pursuant to Article 26(2) of Directive 2018/2001 , the Commission adopted Delegated Regulation 2019/807 .

Proceedings before the General Court and the order under appeal

11 By application lodged at the Registry of the General Court on 13 August 2019, the appellant brought an action for annulment of Article 3 of Delegated Regulation 2019/807 and the Annex thereto ('the provisions at issue').

12 By separate document, the Commission raised an objection of inadmissibility under Article 130 of the Rules of Procedure of the General Court, alleging that the appellant lacked standing to bring proceedings.

13 By the order under appeal, the General Court upheld that objection and dismissed the action as inadmissible on the ground that the appellant was not directly concerned by the provisions at issue within the meaning of the fourth paragraph of Article 263 TFEU.

Forms of order sought by the parties before the Court

14 By its appeal, the appellant claims that the Court of Justice should:

– set aside the order under appeal;

– declare the action for annulment admissible and refer the case back to the General Court; and

– order the Commission to pay the costs of both sets of proceedings.

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15 The Commission contends that the Court of Justice should:

– dismiss the appeal; and

– order the appellant to pay the costs.

The appeal

16 The appellant puts forward three grounds in support of its appeal. The first alleges that the General Court erred in law in finding that the appellant was not affected by the European Union's exclusion of palm oil biofuel from its market. The second ground of appeal alleges that the General Court erred in law in finding that the Member States have discretion in implementing the prohibition in Article 26(2) of Directive 2018/2001 . The third ground of appeal is divided into two parts and alleges, first, that the General Court's legal classification of the effects of the provisions at issue on the appellant's situation was manifestly incorrect and, second, that the General Court's interpretation and application of the condition that a natural or legal person must be directly concerned, within the meaning of the fourth paragraph of Article 263 TFEU, by the provisions which it seeks to have annulled were manifestly incorrect.

The second part of the third ground of appeal Arguments of the parties

17 The appellant claims that the General Court misapplied the condition that a natural or legal person must be directly concerned, within the meaning of the fourth paragraph of Article 263 TFEU, by the provisions which it seeks to have annulled, in so far as the EU Courts have, on numerous occasions and in areas other than competition or State aid, acknowledged that factual effects, relating only to the factual situation of an applicant, are sufficient for that applicant to be recognised as having standing to bring proceedings.

18 The Commission contends that the second part of the third ground of appeal should be rejected.

Findings of the Court

19 According to settled case-law, the condition that a natural or legal person must be directly concerned by the decision against which the action is brought requires two cumulative criteria to be met, namely, first, the contested measure must directly affect the legal situation of that person and, second, the contested measure must leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from the EU rules alone without the application of other intermediate rules (judgment of 6 November 2018, Scuola Elementare Maria Montessori v Commission , Commission v Scuola Elementare Maria Montessori and Commission v Ferracci , C#622/16 P to C#624/16 P, EU:C:2018:873, paragraph 42 and the case-law cited).

20 The General Court was therefore right to hold, in paragraph 45 of the order under appeal, that the mere fact that a measure may exercise an influence on an applicant's substantive situation cannot be sufficient ground for that applicant to be regarded as directly concerned by the measure.

21 Moreover, the case-law relied on by the appellant does not support its argument that applicants have been recognised, on numerous occasions and even in areas other than competition or State aid, as having standing to challenge an act which concerned only their factual situation.

22 In the first place, as regards the four cases cited by the appellant in the field of State aid, namely the cases giving rise to the judgments of 28 January 1986, Cofaz and Others v Commission (169/84, EU:C:1986:42); of 22 November 2007, Spain v Lenzing (C#525/04 P, EU:C:2007:698); of 27 April 1995, ASPEC and Others v Commission (T#435/93, EU:T:1995:79); and of 22 October 1996, Skibsværftsforeningen and Others v Commission (T#266/94, EU:T:1996:153), it is sufficient to note, as the General Court did, in essence, in paragraph 46 of the order under appeal, that the rules adopted in that field are intended to protect competition and the fact that Commission decisions leave intact all the effects of national measures which the applicants claimed, in a complaint addressed to that institution, were not compatible with that objective and placed them in an unfavourable competitive position, makes it possible to conclude that those decisions directly affect their legal situations, in particular their right under the provisions on State aid of the FEU Treaty not to be subject to competition distorted by the national measures concerned (see, to that effect, judgment of 6 November 2018, Scuola Elementare Maria Montessori v Commission , Commission v Scuola Elementare Maria Montessori and Commission v Ferracci , C#622/16 P to C#624/16 P, EU:C:2018:873, paragraph 43 and the case-law cited).

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23 In the second place, in so far as the rules on concentrations pursue, as is apparent in particular from recital 2 and Article 2 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1), the same objective, it must be held that that same reasoning also underlies the four judgments of the General Court relied on by the appellant, namely the judgments of 19 May 1994, Air France v Commission (T#2/93, EU:T:1994:55, paragraph 41); of 3 April 2003, BaByliss v Commission (T#114/02, EU:T:2003:100, paragraph 89); of 30 September 2003, ARD v Commission (T#158/00, EU:T:2003:246, paragraph 60); and of 4 July 2006, easyJet v Commission (T#177/04, EU:T:2006:187, paragraph 32).

24 In the third place, as regards the judgment of 3 May 2018, Distillerie Bonollo and Others v Council (T#431/12, EU:T:2018:251), cited by the appellant, it should be noted that, in the judgment on the appeal brought against that judgment, the Court of Justice relied on three factors in order to conclude that the regulation at issue directly affected the legal situation of the applicants at first instance. Thus, the Court pointed out, first, the fact that those applicants played an important role at all stages of the administrative procedure that led to the adoption of that regulation, second, the fact that those parties were identified by name in that regulation, as EU producers who had lodged a request for interim review and, third, the fact that those same parties were concerned by the preliminary investigations, also because of the fact that the anti-dumping duty established by that regulation had been determined by reference to their particular situation on the market concerned by that same regulation and to the injury which they suffered as a result of the dumping practices which the regulation at issue sought to eliminate (judgment of 3 December 2020, Changmao Biochemical Engineering v Distillerie Bonollo and Others , C#461/18 P, EU:C:2020:979, paragraphs 71 to 77).

25 In addition, in the same judgment of 3 December 2020, Changmao Biochemical Engineering v Distillerie Bonollo and Others (C#461/18 P, EU:C:2020:979, paragraph 82), the Court of Justice rejected the Commission's argument that the General Court had erred in law in finding that the applicants were directly concerned by the regulation at issue solely because that regulation affected their factual situation. In that regard, the Court recalled that, in the light of the factors referred to in paragraph 24 of the present judgment, that regulation concerned those parties not only because of their factual situation, but also because of their legal situation in the context of the procedure that led to the adoption of that regulation.

26 In the fourth and last place, as regards the judgment of 13 September 2018, Gazprom Neft v Council (T#735/14 and T#799/14, EU:T:2018:548), also cited by the appellant, it should be noted, as observed by the Commission, that the General Court found in that judgment that the applicant was directly concerned by the provisions of the contested regulation in the case which gave rise to the abovementioned judgment relating to export restrictions, given that it had established that it was involved in exploration and production projects in Russia, such as those referred to in that regulation, and that, consequently, 'as a result of the adoption of the provisions of the contested regulation concerning export restrictions, the applicant [was] unable, in practice and in law, to conclude new contracts' (judgment of 13 September 2018, Gazprom Neft v Council , T#735/14 and T#799/14, EU:T:2018:548, paragraphs 88 and 89).

27 It follows from the foregoing that the second part of the third ground of appeal must be rejected.

The first and second grounds of appeal and the first part of the third ground of appeal Arguments of the parties

28 The appellant claims, in the first place, that the General Court infringed its obligation to state reasons by holding that the biofuel produced from palm oil could be used outside the thresholds laid down in Directive 2018/2001 without providing any reasons to support that conclusion. In addition, according to the appellant, the General Court erred in law, first, in concluding that the provisions at issue did not trigger an express prohibition in Article 26(2) of Directive 2018/2001 on the use of that biofuel and, second, in finding that the appellant was not directly concerned by those provisions because of the possibility of that biofuel being certified as presenting a low indirect land-use **change** ('ILUC') risk.

29 In the second place, the appellant claims that the General Court was wrong to conclude that the Member States have discretion to implement the restrictions provided for in Directive 2018/2001 even though the application of those restrictions is triggered, as regards biofuel produced from palm oil, by the adoption of the provisions at issue.

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30 Lastly, in the third place, the appellant claims that the General Court was wrong to consider that the effects of the provisions at issue on which it had relied were purely economic and therefore concerned only its economic situation.

31 The Commission disputes those arguments.

Findings of the Court

32 By the provisions at issue, the Commission laid down criteria for determining high ILUC-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed.

33 It follows from those provisions, in particular from the data in the Annex to Delegated Regulation 2019/807 , that those criteria are met in the case of palm oil.

34 Those provisions were adopted on the basis of the fourth subparagraph of Article 26(2) of Directive 2018/2001 and form part of a legal framework which lays down, first, a binding overall objective of ensuring that the share of energy from renewable sources in the European Union's gross final consumption of energy in 2030 is at least 32% (Article 3(1) of that directive) and, second, an obligation which each Member State must impose on fuel suppliers to ensure that the share of renewable energy within the final consumption of energy in the transport sector is at least 14% by 2030 (first subparagraph of Article 25(1) of that directive). It also follows from that legal framework that, for the purposes of calculating, in a given Member State, the gross final consumption of energy from renewable sources referred to in Article 7 of Directive 2018/2001 and the minimum share referred to in the first subparagraph of Article 25(1) of that directive:

– the share of biofuels and bioliquids, as well as of biomass fuels consumed in transport, where produced from food and feed crops, are to be no more than one percentage point higher than the share of such fuels in the final consumption of energy in the road and rail transport sectors in 2020 in that Member State, with a maximum of 7% of final consumption of energy in the road and rail transport sectors in that Member State (first subparagraph of Article 26(1) of Directive 2018/2001);

– the share of high ILUC-risk biofuels, bioliquids or biomass fuels produced from food and feed crops for which a significant expansion of the production area into land with high-carbon stock is observed is not to exceed the level of consumption of such fuels in that Member State in 2019, unless they are certified to be low ILUC-risk biofuels, bioliquids or biomass fuels (Article 26(2) of Directive 2018/2001), and

– from 31 December 2023 until 31 December 2030 at the latest, the limit referred to in the preceding indent is to decrease gradually to 0% (second subparagraph of Article 26(2) of Directive 2018/2001).

35 In that respect the General Court did not err in law in finding, in paragraph 48 of the order under appeal, and after noting, in paragraph 23 of that order, the case-law cited in paragraph 19 above, that the appellant is not directly concerned by the provisions at issue and therefore does not have standing to challenge them before the EU Courts, within the meaning of Article 263 TFEU.

36 Those provisions, read in the light of the legal framework referred to in paragraph 34 above, are addressed to the Member States and concern only the possibility for them to include biofuels, bioliquids and biomass fuels produced from palm oil for the purpose of calculating the gross final consumption of energy from renewable sources referred to in Article 7 of Directive 2018/2001 and the minimum share referred to in the first subparagraph of Article 25(1) of that directive.

37 As the General Court pointed out in paragraph 34 of the order under appeal, and as the Commission submits again in the present proceedings, the provisions at issue neither regulate nor alter the conditions governing the importation, processing or marketing of palm oil intended for the production of biofuels, or for any other purpose. They do not create any legal obligation or constraint imposed directly on the appellant.

38 Similarly, those provisions do not lay down and do not directly entail a prohibition on the placing on the market of palm oil or biofuels produced from that material, unlike the measures referred to in the order of 6 September 2011, Inuit Tapiriit Kanatami and Others v Parliament and Council (T#18/10, EU:T:2011:419), and in the judgment of 25 October 2011, Microban International and Microban (Europe) v Commission (T#262/10, EU:T:2011:623), relied on by the appellant.

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39 It is true that, as a result of the adoption of the provisions at issue, Member States will in principle be prohibited, as from 1 January 2031, from including biofuels produced from palm oil for the purposes of the calculation referred to in paragraph 36 above and that the Member States have no discretion in that regard.

40 However, first, such a prohibition concerns only the inclusion of palm oil biofuels in that calculation and not the use on the market of those biofuels.

41 Second, it should be borne in mind that the minimum share referred to in the first subparagraph of Article 25(1) of Directive 2018/2001 and referred to in paragraph 36 above concerns only at least 14% of final consumption of energy in the transport sector. Moreover, the share of energy from renewable sources which the European Union must, under Article 3(1) of that directive, reach by 2030, concerns only at least 32% of its gross final consumption of energy.

42 Thus, as the General Court observed in paragraph 42 of the order under appeal, the Member States have a certain discretion as regards the remaining share of energy, which may be produced from sources of their choice, including high ILUC-risk renewable sources such as biofuels produced from palm oil.

43 The prohibition under the second subparagraph of Article 26(2) of Directive 2018/2001 does not therefore imply a prohibition on the placing on the market of those biofuels, with the result that, contrary to what the appellant claims, the General Court did not err in law in holding, first, that the provisions at issue did not trigger an express prohibition in Article 26(2) of Directive 2018/2001 concerning the use of such biofuels and, second, that the Member States have discretion as regards the measures to be taken in order to attain the objectives set out by Directive 2018/2001 concerning renewable energy, including as regards high ILUC-risk feedstock such as palm oil.

44 In those circumstances, contrary to what the appellant claims, it must be considered that the General Court correctly held that the consequences which the appellant relies on stem from the implementing measures which will be adopted by the Member States and not from the provisions at issue.

45 Furthermore, those consequences are, as the General Court held without error, substantive and not legal. Since the provisions at issue do not regulate or alter the conditions governing the importation, processing or marketing of palm oil intended for the production of biofuels and do not directly result in a prohibition on the placing on the market of such biofuels, those provisions do not affect the conditions governing the exercise of the appellant's activities and do not in any way require it to put an end to those activities.

46 It follows that, although, in accordance with the objective set out in recital 81 of Directive 2018/2001 , the implementation of the second subparagraph of Article 26(2) of that directive and the provisions at issue adopted on the basis thereof are likely to limit the production of biofuels derived from palm oil, the view cannot be taken that the provisions at issue are of direct concern to the appellant.

47 That finding cannot be called into question by the current state of the market, including the fact, put forward by the appellant, that '[biofuels] are prohibitively priced compared to non-renewable energy sources, such as oil or coal'. In accordance with the case-law cited in paragraph 19 above and contrary to what the appellant claims, the consequences for it of the adoption of the provisions at issue, combined with the market situation, are not sufficient, in the absence of direct effects of those provisions on its legal situation, to establish that those provisions are of direct concern to it.

48 The General Court was therefore not required, contrary to what the appellant claims, to examine whether biofuel derived from palm oil could in fact be imported or sold on the EU market outside the mandatory targets of Directive 2018/2001 and to state reasons for its decision in that regard.

49 Lastly, in the light of the foregoing, it is not necessary to examine, first, the appellant's argument that the General Court erred in law in finding, in paragraph 41 of the order under appeal, that the limit laid down in Article 26(2) of Directive 2018/2001 does not apply to those shares of the gross final consumption of energy from renewable sources in the gross final consumption of electricity or to that in the heating and cooling sector, because Article 2(33) of that directive defines 'biofuels' as 'liquid fuel for transport …', or, second, the appellant's arguments on certification of low ILUC-risk biofuels, bioliquids and biomass fuels pursuant to Articles 4 to 6 of Delegated Regulation 2019/807 .

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50 Even if they were well founded, those arguments would not **change** the foregoing analysis, according to which the provisions at issue, read in the light of the legal framework of which they form part, first, do not regulate or alter the conditions for the importation, processing or marketing of biofuels derived from palm oil and, second, do not directly entail a prohibition on the placing on the market of such biofuels and, consequently, do not directly concern the appellant.

51 It follows that the first and second grounds of appeal and the first part of the third ground of appeal must be rejected as unfounded.

52 Since none of the grounds of appeal put forward by the appellant in support of its appeal is well founded, the appeal must be dismissed.

Costs

53 Under Article 138(1) of the Rules of Procedure of the Court of Justice, applicable to appeal proceedings pursuant to Article 184(1) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against the appellant and the latter has been unsuccessful, the appellant must be ordered to pay the costs.

On those grounds, the Court (Eighth Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Lípidos Santiga SA to pay the costs.**

Passer

Delivered in open court in Luxembourg on 21 October 2021.

A. Calot Escobar

Registrar

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