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# Neutralization of Transport Documents in Road Transport

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## ABSTRACT

*In 1956 there was a significant step in international road freight transport – conclusion of Convention on the contract of carriage in international road freight transport (CMR Convention), the basic purpose of which was to unify the rules in the international transport of goods and thus promote the development of international trade. From a practical point of view, this was very important for both carriers and transporters. The Convention describes the most important document in the carriage of goods – the CMR consignment note.*

*Recently, the term «neutralization» has been used in connection with the CMR consignment note, which is considered as an interference with the system of functioning of transport documents, which aims to obscure the actual movement of the consignment during transport. At the same time, neutralization of the consignment note is not so much contrary to legal norms as it can lead to undesirable consequences for carriers. For this reason, the question of whether it is possible to neutralize the CMR consignment note in accordance with the current rules and whether the neutralization of the CMR consignment note does not violate the functionality of the existing system is relevant. Therefore, the objective of this work is to study the reasons and methods for neutralizing CMR consignment notes, as well as options for handling neutralized consignment notes.*

*Considering that neutralization of the consignment note has become a relatively common practice and means the exchange of original consignment notes or transport documents with other consignment notes or transport documents, canceling the actions of the first consignment note, in the article the authors, based on their own research, identified the possibilities of using the neutralization of the CMR consignment note in practice for certain types of goods, routes of the most frequent use, as well as the risks of these procedures in road transport.*

*Keywords: transport, contract, document, Convention on the contract of carriage in international road freight transport (CMR Convention), document neutralization, parallel trade.*

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## INTRODUCTION

Obviously, in the modern world is an important need for mankind and is also a prerequisite for normal functioning of trade. Within the EU, road transport has gradually gained a dominant position, mainly due to reasons such as a quality and dense road network, flexibility, speed, convenience, adaptability, and many others [1; 2]. Transport of goods in the framework of international trade is possible only based on the conclusion of the transport contract [3; 4]. Concluding such a contract would be significantly more complicated if there were no Convention on the contract of carriage in international road freight transport (CMR Convention). Carriers would have to proceed according to the particularities of the national regulations of the countries where the transport would take place. In 1956 in Geneva CMR Convention was concluded. The purpose of the Convention is to standardize the conditions governing the contract of carriage of goods in the cross-border carriage of goods. The CMR consignment note plays an important role in such transportation. It is a document of the conclusion of the contract of carriage and at the same time, it is a document of acceptance of the consignment by the carrier [5].

Neither the CMR Convention, no other legal documents knows the term neutralization of transport documents.

The *objective* of this article is to identify what procedures, in terms of transport documents and the responsibilities of the contracting parties, take place in the neutralization of documents. There is a presumption that in the neutralization of documents one of the contracting parties is harmed or one of the contracting parties assumes a greater risk in the standard contractual relationship. In the article the authors, based on own research, formulated proposals that would help the contracting parties to identify and prevent the neutralization of documents if the neutralization could harm the rights of the person.

### Analysis of the Current State

Concluding a contract of carriage for international transport would be significantly more complicated for the carrier in the absence of the CMR Convention. In this case, the carrier would have to know all the national transport regulations of the countries where one would like to carry the goods [6]. There would be misunderstandings in the conclusion of contracts, including claims on the carrier, due to differences in legislation between countries and due to their inconsistent interpretation [4]. Therefore, in Geneva on May 19, 1956, CMR Convection was adopted. The basic purpose of this Convention is to unify the rules in the international carriage of goods by road, thereby promoting the development of international trade. From a practical point of view, this is of great importance for both carriers and transporters, since in the absence of such a convention everything would be governed by national regulations [7]. In 1978, a Protocol to the Convention was amended in Geneva, regulating Article 23 describing compensation for damage [8]. Later in 2008, the Convention was supplemented by an Additional Protocol, the amendment relating to the electronic consignment note.

International transport is a transport where the place of loading is in a country other than the place of unloading [9]. The CMR Convention may be used for the international carriage of goods only if the place of loading or the place of unloading is in a State Party to the CMR Convention [10; 11]. There are three exceptions where it is not possible to conclude a contract of carriage under the CMR Convention, even though it is an international carriage [12; 13]. The Convention does not apply to the carriage of postal items, dead persons and migratory uppers. The main reason why these consignments cannot be transported under the CMR Convention is the fact that it is not possible to objectively determine the value of the consignment and thus to identify the carrier's liability for carriage [14]. The Convention has been gradually ratified by individual European countries, but non-European countries are also contracting parties. Currently, 56 countries have signed the CMR Convention, of which only 45 have ratified the Protocol to the Convention [15]. The member countries are listed in the Table 1. The first column lists the countries that have adopted the Convention as well as the Protocol to the Convention. In the second column are countries that are only members of the CMR Convention.

The CMR Convention governs the rules, rights, obligations, and responsibilities of the carrier and the transporter. It regulates the conclusion and implementation of transport contracts as well as the procedures for claiming damages [16]. It further describes what the accompanying documents for transport must contain [17]. It describes the most important document in the international transport of goods, which is the

Table 1

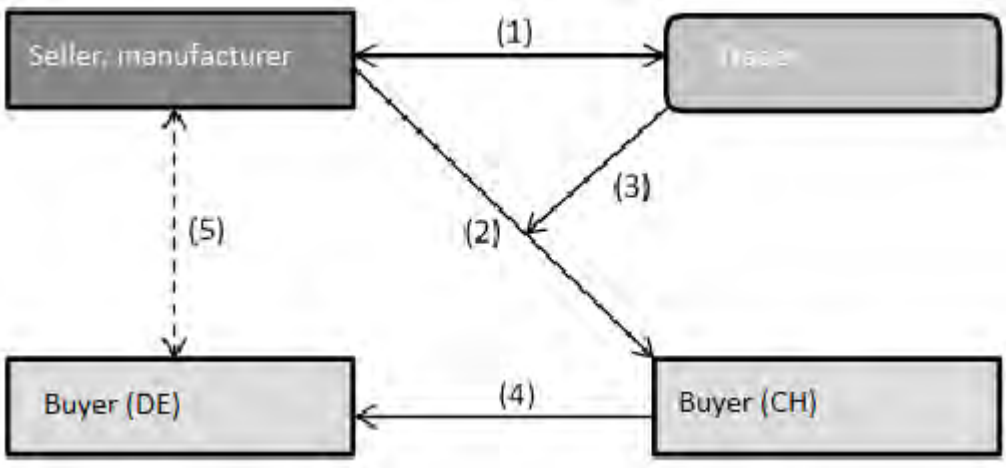
**States Parties to the CMR Convention***

| CMR Convention and CMR Protocol | Only CMR Convention |
|---|---|
| France, Austria | Bulgaria |
| Netherlands, Germany | Bosnia and Herzegovina |
| Italy, Poland | Morocco |
| Belgium, Luxembourg | Kazakhstan |
| Denmark, United Kingdom of Great Britain and Northern Ireland | Tajikistan |
| Norway, Sweden | Serbia |
| Portugal, Switzerland | Mongolia |
| Hungary, Romania | Azerbaijan |
| Finland, Spain | Montenegro |
| Greece, Russian Federation | Ukraine |
| Ireland, Slovenia | Syrian Arab Republic |
| Croatia, Lithuania | |
| Belarus, Estonia | |
| Republic of Moldova, Slovakia | |
| Czech Republic, Latvia | |
| Tunisia, Turkey | |
| Uzbekistan, Turkmenistan | |
| North Macedonia, Kyrgyzstan | |
| Iran, Georgia | |
| Cyprus, Lebanon | |
| Armenia, Albania | |
| Malta, Jordan, Pakistan | |

Compiled by the authors based on the UNTC.
* The text of the Convention: https://unece.org/fileadmin/DAM/trans/conventn/cmr_e.pdf.

CMR consignment note (an official document that has a standardized form and is usually written in two languages) [18–20]. The consignment note shall be drawn up in three original copies signed by the consignor and the carrier [21]. The first red copy shall be addressed to the consignor and shall be a proof to the consignor that the goods have been handed over to the carrier for carriage. The second blue copy shall be handed over to the consignee of the goods so that he knows how many goods to take over from the carrier. The third green copy shall remain with the carrier and shall also constitute proof that the goods have been handed over to the consignee [22]. Unless proven otherwise, the consignment note shall be credible proof of the conclusion and content of the contract of carriage as well as the acceptance of the consignment by the carrier. If the consignment note does not contain the carrier's statement of reasons, the legal presumption is that the consignment and its packaging were in good condition at the time of acceptance by the carrier and that the number of packages, their marks, and numbers corresponded to the information on the consignment note [14; 23].

The carrier's liability shall commence at the moment of acceptance of the goods for carriage and end at the moment of delivery of the goods to the consignee [24; 25]. The carrier is responsible for damage or loss of the goods during transport and also for exceeding the delivery time. The Carrier has to, by the provisions of the CMR Convention, compensate for any loss of the consignment arising from the moment of its acceptance for carriage to the moment of its delivery [26]. The refund shall be calculated based on the value of the consignment at the place and time of its acceptance for carriage. The value of the consignment is determined by the exchange price, if not the exchange price, by the current market price, and if neither the exchange price nor the market price, by the general value of goods of the same nature and quality [27]. The CMR Convention provides that damages may not exceed a fixed amount per kilogram of missing gross weight. In the original version of the CMR Convention, damages may not exceed 25 francs per kilogram of missing gross weight. Franc means a golden franc weighing 10/31 grams and a purity of 0,900 [15]. This limitation of liability currently applies in eleven countries that have not ratified the CMR protocol. Other countries have significantly reduced the liability of carriers by replacing the gold franc with a unit called Special Drawing Rights (SDR). The carrier is obliged to compensate the owner of the transported goods in the amount of 8.33 SDR for each kilogram of damaged, destroyed or lost goods. The specific value depends on the SDR and EUR exchange rates [28–30]. The carrier




*Pic. 1. Scheme of neutralization of CMR consignment note at parallel trade (compiled by the authors).*

must also cover the transport, customs and other expenses involved in the carriage of the consignment. This value is also covered by the liability insurance of the carrier. However, if the CMR consignment note states the price of the consignment or the consignor's particular interest in delivery, in this case, the carrier is liable for the full value of the goods thus indicated. In the event of the total loss of the consignment, the carrier must pay the full value of the goods as well as import charges, customs duties, VAT, excise duties, etc. If this value is higher than the amount of the insurance coverage of the carrier's liability arising from the CMR Convention, the carrier should insure such goods [31]. This applies in particular to light and expensive goods. If the delivery time is exceeded and the consignee proves that he has suffered damage, the carrier is obliged to pay only the amount of the delivery charge.

The above analysis confirms that the CMR Convention is an important legal standard for both the carrier and the transporter. The CMR consignment note constitutes a credible document for both the carrier and the transporter. CMR consignment note is also a credible document for third parties, eg. customs offices, insurance companies, etc. For this reason, further consideration should be given to whether the CMR consignment note can be neutralized under the rules currently in force and whether the neutralization of the CMR consignment note does not jeopardize the functionality of the existing system.

Research of the Concept of Neutralization of the CMR Consignment Note and its Reasons

The neutralization of document is a process known only to the transport sector. The authors of this article have failed to get the definition of this term in any legislation or standards. Nevertheless, this term in road freight has been known and used for some years now. The word neutralization has several meanings. Generally, it also means revocation [32]. In transport, neutralization means the exchange of original consignment notes or transport documents with other consignment notes or transport documents. It is, therefore, the annulment of the effect of the first consignment note [33].

The neutralization of transport documents is in most cases linked to illegal logistics activity called «'parallel trade»'. Parallel trade is defined as a trade-in product that takes place outside official distribution and is created by a particular company [32; 34]. Through their distribution, companies can cause price differences in different countries, exploiting national differences in consumer behaviour. Parallel merchants buy products in countries where they sell them at lower prices and then sell them in countries with a higher price. The product is not forged but imported from the country without the permission of the owner of the intellectual property.

The neutralization of consignment note in the parallel trade can be explained in the following Pic. 1.

The explanations to the scheme are as follow.

(1) The trader agrees with the seller (manufacturer) that he will distribute his product to a country where his product is not currently sold (for example Switzerland) if he is offered a lower price than his original sale price. Lower

sales price because of promotion in the new market.

(2) The CMR consignment note is written, whereas a consignor is mentioned the manufacturer and as the buyer is listed company in Switzerland.

(3) After the goods begin to be transported, the driver receives a command to neutralization CMR. He stops the vehicle for example at the gas station and neutralizes the CMR consignment note.

(4) This consignment note lists Switzerland's company as the consignor and the recipient is a German company. The trader sells these goods in Germany at a much higher price than the one he bought, (5) while the manufacturer does not know that his goods are sold in Germany, where he already sells these goods.

The purpose of neutralizing the consignment note should be to ensure business secrecy, where the trader wants to prevent the recipient from knowing the manufacturer and purchasing terms. Based on theoretical research the following can be identified reasons for neutralizing the consignment note:

*Reason A* – when the trader does not want the manufacturer to find out who is buying the product. In this case, the driver loads the goods in the vehicle and writes out a CMR consignment note indicating the consignor and the original consignee. After a while, the driver will be instructed to neutralize and writes out new documents indicating another consignee.

*Reason B* – when the trader does not want the customer to know where the goods are produced. The driver loads the goods into the vehicle and the consignment note is sent to the consignee's warehouse indicating the place of loading other than the actual one. In the event of a roadside check, the driver shall draw up a consignment note indicating the actual place of loading and unloading of the consignment. However, the end customer will receive documents in which the place of loading is different from the actual one, so he will not know who the actual producer of the goods is.

*Reason C* – Nobody knows anything, that is, the manufacturer does not know where the goods are and the final customer does not know where the product comes from. This is the case when the driver loads the goods into the vehicle and writes out a consignment note which is stored in the warehouse of departure. Later, the driver will be instructed to neutralize and will issue a new consignment note indicating the actual consignor but the new consignee. Subsequently, before approaching a new consignee, the driver shall write out a third consignment note in which the consignor is different from the actual consignor and the new consignee listed in the second consignment note.

Based on this, it can be argued that there are up to three ways of neutralizing transport documents. We conducted our research in the next part which is based on the theoretical identification of the problem of neutralization of transport documents.

## RESULTS OF THE OWN RESEARCH

For acquiring information about the neutralization of consignment note of CMR, a survey was conducted electronically, in software called «Google Forms». After the creation of a survey, the pre-test was done to confirm that questions are understandable enough. Later, this survey was sent to the public on discussion forums, then it resent through the social sites and added into groups including members of the road freight transport (transporters). There were 190 respondents who filled the survey.

The questionnaire contained 3 questions. The first question aimed to determine whether carriers (drivers) have experience in neutralizing CMR consignment note. The second question aimed at identifying the type of goods in which the CMR consignment note was most neutralized. As a final question, we wanted to find out on which transport routes the consignment note was used (the country of dispatch and the country of destination). The questionnaire survey was carried out to obtain basic information on the possibility of using the neutralization of the CMR consignment note in practice and for what kind of goods it is most often performed. We also wanted to find out that if carriers have real experience with the neutralization of transport documents, what countries are in such cases indicated in the shipper and consignee boxes in the CMR consignment note.

Survey output confirms the assumption that carriers have experience with neutralizing the CMR consignment note. The results of the survey show that up to 66 % of the interviewed carriers (drivers) already have experience with neutralization, 34 % have no experience or have never encountered the concept of CMR neutralization. Although no special literature describes the neutralization of the CMR consignment note, it

**Table 2**

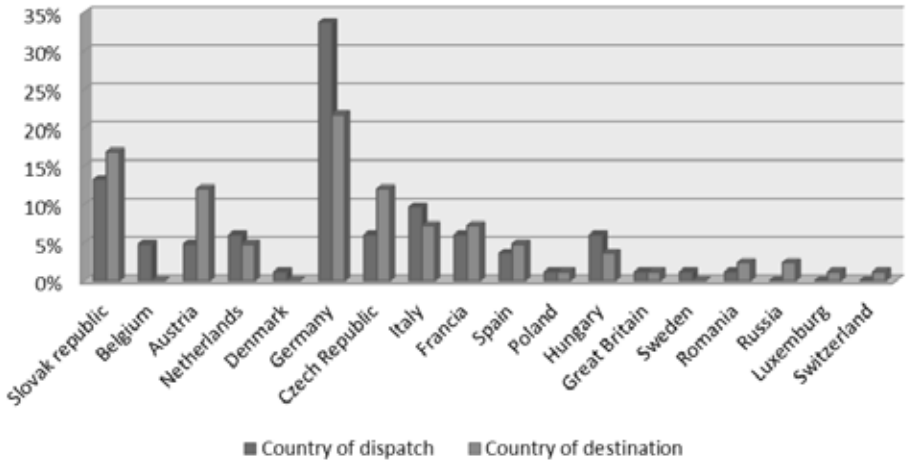
**Share of transported consignments in Slovakia and neutralized consignments (compiled by the authors)**

| Type of goods | Share in total transportation in Slovakia (%) | Share in total neutralized transportations (%) | The ratio of the share of transportations of a particular commodity to that of transportations with neutralized documents |
|---|---|---|---|
| Secondary materials; municipal waste and other waste | 3,50 | 21,25 | 6,0714 |
| Wood, articles of wood and cork; articles of straw and plaiting materials; pulp, paper and paper products; | 3,52 | 8,75 | 2,4858 |
| Textiles and textile products; leather products | 0,59 | 1,25 | 2,1186 |
| Food, beverages and tobacco | 8,82 | 17,50 | 1,9841 |
| Chemicals, chemical products and man-made fibers; rubber and plastic products; nuclear fuel | 5,51 | 7,50 | 1,3612 |
| Furniture; other industrial goods | 2,11 | 2,50 | 1,1848 |
| Machinery and equipment; office machines and computers; electrical machinery and apparatus | 5,32 | 6,25 | 1,1748 |
| Metal ores and other mining and quarrying products; products thereof; turf; uranium and thorium | 36,62 | 27,50 | 0,7510 |
| Transport equipment | 4,67 | 2,50 | 0,5353 |
| Equipment and material used in the carriage of goods | 3,89 | 1,25 | 0,3213 |
| Products of agriculture, hunting and forestry, fish and other fishery products | 13,18 | 3,75 | 0,2845 |
| Other non – metallic mineral products | 9,35 | 0,00 | 0,0000 |
| Coke and refined petroleum products | 2,44 | 0,00 | 0,0000 |
| Coal and lignite; oil and natural gas | 0,23 | 0,00 | 0,0000 |
| Goods transported during the moving of household and office; luggage | 0,14 | 0,00 | 0,0000 |
| Unidentifiable, other goods | 0,12 | 0,00 | 0,0000 |
| Total | 100 % | 100 % | – |

should be noted that carriers are commonly encountered with these practices.

The second part of the research dealt with the question of what kind of goods usually requires the consignor or consignee to neutralize the transport documents. The results of the research are expressed in Table 2, which describes the different categories of goods reported by the carriers as transported goods that were entered in the CMR consignment note in box 9 Labeling of goods in case the consignment note was neutralized. It may be noted that the documents are neutralized for different types of goods. The table also contains information on the percentage of individual categories of transported goods in Slovakia (information from EUROSTAT). However, this survey shows that the most neutralization is associated with the transport of metal ores and metal products (27,50 %), which represents the most transported category of goods in the Slovak Republic (36,62 %). Furthermore, in the volume of 21,25 % of all neutralized documents were related to the transport of waste. In the Slovak Republic, it is not often transported type of goods, only 3,5 %. On the third place is the transport of food and beverages, which represents almost 18 % of the total neutralized transported quantity of goods, the fourth most frequently transported type of goods in Slovakia. On this basis, it can be said that neutralization does not, therefore, apply to specific transported goods and is not related to the total volume of transported goods in Slovakia (both high and lower share of transported goods).

However, if we observe the importance of neutralizing transport documents to the share of transport of a particular commodity, then the highest share is achieved by secondary materials, municipal waste and other waste. These shipments account to share for only 3,5 % of total transport but up to 21,25 % of total transport with an identified neutralization of tickets (the ratio




*Pic. 2. Country of dispatch and destination at neutralizing transport documents (compiled by the authors).*

between the percentages reaches a coefficient of up to 6,0714). Furthermore, the following items are also important from the neutralization of transport documents: wood, articles of wood and cork; articles of straw and plaiting materials; pulp, paper, and paper products with a coefficient of 2,4858 and textiles and textile products; leather products with a coefficient of 2,1186.

The last part of the research was aimed at obtaining information on transport routes where neutralization is used. We wanted to find out from the carriers on what transport routes they received a request from the customer to carry out the neutralization of the consignment note. As different transport routes were mentioned, these routes were divided into countries of dispatch and destination. The results are shown in Pic. 2, which shows that Germany is the country where neutralization is most used. Germany accounts for almost 35 % of the replies as the country of dispatch and 22 % than the country of destination. Furthermore, neutralization is mainly used in connection with the Slovak Republic. The other countries mentioned were not listed as much as Germany and Slovakia.

This survey also showed that neutralization is used not only for international transport but also for national (cabotage) transport. 87 % of carriers carried out the neutralization of the consignment note for international transport, the remaining 13 % for domestic transport.

**Risks Associated with the Neutralization of Transport Documents**

With the neutralization of the transport documents, which in practice exists and which is described above, some risks arise not only on the part of the consignor but also on the part of the carrier. To neutralization, we identified the following risks:

• *Fraud* risk occurs when someone enriches someone else's property or otherwise by misleading someone or using someone else's mistake, causing damage to someone else's property. The carrier cannot know in advance whether neutralization will be used to conceal fraud on the consignor. Fraud is circumventing a regional pricing policy or getting rebates that are not eligible. For example, if the consignor requests a lower price from the manufacturer for deliveries to the Baltic States, so that the goods can be placed on a new market. The goods will be transported to Germany. The Sender will mislead the manufacturer, and there will be a lie and a violation of the Criminal Code. This type of trading is known as «Parallel trade».

• *Damaging foreign rights* occurs when someone else causes serious harm to rights by misleading someone or making use of someone's mistake. According to Article 12 of the CMR Convention, the seller has the right to change dispositions until the moment of delivery and if the holder of the first copy of the CMR. For example, if the consignee is found to be insolvent, it has the right to require the carrier to return the goods. However, if the consignment note is neutralized immediately after loading, this right is difficult to assert.

• *Risk of insurance of the carrier's liability*. The carrier in the event of a loss event must prove to the insurance company the original transport documents related to the carriage in which the

consignment or its part was damaged. The carrier, who on the order of the customer exchanges the transport documents during the carriage, carries out the carriage according to other conditions than originally agreed in the contract of carriage. According to the opinion of several insurance companies, they would not realize insurance benefits when the transport documents were neutralized. In this situation, there is a risk on the part of the carrier that it carries out the transport without insurance coverage.

In addition to these risks, there are other risks in the area of tax law or cabotage operations, which we will not discuss in detail because they are either on the side of the transport customer or on the side of the carrier who is aware that the transport documents have been neutralized.

## CONCLUSIONS

The CMR Convention, which governs the contract of carriage for international road freight transport, is today the most important instrument of sharing responsibility between the carrier and the customer. The CMR Convention also defines credible documents that are necessary for the execution of the carriage and which constitute proof of the carriage not only for the parties but also for third parties. In the absence of credible research into the neutralization of the transport documents, the paper aims to confirm the hypothesis that the documents are neutralized. Research by the authors confirmed that in practice the transport documents were neutralized. Up to 66 % of the surveyed carriers confirmed that they had neutralized the transport documents at the request of the client of transport. From further research, it can be concluded that neutralization does not only apply to the transport of a particular type of goods. However, we can say that our research shows that documents are most neutralized when transporting secondary materials, municipal waste, and other waste. We have also concluded that the consignment note exchange is used on different transport routes. It is mostly connected with the transport of goods from/to Germany and further from/to Slovakia. Neutralization is used not only in international freight transport but also in national freight, where there may be problems of non-compliance with cabotage conditions.

Since neutralization of the consignment note is not a technical term and is not defined in any legislation or the CMR Convention, the neutralization procedure needs to be specifically addressed. In this article, we identified some risks on the shipper and carrier side. These are mainly risks related to fraud and infringement of the sender's property rights but also risks related to insurance of the carrier's liability. The authors are aware that there are other risks, for example in the tax area. This paper presents a proposal to prevent the neutralization of the CMR consignment note from the position of the sender. In case the sender has access to data from the transport route – according to the unique CMR consignment note number, the neutralization of the transport documents will be limited. Similarly, in terms of tax risk, it would be appropriate to provide this information to the financial administration. Further research would need to be devoted to this issue.

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