Model for a transparent and rational cannabis policy from tolerating to regulating
FROM TOLERATING MODEL FOR A TRANSPARENT
TO REGULATING
AND RATIONAL CANNABIS POLICY

Taskforce Handhaving Cannabis
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"The attitude taken towards coffeeshops here is often a bit derisive, but the coffeeshop is actually a global breakthrough, as it is the best proof that the entire war on drugs is unnecessary."

(Raymond Dufour, chairman of the Drugs Policy Foundation, TROS TV news show 3 June 2011)

"End the criminalisation, marginalisation and stigmatisation of people who use drugs but who do no harm to others. Challenge rather than reinforce common misconceptions about drug markets, drug use and drug dependence. Encourage experimentation by governments with models of legal regulation of drugs to undermine the power of organised crime and safeguard the health and security of their citizens. This recommendation applies especially to cannabis, but we also encourage other experiments in decriminalisation and legal regulation that can accomplish these objectives and provide models for others. Break the taboo on debate and reform. The time for action is now."

(Report of the Global Commission on Drug Policy, June 2011)
The Task Force for the Regulation of Cannabis (Dutch acronym: THC) was established in the summer of 2010 with the aim of developing a concrete and feasible model for the regulation of cannabis in the Netherlands. The task force has representatives of consumers, coffeeshop owners, activists and experts. By integrating expertise and experience from various areas, we hope to contribute to the debate on modernising policy in relation to cannabis.

Dutch policy on cannabis is an unmistakable success in the area of public health. Drug markets are in fact separated and the use of hard drugs is far below the European average as are the number of drug-related deaths and the consumption of cannabis [1]. The decriminalisation of cannabis and the relatively widespread availability of small amounts of cannabis have not led to increased consumption but to significantly fewer prison inmates and a much more transparent sales framework. The system of coffeeshops has developed into a unique subsector of the overall hospitality sector, which also makes a significant contribution in terms of social interaction and information [2].

On 27 May 2011, the Dutch government presented a series of proposals aimed at transforming coffeeshops into closed clubs. These clubs would have a maximum number of members, all of whom have to reside in the Netherlands, would have to provide members with a special club pass, and would have to record consumer related information. In addition, they would have to be located at a distance of at least 350 m from secondary schools and schools providing intermediate vocational education.

The THC characterises these measures as counterproductive symbolic politics. After all, the real problems are not found at the front door but rather at the back door where the cannabis is delivered to the coffee shop. By maintaining the illegal situation at the back door and simultaneously making it much more difficult for potential clients to actually visit the coffeeshop, this government is actually contributing to the problems it says it wishes to combat, namely criminal activity and excessive nuisance. In the meantime, hundreds of thousands of consumers will no longer be able to access reliable product information or benefit from effective controls with regard to their soft drug of choice.

All over the world, voices are increasingly being heard arguing for a different approach to the drugs phenomenon [3]. The core insight behind these voices is that criminalising the use, production and buying & selling of drugs (including soft drugs) does not have any effect on the scale of such use and actually causes more problems than the drugs themselves. The war on drugs is a hopeless fiasco and must stop.

In spite of the above, our government has chosen an approach based exclusively on repression. Such an approach inevitably leads to further criminalisation of consumers and the cannabis sector as a whole and to greater profits for the illegal circuit and criminal organisations. The only sustainable solution is quite evident and also feasible within the
relevant international frameworks, namely the transparent and enforceable regulation of 
the production and supply of cannabis to the coffeeshops. The time has come for real 
solutions, as was also emphasised by Gerd Leers during the second Cannabis Tribunal on 
3 May 2010:

“We can no longer continue on our present course. Other countries such as the Czech 
Republic, Spain and Portugal have also realised this. (...) I think the time has come for a 
European Conference, a conference focusing on a practical approach - not on moralising 
and playing politics but on regulating and implementing. I therefore call on you to focus 
your mental energy on accomplishing this.”

We have taken Leers’ advice to heart, and the model described here is the result. In contrast 
to the plans of the present government, which may very well turn out not to be legally 
feasible, the THC model offers a solution for the existing problems related to the production 
and distribution of cannabis. Earlier model versions have been discussed in detail, for 
example during public debates throughout the country [4] and the third Cannabis Tribunal. 
A large and varied group of experts and parties directly involved have contributed to the 
model, but final responsibility for the model is born solely by the undersigned.

The Task Force for the Regulation of Cannabis:

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Principles of the THC-model:

Regulation of possession and culture for personal use

- Possession of a limited number of female cannabis plants for personal use by persons 18 years or older will not be prosecuted and these plants will no longer be confiscated. The number of plants presently specified in the Opium Act, namely five plants, can serve as the point of departure in this regard.
- Possession of a limited quantity of cannabis for personal use by persons 18 years or older will no longer be prosecuted and this cannabis will no longer be confiscated. In the Opium Act, possession of amounts up to 30 g is defined as a misdemeanour. This limit can also be applied in this regard.
- Individuals will be allowed to organise the culture of cannabis for personal use within a club framework. They will be allowed to grow their plants in a collective growing area and distribute the harvest under the members of the club. Working together within the framework of a club can be an adequate solution for individuals who use cannabis for medicinal purposes and often have higher rates of consumption, for people with very low income levels, for people in thinly-populated areas etc.

Normalising the coffeeshop

- The sale of cannabis is allowed only in coffeeshops. The amount sold per day per client may not exceed the maximum amount that an individual may have in his or her possession at any one time.
- Coffeeshops are allowed to keep a quantity of stock on hand that is related to their turnover. This can easily be monitored and controlled with the help of tax revenue information.
- Coffeeshops will be allowed to continue admitting any person who is at least 18 years of age and can present an ID.
- The provision requiring a minimum distance between coffeeshops and schools will be removed.
- Coffeeshops will be obligated to implement optimum monitoring and supervision of persons entering the shop, solely on the basis of valid identity documents.
- Coffeeshops will continue to do their best to provide adequate information to their clients and to employ individuals with sufficient expertise.
- Municipalities will be given the opportunity to implement an effective policy with regard to the spatial distribution/redistribution of coffeeshops in accordance with
local circumstances. This will enable them to deal more effectively with any excessive nuisance factors. A better spatial distribution can also be effective on a national level. At present, only 23% of municipalities have coffeeshops [5], leading to a great deal of coffeeshop tourism inside the Netherlands. A better distribution would reduce this and also encourage smaller-scale frameworks.

**Dispensation permits for professional production**

- A system of dispensation permits will be introduced for producers supplying the coffeeshops. Such a dispensation permit will be required for any party culturing more plants than the number permitted for personal use.
- The local and national government will set out reasonable safety and quality requirements for such dispensations to ensure the responsible use of electricity, pesticides etc. The goal is to ensure a safe and transparent production framework, an ecologically sustainable end product and the availability of reliable product information. Supervision and control will be implemented by existing parties such as the fire brigade, the environmental inspection agency, the food and consumer product safety authority etc.
- It is essential that the expertise already established and acquired by growers not be lost. Any previous cannabis related convictions may not form an obstacle to obtaining a dispensation. Growers for the medicinal sector, in particular, have a wealth of information which is hardly being utilised at present.
- Growers with a dispensation permit will be allowed to keep a stock of finished product on hand in order to deal with possible calamities. This amount will be related to their turnover. Growers will be registered with the Chamber of Commerce as regular companies and will receive payment for their products via the regular banking sector to ensure maximum transparency and safety.

**Benefits of the THC model**

- Decriminalisation of the consumer due to clear and transparent regulations covering the culture and possession of cannabis for personal use: At present, the police systematically confiscate amounts for personal use and, by so doing, unnecessarily criminalise normal citizens who are not causing any hindrance or nuisance to others.
- Strengthening consumer rights: Consumers will gain access to reliable information on composition and effects and to a supervised and responsibly grown product.
- The local or national government will be able to set down requirements for production. This will be an enormous advance in terms of public health. At present, coffeeshops
have almost no information or insight with regard to culture methods, pesticide use etc. A product used by hundreds of thousands of people in the Netherlands is subject to zero supervision. This is an undesirable and irresponsible situation.

- A structural reduction in the workload of the police and the justice system: in the THC model, production for export and the illegal circuit remains punishable. More resources can then be focused on combating these practices, and such efforts will be more effective if the entire system of coffeeshops is regulated in a transparent fashion.
- The only effective weapon against an illegal commercial circuit is the availability of a regulated supply. This is the most important lesson from the US era of prohibition (1922-1933). Effective and transparent regulation will make it much more difficult for minors to get hold of cannabis. After all, the illegal circuit does not recognise any age limit and definitely does not make any distinction between soft drugs or hard drugs.
- Reintroducing a maximum purchase amount of 30 g per person per day will greatly reduce the number of visits paid to coffeeshops. This will also greatly reduce the number of vehicles circulating around the shops and therefore also free up parking facilities for non-users and reduce the impact on the environment.
- In order to prevent any leakage into the illegal circuit, the system should provide sufficient product quality and variety. Consumer demand and market mechanisms are the drivers in this regard.
- A better distribution and spatial reorganisation of coffeeshops will lead to an increase in the number of shops and encourage a more desirable smaller scale of entrepreneurial activities. The number of shops has been reduced by more than 50% since the 1990s, so it is only logical that the remaining shops have seen their activities increase in scale.
- A redistribution would also be effective against drug runners who approach clients between parking locations and the coffeeshop. If coffeeshops are relocated, parking facilities can be realised directly adjacent to the shop, making it very difficult for drug runners to ply their trade. Of course, a sufficient number of centrally located coffeeshops should remain to serve the locals. Such shops have an important social role to play and, after more than three decades, are an integrated element of the range of options available to people going out to socialise and enjoy themselves.
- Strengthening the role of coffeeshops in providing information: such shops have turned out to be very suitable locations for providing information to the public in a freely accessible fashion [6].
- Competitive prices for a regulated product: Regulated cannabis will be cheaper than the cannabis now available in coffeeshops. The extra costs of taxes, electricity, security, personnel etc. are less than the ”risk surcharge” now being paid to growers [7].
- If production is regulated, cannabis products will no longer have to be imported in the long term. However, a transitional period will be needed to ensure that growers can acquire sufficient experience and expertise. In the interim, the justice system can use the discretionary principle with regard to imported cannabis. After all, a total prohibition of such products is a direct stimulus for the illegal circuit.
- Regulation of cannabis production will provide a significant structural contribution to government income via taxes on cannabis and by reducing the cost of combating its
use. The economist Boermans estimated the net benefit for the government resulting from cost savings and extra income to be €850 million [8].

- If the supply chain to the back door is regulated, illegal jobs will be converted into legal employment opportunities with all their associated benefits. For years, coffeeshops have been providing work for thousands of individuals, many of whom have low levels of education. In addition, they contribute indirectly to the local economy as a result of the amounts spent by their clients outside the coffeeshop circuit for fuel, parking, purchases, accommodation etc. In Maastricht, the total amount of such spending has been estimated at 140 million euros per year, which is equivalent to 1617 FTEs of employment opportunities [9].

Comments on the distance criterion

The distance criterion is a perfect example of counterproductive symbolic politics. In the first place, minors are already not permitted to enter coffeeshops under present legislation. In 2009, the number of registered violations of the so-called M-criterion (i.e. entry prohibition for minors) for the entire coffeeshop circuit in the Netherlands was six [10]. In the second place, it is not at all clear that there is any relationship between the proximity of a coffee shop and the use of cannabis by youngsters. A study carried out in Rotterdam, where the 250 m distance criterion was implemented in 2009, shows that this criterion had no effect on the use of cannabis by minors or on how they felt about its use [11].

For years, the level of cannabis consumption by young people in the Netherlands has been lower than in other EU countries where there are no coffeeshops. Only 11.4% of all Dutch people between the age of 15 and 24 used cannabis over the last year compared to 21.7% in France [12]. It should also be noted in this regard that only 23% of municipalities in the Netherlands have coffeeshops within their boundaries compared to 77% who do not. Nevertheless, the consumption of cannabis by young people is practically the same in municipalities with and without coffeeshops. Accordingly, a distance criterion is simply unnecessary and will do more harm than good. As a matter of fact, the presence of a coffee shop in the vicinity of a school is more likely to result in a greater degree of supervision and control, e.g. by helping to ensure that scooter dealers are kept away from the vicinity.

Strict enforcement of a distance criterion of 350 m would lead to the closure of at least half of the coffeeshops presently in operation [13]. As a result, the remaining shops would see their level of trade increase. This would encourage larger-scale commercial frameworks, which is exactly the opposite of what the present government aims to accomplish.

Comments on the “weed pass”

The long-awaited decision handed down by the Council of State on 29 June last has not brought the hoped-for clarity. The Council of State will tolerate discrimination of non-residents only if it can be demonstrated that drugs tourism results in excessive nuisance for
the neighbourhood but only for as long as the nuisance continues and only if the nuisance cannot be dealt with by using other less far-reaching measures. In any case, the decision does not give the government blanket permission to introduce a national “weed pass”. A mandatory pass-based system will introduce an unacceptable obstacle to most coffeeshop visitors [14]. They will justifiably ask themselves why they are required to register in order to purchase cannabis whereas alcohol and tobacco products, which rank much higher on the scientific scale of damage caused to human health [15], are freely available. Permanent registration will make consumers feel like patients or delinquents instead of consumers.

It is to be expected that a significant percentage of the persons presently visiting coffeeshops will switch to the illegal circuit to avoid the pass-based registration system. In other words, this circuit will expand, inevitably leading to unintended consequences: unsupervised production, nuisance caused by drugs runners, scooter dealers and home dealers, crossover between the markets for hard drugs and soft drugs, increased availability of drugs for minors etc.

By introducing a stricter distance criterion and a “weed pass” the government will be playing into the hands of the criminal circuit. The public at large will, of course, pay the price: increased nuisance in the neighbourhood, more crime, increased public health risks, and hundreds of millions of euros worth of tax money wasted on the ineffective enforcement of an unnecessary and unenforceable cannabis prohibition.

Comments on the public perception/image of cannabis and coffeeshops

In recent years, the supposed risks associated with a high THC concentration in Dutch marijuana have received a great deal of attention. The public perception that this THC concentration leads to increased numbers of school dropouts, asocial behaviour by young people and psychological problems among users has resulted in a clearly hostile attitude towards coffeeshops and cannabis. Some politicians are already arguing for eliminating the legal distinction between soft drugs and hard drugs and thereby liquidating the present coffeeshop policy. The expression “throwing out the baby with the bathwater” perfectly describes such an approach.

It would be very premature to identify cannabis or THC as the cause of psychological problems among young people. For example, according to recent scientific insights into the role of cannabidiol (CBD) in the effect of cannabis, CBD, one of over 60 different cannabinoids found in marijuana besides THC, actually tends to block the development of psychoses [16]. Unfortunately, the discussion regarding the health risks of cannabis and the social benefits of coffeeshops has become oversimplified and very black and white. Facts play almost no role at all in the debate surrounding cannabis. This debate has been hijacked by emotions and unsubstantiated assumptions in the media as well as politics.
The repressive zero-tolerance approach taken by the present government is even more striking now that international support for the decriminalisation of cannabis and ending the war on drugs is greater than ever before. In an essay in the Dutch Newsletter for the Legal Profession [17], the criminologist and drugs expert Tim Boekhout van Solinge wrote as follows regarding this paradox:

“All things considered, it’s more than strange that a country such as the Netherlands, with its coffeeshops, is not looking into the legal possibilities of decriminalising the production of cannabis. This can best be explained by the ‘first-mover disadvantage.’ The Netherlands first led the field with its non-repressive drugs policy but, as a result of foreign criticism and conservative politics, has retreated in that regard and now invests almost no effort at all on trying to come up with ways of improving drug policies.

(…)

The major reason why there is still so much cannabis related crime is the political failure to think pragmatically instead of ideologically about how the government could intervene in this market, which is at present still completely illegal, by regulating the supply of cannabis or by other means. Adopting a policy which prohibits drugs in order to protect the public and, more particularly, young people, actually encourages criminal activities. It encourages crime and helps maintain organised criminal activities.”

Practical feasibility of the THC model

The most frequently-heard argument against regulating the production of cannabis is the supposed incompatibility of such a policy with the international drug treaties signed by the Netherlands. It is claimed that any form of experimentation or regulation would constitute a violation of these treaties. This is simply not true. The relevant UN treaties explicitly give member states the freedom to deviate from the treaty-based obligations for “medical and scientific purposes.”

As far as the European Union is concerned, as recently as December 2010, Dana Spinant, head of the Anti-Drug Policy Coordination Unit of the European Commission, stated that responsibility for regulating the internal national cannabis market is entirely in the hands of the EU member states themselves [18]. In 2005, the former European Commissioner for Justice, Franco Frattini, expressed similar thoughts: “Drugs policy is a matter for the member states themselves… Each country is free to implement its own drugs policy, although members must combat the cross-border effects, such as the smuggling of drugs.” [19]

Phased plan

The Dutch government can implement the following step-by-step plan to regulate the production of cannabis in the Netherlands without violating any international treaties.

• The political will to end the prohibition of cannabis and to regulate it instead should be based on the public health argument. The government can start by requesting advice from the Public Health Council on whether it would be advisable to decriminalise the
production of cannabis.

- A positive recommendation would lead to step two: a scientific experiment with a regulated growing facility for a number of coffeeshops. Such an experiment would be allowed within the framework of the present UN treaty, which specifies (Article 4, sub c) that every country is required to limit the production, manufacture, import and export, distribution, trade and use and possession of narcotics exclusively to medical and scientific purposes.

- The next step would be for the Netherlands, preferably together with other EU countries such as Spain, Portugal, the Czech Republic and Belgium, to start a procedure with the UN for removing cannabis from List 1. This will initiate a lengthy period of debate during which no decisions will be taken. During this period, the Netherlands will be able to simply take the steps it deems necessary, as long as it can explain that these steps are based on scientific insights and are necessary from a public health standpoint and that efforts will continue aimed at combating export to other countries.

- If it turns out that the Netherlands and other countries are then not able to modify the UN treaty as requested, the Netherlands would have the option of cancelling this UN treaty and then immediately signing it again but with the inclusion of relevant articles on exceptions. [20]

- Article 3 of the Opium Act must be modified in order to allow persons to grow cannabis for other than scientific or medical purposes. The Minister of Health will have to be given the authority to provide dispensation for regulated cannabis production for purposes other than scientific or medicinal purposes.

- In the meantime, the discretionary principle, which specifies that the public prosecutor is not required to prosecute and which forms the legal basis for the present policy of tolerance, can be maintained. The need for structuring matters in this fashion will disappear as soon as the prohibition of cannabis is repealed within an international framework.

How to proceed at present?

Developments with regard to cannabis policy have arrived at a crucial juncture. Essential questions must now be answered. Will we allow the culture of and wholesale trade in cannabis to be controlled by the criminal circuit in future or will we finally adopt a policy of regulation? Will we supervise and monitor or will we criminalise? Do we prefer a situation in which cannabis is sold on the street, on school grounds, and at home, or one in which it is sold in the safe and familiar setting still being provided by the coffee shop? Do we want an increased level of nuisance or an increased level of oversight and insight? Zero-tolerance without any real benefit or harm reduction accompanied by reduced nuisance and crime levels?

The THC model aims to encourage the introduction of a pragmatic and rational regulation of cannabis in the Netherlands. The model is based on the experience and expertise of the parties directly involved, enjoys widespread support, and is practically feasible. As long as our country continues to combat large-scale export, there is sufficient opportunity to modernise our policy towards cannabis. The unmistakable trend towards the
decriminalisation of cannabis in Portugal, the Czech Republic, Belgium, Spain, the US and South America should serve to support and encourage those Dutch politicians who have sufficient courage and vision to shoulder their social responsibility in this area.

Notes:

1] ‘Evaluation of Dutch drugs policy’ (in Dutch), WODC/Trimbos Institute, 2009, table 5.1, p. 70. The recent (past year) user rates for cannabis in all 27 EU countries are 7% in the EU-15 countries, 7.5% in Norway, 5.4% in the Netherlands, 9.1% in Australia, 10.1% in the US, and 15.4% in Canada. In the drugs memorandum of 2000, Het pad naar de achterdeur (The path to the back door), The Minister of Justice concludes that “The vast majority of cannabis users stop using it before the age of 30 without ever having used hard drugs.”

2] For more information in this regard, see: Sociale functies van 115 Amsterdamse coffeeshops (Social functions of 115 Amsterdam coffee shops; in Dutch), Advisory Agency on Drugs, 1994. In Het utopisme van de drugsbestrijding (The utopia of combating drugs; in Dutch), (Mets & Schilt, 2008), the sociologist and former professor of environmental science, Egbert Tellegen, writes, “The unique Dutch invention referred to as the coffeeshop should long ago have been acclaimed as the most important Dutch social innovation of the last 50 years.”

3] The report by the Global Commission on Drug Policy, released on 1 June 2011, is a historic breakthrough in this regard. Nineteen former world leaders, Nobel Prize winners, diplomats and leading entrepreneurs (incl. Kofi Annan, Javier Solana and Richard Branson) call on the present generation of political leaders to recognise that the war on drugs is a fiasco and to adopt policies aimed at decriminalisation, regulation and harm reduction instead of repression.

4] In 2011, the task force organised debates in Amsterdam (5 February), Eindhoven (26 February), Leeuwarden (5 March) and The Hague (21 March). During the third Cannabis Tribunal, held on 16 May 2011, the task force presented a summary of the model that took into account the reactions and suggestions made until then.


6] Since the Association of Cannabis Retailers published its first information folder (in four languages) in 1997, the cannabis sector has increasingly shouldered its responsibility in this area. In addition to folders with information on the safe and responsible use of cannabis, many coffeeshops also offer flyers published by the Trimbos Institute.

7] For calculations, see: Nebahat Albayrak, Boris van der Ham, Gerd Leers e.a.: Manifest van Maastricht: experiment voor het reguleren van de teelt en handel van softdrugs (Maastricht manifesto: experiment for regulating the culture of and trade in soft drugs; in Dutch), December 2005. Since this manifesto was first released, the price of cannabis has increased quite significantly.

8] Martijn Boermans: An economic perspective on the legalisation debate: the Dutch
9] De betekenis van het bezoek aan coffeeshops voor de Maastrichtse economie (The significance of visits to coffeeshops for the economy of Maastricht; in Dutch), OWP Research, October 2008.


12] 2009 annual report of the Europees Waarnemingscentrum voor Drugs en Drugsverslaving (European Monitoring Centre for Drugs and Drug Addiction; in Dutch), Table GPS-8.

13] Ward Wijndelts: Zo verdwijnen de meeste coffeeshops (The death of most coffeeshops; in Dutch), NRC/Handelsblad newspaper, 4 January 2011. A study carried out by the newspaper revealed that 187 of the 223 coffeeshops in Amsterdam would have to close their doors if a distance criterion of 350 m was introduced. Nationally, 57.9% of all coffeeshops would have to close their doors.

14] On 22 June 2011, the municipality of Amsterdam released a study focusing on the weed pass, based on interviews with 1214 visitors to coffeeshops and 66 coffeeshop owners. Only 30% of the visitors interviewed had any intention of obtaining a weed pass; 25% intend to grow their own or purchase cannabis from a grower and 25% intend to purchase from dealers or via home delivery. [www.amsterdam.nl/gemeente/college/burgemeester/persberichten/resultaten/

15] Van Amsterdam, Opperhuizen, Koeter, Van Aerts and Van den Brink: Ranking van drugs. Een vergelijking van de schadelijkheid van drugs (Ranking drugs. A comparison of the harm caused by drugs; in Dutch), RIVM, 2009. In this ranking, alcohol is ranked third, tobacco fourth and cannabis eleventh.


17] Tim Boekhout van Solinge: Het Nederlands drugsbeleid en de wet van de remmende voorsprong (Dutch drugs policy and the law of the first-mover disadvantage; in Dutch), Nederlands Juristen Blad [Dutch Newsletter for Legal Professionals], number 40, 22 November 2010.

18] Spinant expressed these sentiments during a special meeting called to discuss the regulation of cannabis and other drugs in the European Parliament 8 December 2010.

19] Bert Lanting: Mijn eerste zorg is het bestrijden van de drugssmokkel (My primary concern is combating drug smuggling; in Dutch), De Volkskrant newspaper, 4 May 2005

20] On 24 June 2011, Pablo Solon, the Bolivian ambassador to the United Nations, held a press conference in New York on the decision by Bolivia to remove itself from the 1961 Treaty on Narcotics. Bolivia will leave the treaty on 1 January 2012 and sign the treaty again on the same day subject to the inclusion of several new articles.

Source: http://boliviaun.net/cms/?cat=4
Website Society for the abolition of cannabis prohibition:
www.voc-nederland.org

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