



The fight against bribery and corruption

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Summary

Since 1989 the OECD has played a leading role in the battle against international bribery and corruption. The fight gathered momentum in 1999 with the entry into force of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Convention is open to accession by any country that first becomes a full participant in the OECD Working Group on Bribery in International Business Transactions in accordance with its procedures, and that is willing and able to assume the obligations of the Convention. Signatories currently include all 29 OECD Members and five non-Members (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic). As of June 2000, 21 signatories had ratified the Convention. (See website www.oecd.org/daf/nocorruption for dates of deposit of instruments of ratification.)

The Convention represents the result of an ambitious undertaking that began with the development by the OECD Working Group on Bribery in International Business Transactions of various instruments – the Recommendations of 1994, 1996 and 1997 – and culminated with the entry into force of the Convention. The overall purpose of these instruments is to prevent bribery in international business transactions by requiring countries to establish the criminal offence of bribing a foreign public official, and to have in place adequate sanctions and reliable means for detecting and enforcing the offence. They also include non-criminal rules for prevention, overall transparency and co-operation between countries. In addition, parties are also required to deny the tax deductibility of such bribes.

The OECD takes a multifaceted approach to fighting bribery, recognising that tackling both the supply and the demand side of the bribery transaction requires different measures. It recognises that reducing the supply of bribes requires more than criminalising the act of bribing a foreign public official. Businesses themselves must play a role, and address the practice internally by changing the corporate culture that enables it to continue. To provide businesses with guidance in this regard, the OECD has revised the 1976 Guidelines for Multinational Enterprises to include a new chapter on the measures that should be taken by enterprises to prevent the furnishing (as well as the solicitation) of bribes. In addition, the provisions in the OECD Principles of Corporate Governance on improving disclosure and transparency in financial as well as other matters provide a framework that discourages bribery.

The demand side of bribery has also been addressed by certain OECD initiatives. For instance, the 1998 OECD Council Recommendation on Improving Ethical Conduct in Public Service calls on Member countries to

take steps to ensure well-functioning institutions and systems for promoting ethical conduct in the public service. The OECD Public Management Committee (PUMA), recently sent to the OECD Ministerial Council a report on the implementation of the Recommendation, including methods for detecting, investigating, prosecuting and penalising misconduct by public officials. SIGMA (Support for Improvement in Governance and Management) – a joint initiative of the OECD and the European Union, principally financed by EU – advises Central and Eastern European countries on improving accountability, efficiency, management and transparency in the public administration. In

addition, the Working Group on Bribery in International Business Transactions is studying ways of incorporating demand side issues into its agenda, and has already held several meetings with the private sector for this purpose.

Moreover, the Financial Action Task Force on Money Laundering, which includes most OECD Members as well as some key financial centres outside the OECD, addresses both the supply and the demand sides of bribery by addressing the illegal laundering of bribes and proceeds deriving from bribery and corruption.

OECD Member countries cannot effectively control corruption on

their own. Through the Centre for Co-operation with Non-Members (CCNM), the OECD promotes initiatives on both the supply and demand sides to engage non-Members in the fight against bribery and corruption. For developing countries specifically, anti-corruption initiatives are carried out by the OECD Development Assistance Committee (DAC) and the OECD Development Centre. ■

Why fight corruption?

Instances of corruption around the world are reported on almost a daily basis. There is no scarcity of scandals that illustrate the depth and pervasiveness of corruption: the shady

Co-operating with Non-OECD Economies in the Fight against Corruption

OECD Member countries cannot effectively control corruption on their own. They recognise that a successful anti-corruption strategy must involve the concerted action of many diverse players, including non-members.

Through the Centre for Co-operation with Non-Members (CCNM), the OECD has sponsored several anti-corruption initiatives involving non-members. In many cases these have been staged jointly with Member countries and with other international and regional organisations, including the European Union, the World Bank, the Organisation of American States and the Asian Development Bank.

A Global Effort

Central and Eastern Europe and Former Soviet Union

Public institutions that are weak and underdeveloped contribute to an environment in which corruption and other unethical behaviour can thrive. The OECD has created a number of initiatives for strengthening government institutions in transition economies.

Since 1992, the SIGMA Programme has counselled transition countries in Central and Eastern Europe on the reform of their core management systems of government. The Programme counsels 13 countries on modernising their public administrations in such areas as the civil service, expenditure management, financial control, and external audit.

SIGMA provides support to countries in the drafting of legislation and procedures for regulating the civil service and contributing to the setting of high ethical standards in the discharge of public functions. It assists governments in creat-

ing effective budget planning, authorisation, and implementation processes and structures for accounting, financial control and cash and information management. It also counsels on the strengthening of supreme audit institutions (SAIs), which serve a key role in government accountability. SIGMA provides advice on the creation of modern procurement systems and supporting legislation that promote transparency and accountability in the public sector's purchase of goods and services.

Further OECD initiatives in this region include the following:

- The Anti-Corruption Network for Transition Economies (ACN), a collective effort of involving several OECD Directorates, which brings together government, private sector and civil society participants from the transition economy regional organisations to promote reforms that foster integrity in business operations and transparency and ethics in government. It operates in partnership with USAID and other donors.
- The Public Management Service (PUMA), which assists governments in detecting corruption through budgeting and financial control and by promoting ethics in government.
- The Task Force for the Implementation of the Environmental Action Program (EAP), an EU-backed initiative. The EAP, which recently established a network on environmental compliance and enforcement in the New Independent States, will also address corruption issues that are related to the application of environmental regulations.

funding of political parties in Europe and North America, bribes to high-level officials for major export contracts in many countries, the depletion of health insurance funds in Argentina, the death sentence for a high-ranking bureaucrat in China, the plundering of national assets in Russia, and the endemic confusion between private and public funds in some developing and transition economies.

In the wake of these scandals and the role that corruption played in the financial crises in South East Asia, awareness has grown about the social, political and economic costs of corruption, which no country can

afford. It erodes public confidence in political institutions and leads to contempt for the rule of law. It distorts the allocation of resources, inflates spending on public procurement and undermines competition in the market place. It has a devastating effect on investment, growth and development. Furthermore, corruption exacts an inordinately high price on the poor by denying them access to vital basic services. With increasing intolerance of these devastating effects, pressure from citizens and financial markets has mounted for an international fight against corruption. ■

What is bribery?

Bribery is defined by the Convention as the offering, promising or giving of something in order to influence a public official in the execution of his/her official duties. Bribes can take the form of money, other pecuniary advantages, such as a membership in an exclusive club or a promise of a scholarship for a child, or non-pecuniary advantages, such as favourable publicity. Similar definitions concerning bribery of corporate employees are used in private sector codes of conduct (See page 6). Every bribery transaction involves a supply side (the briber) and a demand side (the public official).

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South Eastern Europe Anti-Corruption Initiative

The OECD, the Council of Europe, the European Commission, the Special Co-ordinator of the Stability Pact, the World Bank and the United States agreed to develop an Anti-Corruption Initiative for South Eastern Europe under the Stability Pact, adopted at a meeting in Sarajevo in February 2000. The Initiative calls for states to take effective measures on the basis of existing relevant international instruments, promote good governance, strengthen legislation and promote the rule of law, promote transparency and integrity in business operations and encourage an active civil society. The Initiative gives the OECD a leading role together with the Council of Europe in its overall management as well as in the implementation of the action plan. A regional website operated by the OECD as part of the Anti-Corruption Ring Online supports the implementation and monitoring of the Initiative (www.oecd.org/daf/stabilitypact/nocorruption).

Asia-Pacific Region

In 1999, the OECD and the Asian Development Bank (ADB) launched a Forum on Combating Corruption in the Asia-Pacific Region. The Forum is now in its second year, enabling those countries active in the fight against corruption in the Asia-Pacific Region to continue to exchange experiences and discuss policy reforms. PUMA is also active in the CCNM programmes for China and for Emerging Asian Economies. Anti-corruption initiatives in Pakistan and the Philippines have been the focus of studies by the OECD Development Centre.

Latin America

The OECD collaborated with the Organisation of American States and the Government of Argentina on the Workshop on Combating Bribery in International Business Transactions in

September 1998, which informed the region of OECD and other initiatives for fighting corruption and served to encourage OAS countries to complete the ratification and implementation of the Inter-American Convention against Corruption. Furthermore, Argentina, Brazil and Chile are signatories to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and thus lead the way for fighting corruption in the region.

Developing Countries

The foundation of the OECD Development Assistance Committee (DAC) anti-corruption work relates to its broader efforts to promote good governance and ensure aid effectiveness. Pervasive corruption undermines the credibility and authority of the state and its institutions, and devalues the aid effort through misuse of scarce resources. A more specific element of the DAC's work concerns corruption in aid procurement (and government procurement more generally), based on its 1996 Recommendation which sends out a strong political, zero tolerance, message.

The OECD Development Centre has carried out policy-oriented research on corruption in developing countries since 1996. The purpose of this research is to provide policy recommendations to developing countries and agencies on fighting corruption, and informing OECD Members of the causes and consequences of corruption in developing countries. Analyses of the situation in various countries have been undertaken, including corruption in customs administration in Senegal and Mali, and the anti-corruption programmes in Bolivia, Morocco, Benin, Pakistan and the Philippines. Work also focuses on the role of the private sector in combating corruption.

However, it is not necessarily a simple two-sided transaction, as in some cases intermediaries are involved in the transmission of the bribe, and in certain instances the bribe is transferred to a third party for that person's benefit rather than for the benefit of the public official. Normally, a private individual or business carries out the supply side of the transaction, but, ironically, public officials may also initiate bribes to those in the private sector, as recently illustrated by the scandal regarding government representatives and members of the International Olympic Committee. ■

How does the OECD enforce the Convention?

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is the principal tool at this time for fighting bribery of foreign public officials. In addition to joining the Working Group, signatories must accept the Revised Recommendation of 1997 of the Council on Combating Bribery and the Recommendation on the Tax Deductibility of Bribes of Foreign Public Officials, adopted on 11 April 1996. The Convention requires that each Party establish the criminal offence of bribery of foreign public officials and further establish the liability of enterprises (referred to as "legal persons" in the Convention) for the offence. The additional provisions in the Convention chiefly reinforce this requirement by enabling its effective application and enforcement. (Although the objective of the Convention is to combat foreign bribery through equivalent measures, the Convention is flexible in that Parties may adapt the requirements according to their individual legal systems.)

Countries that join the Convention agree to establish the offence of brib-

ing a foreign public official in the following manner:

- It must apply to all persons.
- It must apply to the offering, promising or giving of a bribe. It is an offence regardless if the offering, etc., is done through an intermediary and regardless if the advantage is for a foreign public official or a third party.
- It must apply regardless of the form that the bribe takes. Thus the offering of an advantage that is tangible or intangible as well as pecuniary or non-pecuniary must be prohibited.
- It must prohibit bribery for the purpose of obtaining or retaining "business or other improper advantage in the conduct of international business". This is not limited to the procurement of contracts, but also includes the obtaining of regulatory permits and preferential treatment in relation to taxation, customs and judicial and legislative proceedings. It is irrelevant that the person concerned was the best-qualified bidder or could properly have been awarded the business. And it is an offence irrespective of "the value of the advantage, its results, perceptions of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment".
- A "foreign public official" must include any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation.

Each Party must also satisfy the following requirements under the Convention:

- Each Party must establish effective, proportionate and dissuasive criminal penalties for the foreign bribery offence. Where a Party's legal system does not apply criminal responsibility to enterprises, they shall be subject to effective, proportionate and dissuasive non-criminal penalties for the offence.
- Each Party must establish its jurisdiction over the foreign bribery offence when the offence is committed in whole or in part in its territory. Where a Party has jurisdiction to prosecute its nationals for offences committed abroad, it shall establish such jurisdiction over the foreign bribery offence according to the same principles.
- Where a Party has established a money laundering offence in relation to the bribe and/or proceeds of domestic bribery, it shall do so on the same terms for foreign bribery.
- Each Party is required to prohibit certain accounting and auditing practices that facilitate the concealment of foreign bribery.
- Each Party is required to provide prompt and effective legal assistance to other Parties seeking assistance in the investigation and prosecution of foreign bribery offences. In addition, the bribery of a foreign public official shall be deemed to be an extraditable offence under the laws of the Parties and the extradition treaties between them.

In addition, to comply with the 1997 Recommendation, Parties commit themselves to the following measures for deterring, preventing and combating international bribery:

- Encouraging the introduction of sound internal company controls, including standards of conduct and controls applicable down to the operational level. In the area of public procurement, companies

responsible for bribing foreign public officials should be suspended from future public contract bids.

- Requiring that anti-corruption provisions be included in bilateral aid-funded procurement, promoting the proper implementation of anti-corruption provisions in international development institutions, and working closely with development partners to combat corruption in all development cooperation efforts. ■

How is implementation monitored?

The Convention and the 1997 Recommendation are enforced through a programme of systematic follow-up to monitor and promote their full implementation. This is essentially accomplished through a rigorous peer-review process involving two evaluative phases. Phase 1, which began in April 1999, involves an examination of the relevant laws and secondary legal sources of each Party to determine whether they conform to the requirements under the Convention, whereas Phase 2 will focus on the application of the laws in practice.

In preparation for the Phase 1 examination, each Party to the Convention is required to reply to a questionnaire designed to evaluate compliance with the Convention. A provisional review is prepared on the basis of a Party's responses and the comments of the two countries that serve as lead examiners as well as the OECD Secretariat.

Once the provisional review is transmitted to the Working Group, two rounds of consultations take place in the Working Group for the purpose of further assisting Members in understanding the country's legal system and approach to implementing the Convention and providing the Group with an opportunity to

clarify specific issues. The Working Group concludes the examination with the adoption of an evaluation that targets specific issues requiring further examination in Phase 2 of the evaluation process, and in some cases, recommends remedial action. Together the final review and evaluation comprise the report of a Party's implementation of the Convention and 1997 Recommendations.

Between April 1999 and June 2000, the 21 Parties that had ratified the Convention underwent the Phase 1 examination by the Working Group. The overall assessment of countries' compliance with the Convention was positive. However, the Working Group identified certain deficiencies in its review of some countries, as well as specific issues of varying magnitude that need addressing for almost all of the countries reviewed. The Group made specific recommendations for remedial action wherever potential loopholes or gaps were observed, or where it considered that the provisions fell below the standards set by the Convention. The resulting reports on these countries are available at www.oecd.org/daf/nocorruption/report.htm. ■

What about the tax deductibility of bribes?

Until recently, the bribery of foreign public officials has been accepted as a normal cost of doing business by many OECD countries. Companies doing business with foreign countries often claim that they must pay bribes in order to be favourably considered for the awarding of contracts. Previously, by allowing the tax deductibility of such bribes as an expense in earning income, several governments were perceived as condoning this practice.

The OECD Committee on Fiscal Affairs (CFA) believes that the disallowance of the tax deductibility of bribes to foreign public officials

helps serve as a deterrent, especially when it is combined with the criminalisation of such conduct. It also feels that non-deductibility sends a strong signal to companies that bribery is no longer an acceptable business practice, and serves as a politically visible symbol of the common international commitment to combat bribery. For these reasons, in April 1996, the OECD adopted the Recommendation on the Tax Deductibility of Bribes to Foreign Officials, and then urged its prompt implementation in the 1997 Recommendation.

Since agreeing to the 1996 Recommendation, most OECD countries that previously allowed the tax deductibility of bribes to foreign public officials have amended their legislation to disallow such tax deductibility, and a few countries have bills to this effect pending in their parliaments. As with the Convention, the successful application of these changes depends on their effective enforcement as well as their specific construction. Enforcement will be addressed by OECD Tax Audit Guidelines for the Detection of Bribes to Foreign Public Officials, which are being prepared. These will provide guidance to tax inspectors and the accounting profession for recognising suspicious payments through, for instance, the careful scrutiny of recurring payments to anyone other than a normal supplier. And with respect to the construction of a non-deductibility provision, it is essential that a country does not define bribes too narrowly, and where bribes to foreign public officials are not explicitly denied, the tax legislation should not contain other categories of expenses, such as entertainment expenses and commissions, under which bribes could possibly be claimed. The relevant tax laws are being examined by the Working Group on Bribery in International Business Transactions, in

co-operation with the Committee on Fiscal Affairs, in the course of its Phase 1 examination of Parties' implementation of the Convention and the 1997 Recommendation. ■

How can integrity of public officials be encouraged?

OECD has taken the leadership in identifying sound ethics management principles in the public service. Public ethics are a prerequisite to, and underpin, public trust and are a keystone of good governance. Recognising this, in April 1998 OECD countries demonstrated their commitment to improving ethical conduct in the public service by approving a set of 12 Principles for Managing Ethics in the Public Service in an OECD Recommendation. The Principles – as a reference checklist – are intended to help governments review their broader public service environment and maintain effective frameworks to promote integrity and prevent corruption by public officials. A recent report, titled *Trust in Government: Ethics Measures in OECD countries*, gives a snapshot of progress in the implementation of the 1998 Recommendation on Improving Ethical Conduct in the Public Service. This report provides – for the first time – a comprehensive overview of ethics measures in all 29 OECD countries, including overall trends, models, promising practices and innovative solutions.

The changing public sector environment requires that core values be widely known. Stating core values and standards of behaviour is a key step to create a culture in which both public servants and society have a common understanding of the expected behaviour of public office holders. Legislating standards of behaviour has become the primary way to elaborate on stated core val-

ues. Over one-third of OECD countries have already updated their core public service values in the last five years, and further reviews are under way.

Putting values into effect starts with communication and ensuring integrity in daily management. All OECD governments provide training, principally to raise awareness among public servants of ethical issues. Measures to enhance transparency can reduce the possibility of conflicts arising between public duties and private interests. Paying special attention to officials in positions, such as public procurement, that are particularly susceptible to corruption is a rising concern for OECD countries. Countries have also strengthened existing legal measures or established a legal framework for internal control to detect individual irregularities and systemic failures. There is a growing need to provide protection for whistleblowers in the public service. They now receive general protection in almost half of OECD countries, mainly through their public service regulations.

While public sector managers have the primary responsibility for initiating disciplinary measures in their agencies in a timely manner, they may also receive assistance from law enforcement authorities responsible for investigating and prosecuting misconduct in the public service.

In developing countries a complex set of factors – social, political, economic and administrative – provide opportunity and incentive for corrupt practices. The OECD's Development Assistance Committee (DAC) has been tackling corruption in the field of development co-operation between DAC Members and partner countries in the developing world mainly through the following measures:

- The adoption in 1996 of the Recommendation on Anti-Corruption

Proposals for Aid-Funded Procurement, which recommends that Members introduce or require anti-corruption provisions governing bilateral aid-funded procurement and requires that Members work closely with development partners to combat corruption in all development co-operation efforts.

- The inclusion by DAC Members of explicit anti-corruption clauses or equivalent measures in their procedures concerning aid-funded procurement.
- These measures have been developed by DAC Members in collaboration with their partner countries, multilateral development institutions and other OECD initiatives for fighting corruption. ■

What is the role of the private sector?

Some companies have established their own anti-corruption strategies, including the adoption of codes of ethical conduct that include provisions concerning bribery and extortion between the private and public sectors as well as between private companies. These codes express the companies' serious commitment to comply with international efforts to combat corruption, and are intended to modify the corporate culture and attitudes of its employees to reduce the risk of corrupt behaviour. They often are accompanied by the creation of management systems for monitoring and reviewing compliance.

At the OECD's annual Council meeting at ministerial level in June 2000, an agreement was reached on a revised set of Guidelines for Multinational Enterprises (non-binding recommendations to enterprises made by the Member countries). The Guidelines include rules for combating bribery that address the supply and demand sides of the bribery transaction. They focus on the

The OECD Anti-Corruption Unit has created one of the world's largest information centres on corruption and bribery, the OECD Anti-Corruption Ring Online or AnCorR. The AnCorR, the repository of more than 5,000 references to anti-corruption documentation, responds to the needs of anti-corruption practitioners and individuals for the concrete information necessary to design and implement anti-corruption activities.

AnCorR also acts as a gateway by providing direct access to local initiatives in OECD countries, Latin America, the Middle East and Africa, and links to the three regional networks – the Anti-Corruption Network for Transition Economies, the Stability Pact Anti-Corruption Initiative for South Eastern Europe and the Forum on Combating Corruption in the Asia-Pacific Region.

Visit AnCorR at: www.oecd.org/daf/nocorruptionweb/

bribery of public officials and the employees of business partners, as well as preventing the channelling of payments through the use of subcontracts, purchase orders and consulting agreements to public officials, employees of business partners, relatives and business associates.

In addition, the Guidelines address the issue of remuneration of agents. Further provisions require enterprises to adopt management control systems, including financial and tax and auditing practices, for discouraging bribery and corrupt practices, and requires them to promote public and employee awareness of their programs and policies in this regard.

Finally, there should be no illegal contributions to candidates for public office, political parties and other political organisations, and enterprises should disclose political contributions. ■

What lies ahead?

The Convention and the Recommendations have laid the groundwork for substantial progress in the fight against international bribery, but there is still much work to be done. As more countries ratify the Convention, they too will be required to submit to the Phase 1 examination. Additionally, Phase 2 – the on-site assessment of each Party's application in practice of its laws and rules for combating foreign bribery – must still be undertaken.

Moreover, the OECD Council decided that five related corruption issues will be examined by the Working Group on a priority basis. These are: bribery acts in relation to foreign political parties; advantages promised or given to any person in anticipation of that person becoming a foreign public official; bribery of foreign public officials as an offence that triggers the offence of money laundering (i.e. where the gains thereof have been laundered); the role of foreign subsidiaries in bribery transactions; and the role of offshore centres in bribery transactions.

The OECD will build on work supporting Member and non-Member countries in strengthening public sector ethics. Future ethics work will focus on critical issues in relation to governance, including ethical issues at the interfaces between the changing public/private sectors and between politicians and administrations, as well as methods to institutionalise transparency and accountability. The Anti-Corruption Network for Transition Economies, through a series of Network and Steering Group meetings, will continue to bring together donors, governments, private enterprise and civil society to provide mutual support and share experiences in curbing corruption in Central and Eastern Europe and the New Independent States.

Analysis is also under way in the OECD Trade Committee to determine to what extent the disciplines of the World Trade Organisation can contribute to anti-corruption efforts. Bribery and corruption have not been among the issues specifically addressed by the WTO Agreements. But the underlying principles of the WTO system and their enforcement by WTO Members are likely to have a preventive effect by reducing the motivations and opportunities for proposing, requesting and accepting bribes.

For the fight against international bribery to succeed, it is essential that the initiative receive sustained political commitment and the involvement of organisations positioned to play a key role. For this reason it is important to acknowledge the invaluable contributions made by many organisations. For instance, several international bodies have become involved, including the European Union, the Council of Europe, the Organisation of American States, the International Monetary Fund, the World Bank, the Asian Development Bank, the World Trade Organisation, the United Nations Development Programme, the International Labour Organisation, and the World Customs Organisation. Moreover, non-governmental organisations, such as Transparency International and the Open Society Institute, as well as international aid providers, both government and private, help raise public awareness of the dangers of corruption and provide technical assistance to countries in designing effective anti-corruption strategies. The involvement of companies, business associations and trade unions remains essential. Likewise, the contribution of free and independent media is vital to exposing corruption and encouraging accountability of public officials. ■

For further reading

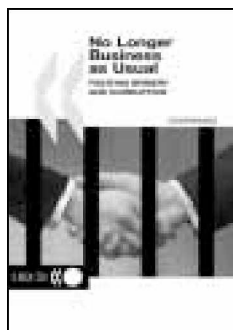
■ **No Longer Business as Usual: Fighting Bribery and Corruption**

ISBN: 92-64-17660-8,
US\$38, 250p.

■ **Trust in Government: Ethics Measures in OECD Countries.**

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ISBN: 92-64-18519-4,
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1997 - ISBN: 92-64-15559-7, US\$18, 94p.

■ **OECD Anti-corruption Unit Internet site:**

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