
THE EU STATE AID REGIME IN AGRICULTURE –LEGAL ASPECT

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ABSTRACT

State aid to certain economic sectors in the European Union was an acceptable model until the establishment of the single market in 1992. The EC acknowledge that the allowance is imputable to the MS and that it constitutes State aid. In the light of the foregoing, the Commission concludes that the measures at issue in the present case constitute State aid (Article 107(1) TFEU). "Special rules on provision of state aids were created as secondary law rules by the EU Council and EU Commission". State aid to promote the economic development of the agricultural sector is part of the wider framework of the "Common Agricultural Policy" ("CAP"). This paper analyzes EU state aid regulation in the agriculture sector, with special focus on the provisions of the "Agriculture Block Exemption Regulation" – ABER. The paper also analyzes agricultural aid, which must be notified to the EC as being authorized under the "Agriculture Guidelines".

Introduction

In the EU, state aid to companies, to certain industry branches was an acceptable model until the establishment of the single market in 1992, which largely organizes state aid. State aid represents a new legal institute. The legislation of the EU is the basis for the standardization of state aid in the legislation of the EU MS, but also of the potential MS. State aid in the EU is regulated by Articles 107-109. TFEU (OJEU 9.5.2008 C 115/91–93”), throw documents of EU authorities, but also by soft law. The EU Court of

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Justice has made considerable endowment to the interpretation and application of state aid rules. State aid control is carried out by the Commission, applying the principles of selectivity, temporality and transparency. (Maksimovic Sekulic, 2017)

The TFEU does not provide a completely precise definition of the concept of state aid, which leaves a lot of room for different interpretations. Namely, state aid is expressly prohibited on the territory of the EU MS. According to Article 107 of the TFEU “any aid granted by a MS or through State resources which distorts or threatens to distort competition by favoring certain industry sector or the production of certain goods, in particular if it affects trade between MS, shall be deemed incompatible with the common market”. Furthermore, a wide scope is left for discretionary interpretation of which all falls into the category of authorities that grant state aid. These can be the state, local or regional authorities or bodies over which the state, directly or indirectly, has a decisive influence, that is, entities over whose decisions and operations the state exercises control. In the European Union, it is completely forbidden to forgive the debts or taxes of companies that are in difficulties, that is, to give them loans under favorable conditions, to subsidize the operations of state enterprises and to give them land for use. (Maksimovic Sekulic, 2017)

However, there are also forms of state aid that are allowed and are in line with the single market. One of them is the agricultural sector, which has always been under special treatment. (Janku, 2013). Primarily, Regulation (EU) 2022/2472, the Agricultural Block Exemption Regulation (ABER), part of a package of measures the Commission adopted revising State aid rules on agriculture, forestry and rural areas with the Fishery Block Exemption Regulation (FIBER) and the Agricultural Guidelines and Fisheries Guidelines. (Janku, 2013)

Materials and methods

The paper analyses the state aid regulations, with special focus on agriculture sectors and comparison of the ABER with the general TFEU rules on the state aids. Finally, agricultural aid that falls to be notified to the EC as it may be authorized under the Agriculture Guidelines will be discussed.

The basic methods of research are the content of secondary data sources analysis. Secondary data, the state aid regulations were taken mostly from the official EC documents and relevant literature.

Research results

Regulation (EU) 2022/2472

Regulation (EU) 2022/2472 is known as the “agricultural block exemption regulation” (January 2023 to 31 December 2029). This regulation declares specific aid categories “compatible with EU State aid rules and exempts them from prior notification to, and approval by, the EC. Regulation (EU) 2022/2472 applies to the following categories of national aid for: (Regulation (EU) 2022/2472):

“micro and SMEs agricultural activities: investment in farms to improve agricultural performance and sustainability, environmental performance and infrastructure; land consolidation; relocation of farm buildings; investments in marketing of agricultural products; “start-ups for young farmers”, farming and producer groups and organizations; participation in “quality schemes”; know-how exchange, information and counseling services; services of farm replacement; promotion of agricultural products; repairing damage from unfavorable weather, such as storms or severe drought; “prevention, control and eradication of animal diseases and plant pests and repairs to any damage”; “livestock and fallen stock; payment of insurance premiums and contributions to mutual funds”; “repairs to damage caused by protected animals”; animal welfare; agricultural cooperation and non-agricultural activities in rural areas; environmental protection in agriculture; conservation of cultural and natural heritage on agricultural holdings and in forests; repair of damage from natural disasters in the agricultural sector; research, development and innovation in agriculture and forestry; other forestry measures.”

State Aid must be transparent, precise calculation of the gross grant equivalent (grants, loans, guarantees, interest rate subsidies); provide an incentive to change the behavior of a potential beneficiary (a written request for aid has to be submitted before starting the project or activity); be published on national and Commission websites.

The procedure for granting state aid must be implemented in compliance with the rules of transparency, with a special emphasis on the clarity of the procedure itself. State aid must be reported to the Commission, in accordance with the regulations that regulate in detail the application process - notification of state aid and according to the rules for awarding certain categories of state aid. The regulation requires: (Regulation (EU) 2022/2472) the Commission to instruct Member States to notify future aid, if it finds that the aid already given does not meet the conditions in the legislation; MS to: send to the EC a summary of each type of aid they give and provide an annual report; maintain detailed records, with supporting documentation, for at least 10 years; have aid schemes evaluated by independent experts after their implementation if spending is “over €150 million in 1 year or €750 million over the lifetime of the scheme”. Regulation 2022/2472 is part of a package of measures the EC adopted revising State aid rules on agriculture, forestry and rural areas. These revised rules align State aid with the EU’s strategic priorities, notably the common agricultural policy and the European Green Deal. (Regulation (EU) 2022/2472)

“Common agricultural policy”- CAP

The CAP consists of two pillars – the “European Agricultural Guarantee Fund” (EAGF) and the “European Agricultural Fund for Rural Development” (EAFRD) – which together provide a basic layer of support for farmers in the Union and thereby create the conditions for preserving sustainable agriculture throughout the Union. In accordance with Article 39, Paragraph 1 of the Treaty, the objectives of the CAP are to increase agricultural productivity, ensure an adequate standard of living for the agricultural population, stabilize markets, ensure supply availability and ensure that goods reach

consumers at reasonable prices. (Maksimović, Sekulić & others, 2018) CAP and its special application methods must include: (Art. 39. Par. 2, TFEU):

- Agricultural activity nature and agricultural regions differences;
- Appropriate adjustments execution;
- Sector of agriculture in the EU MS, represents a sector that is closely related to the economy as a whole.

The goal of the reformed CAP is to: provide more targeted support to smaller agricultural assets, improve the contribution of agriculture to the environmental and climate goals of the EU, and enable member states greater flexibility in adapting measures to local conditions. (Regulation (EU) 2021/2115)

The main aspects of the policy are: a new green structure based on environmental conditions to be met by farmers and additional voluntary measures, the application of strategic planning for the purpose of more targeted direct payments and interventions in the field of rural development, a performance-based approach in which member states must report annually on his accomplishments. (Regulation (EU) 2021/2115)

The new policy includes the following components at the EU level: a common set of objectives set at the EU level for the entire CAP, which indicate what they said policy aims to achieve for farmers, citizens and the climate, an extensive set of broad intervention measures agreed at the level of the EU, which determine what member states can do to achieve the objectives of the CAP, a common set of result indicators agreed at the EU level in order to ensure equal conditions for evaluating the effectiveness of the applied measures. (Regulation (EU) 2021/2116)

Based on a clear assessment of its own needs, each country is free to choose specific intervention measures that it considers the most effective for achieving its specific goals. The new provisions state the following: “each EU member state is obliged to conduct a comprehensive analysis to determine its specific needs and create a strategic plan within the framework of the CAP, each plan states the way in which the member state will use CAP funds - and in order to meet these needs, including the tools to be applied and the specific objectives, each strategic plan under the CAP needs the approval of the Commission to ensure its alignment with the EU-wide objectives, countries must submit performance reports to the Commission in which they show the progress in achieving the goals established as indicators of results”. (Regulation (EU) 2021/2116)

By checking the strategic plans, it is ensured that they do not distort the single market, that is, that they do not represent too much of a burden for users or administrations. The committee can review the reports and, if necessary, propose recommendations to improve performance.

The new CAP also includes new obligations and incentives for farmers, such as:

- “Conservation of carbon-rich soils by protecting wetlands and peat lands,

- programs for ecology that EU countries should include in their plans to support farmers and/or to encourage farmers to use agricultural practices beneficial for the climate and the environment to an extent that goes beyond the mandatory requirements. Member States will have to allocate 25% of their direct payments to these programmes”. (Regulation (EU) 2021/2117)

In order to ensure stability and predictability, income support remains an essential part of the CAP, with certain changes, for example:

- EU countries must ensure that all payment entitlements reach a value of at least 85% of the average national amount in the EU by 2027,
- for all countries whose level of direct support per hectare is below 90% of the EU average, this gap will be closed by 2027,
- member states will be allowed to reduce direct payments per farmer (in the amount of EUR 60,000 per year or more) by a maximum of 85% and to limit them to EUR 100,000 per year,
- member states will have to redistribute at least 10% of the funds for their direct payments from larger agricultural holdings to smaller and/or medium-sized agricultural holdings, unless they would rather solve the need for redistribution with other means and can prove that this need is sufficiently met.

In November 2023, the European Commission published a report on joint efforts within all strategic plans within the CAP in EU member states. The report confirms the role of the new CAP in supporting the transition to a more sustainable agriculture model. In addition, the new CAP aims to ensure a fairer distribution of funds, with plans to support 377,000 young farmers. Income support to ensure an adequate standard of living for farmers and supporting food security remain key policy objectives.

The report found that certain improvements are needed, namely:

- “improving instruments for risk management and increasing the resilience of agricultural holdings
- Further support for innovation and digital technologies
- Complementary with EU and national policies and funds aimed at achieving environmental goals”. (Regulation (EU) 2021/2117)

Agriculture Guidelines

The Commission has adopted in 2022 Guidelines for state aid to the agricultural and forestry sectors and in rural areas (“Agriculture Guidelines”). “The revised Agriculture Guidelines introduce a new simplified state aid authorization procedure for measures co-financed under the CAP, as well as new incentives for farmers to commit to schemes under which they respect stricter environmental standards than what is required by law”. (Commission Communication 2022/C485/01 C/2022/9120)

The Guidelines apply to support for SMEs, and big companies. However, large businesses are mostly less sensitive to market deficiencies than SMEs. In addition, large enterprises in the agriculture and forestry sectors are more likely to play a significant role in the market, and therefore, in specific cases, support granted to big companies can make distortion of competition and trade in the internal market. Entrepreneurs in difficulty are excluded from these Guidelines. The EC considers that undertakings in financial difficulties, since they are endangered, cannot be considered an appropriate means to promote other public policy objectives until they are ensured sustainability. Therefore, if the beneficiary is an undertaking, the aid will be granted in accordance with the State aid guidelines for the resolution and restructuring of enterprises in difficulty. MS notifying State aid not covered by Guidelines shall have to prove that the State aid concerned is compatible with Article 107(3)(c) of the TFEU. The Commission will only approve such measures if their positive contribution to the development of the sector clearly exceeds the risks of distorting competition in the internal market and the impact on trade between MS. (Commission Communication 2022/C 485/01C/2022/9120)

“Aid in favor of undertakings active in the primary production, processing and marketing of agricultural products”

These aids relate to “investments in agricultural holdings” associated with “primary agricultural production” and to investments related to the processing of agricultural products and the placing on the market of agricultural products. Support for investments in tangible assets on farms related to primary agricultural production is covered. “Investment is carried out by one or more users or it applies to tangible assets or intangible assets used by one or more users”. Support may also apply to “investments in tangible assets and intangible assets associated with the production of bio fuels or with the production of energy from renewable sources on holdings, which meet one of the following conditions”: (Regulation (EU) 2020/852)

- In the case of investment for bio fuels production (Art. 2. (EU) 2018/2001) on farms, “renewable energy” production plants can be supported only if their annual production capacity is smaller or equal to the average annual fuel consumption on the farm concerned;
- the bio-fuel produced cannot be the market;
- in the case of investment for the production of heat and/or electricity from renewable sources on farms, renewable energy installations are eligible for support only if the customer’s goal is to meet their own energy needs and if their annual production capacity is less or equal to the common average of the annual heat and electricity consumption on the farm, including the farm;
- the sale of electricity to the electricity grid is permitted if the limit of its average annual consumption is respected.

Where investment for renewable energy production is carried out by more farms to meet their own energy needs or “to produce bio fuels on holdings, the average annual consumption is equal to the sum of the average annual consumption of all users”. MS must “require compliance with minimum energy efficiency standards for investments in energy generation infrastructure from renewable sources that consume or produce energy where such standards exist at national level”. (Regulation (EU) 2020/852)

Support for electricity production from biomass is strong prohibited, unless a “minimum percentage of the heat produced by MS is used”. MS will set thresholds for maximum starch, sugar crops and other starch-rich cultures, sugar crops and oilseeds used for bio-energy production, including bio-fuels, for different types of installations in accordance with Article 26. (Directive (EU) 2018/2001). Support for bio-energy projects must be limited to bio-energy that meets “the applicable sustainability and greenhouse gas” emission savings criteria (Art. 29 of Directive 2009/2009/EC).

“Investment must have at least one of the following objectives”:

- improve of farm sustainability -reducing production costs or improving and redirecting production;
- improving the environment, “hygiene or animal welfare standards”;
- creating and improving of development infrastructure, adaptation and modernization of agriculture, including access to agricultural land, land degradation and land improvement;
- restore the potential of agricultural production damaged by natural disasters, emergency events or adverse climate conditions that can be equated with natural disasters, animal diseases and plant-harmful organisms and which have damaged protected animals, as well as prevent and reduce the risk of damage caused by the above events and factors;
- contribute to climate change mitigation and adaptation - reducing greenhouse gas emissions and improving carbon sequestration;
- contribute to sustainable circular bio-economy and to foster sustainable development and efficient management of natural resources, (“water, soil and air, including by reducing chemical dependence”);
- contribute to stopping and reversing the process of biodiversity loss, improving ecosystem services and conservation of habitats and landscapes. (Directive (EU) 2018/2001)

“Start-up aid for young farmers and start-up aid of agricultural activities”

Aid shall be “granted to undertakings engaged in primary agricultural production and may relate to the setting-up of young farmers or to the setting-up of agricultural activities”. The aid must be conditional on the submission of the

business plan to the competent authority of the MS concerned. The amount of support shall not exceed EUR 100 000. In these cases, the EC will consider that the aid is “compatible with the internal market”. The activities must include one of the following elements:

- benefit for the climate and the environment”;
- Prevention of the development of antimicrobial resistance as identified in the Commission Communication entitled “A European action plan for Common Health” to combat antimicrobial resistance”;
- Risk prevention and management;
- Measures to modernize farms, build competitiveness, sectoral integration, innovation, market orientation;
- Digital technologies in agriculture (Art. 114 (b) of Regulation (EU) 2021/2115);
- “sustainable nutrient management”;
- Employment conditions (health and safety at work) and social support in agricultural communities;
- “the sustainable production of feed, the evaluation of feed in terms of nutrient content and value, and the documentation, planning and control of feed for farmed animals based on needs”.

“The aid must be granted in the form of subsidized services”. The institutions selected to provide advisory services shall have adequate resources in terms of professional staff undergoing regular training and advisory experience and reliability in the areas for which they provide advice. MS shall ensure that advisers are impartial and that advisory service providers are free from conflicts of interest. (Commission Communication 2022/C 485/01C/2022/9120)

“Aid for cooperation in the agricultural sector”

The EC has a positive attitude towards “start-up aid for producer groups and producer organisations” as they encourage farmers to link up. The aid shall be granted to the following “undertakings or associations of undertakings”:

- cooperation between the agricultural operators and food supply chain operators (producer groups, cooperatives and inter-branch organisations)
- clusters and networks creations;
- succession of holdings, in particular for generational renewal at farm level.

Support may be granted for the following activities:

- “pilot projects”;

- “the development of new products, practices, processes and technologies in the agricultural and food sectors”;
- cooperation between small operators in the agricultural sector in the organisation of joint working procedures and the sharing of facilities and resources; horizontal and vertical cooperation between operators in the supply chain to establish and develop short supply chains and local markets;
- joint action to mitigate or adapt to climate change; the convergence of approaches to environmental projects and existing environmental management practices, including the efficient use of renewable energy sources and the sharing of facilities and resources;
- horizontal and vertical cooperation between operators in the supply chain to establish and develop short supply chains and local markets;
- the promotion of environmental education in the context of the development of short supply chains and local markets;
- joint action to mitigate or adapt to climate change; the promotion of common approaches to environmental projects and existing environmental management practices, including the efficient use of water and the sustainable use of resources in the agricultural sector;

The aid may be granted only for new forms of cooperation and for existing forms if a new activity is started. (Commission Communication2022/C 485/01C/2022/9120)

“Aid to make good the damage caused by natural disasters or exceptional occurrences”

The Guidelines provide for State aid to make good the damage caused by natural disasters or exceptional occurrences. In this respect, the EC took the view that earthquakes, avalanches, landslides and floods can be considered as elementary disasters. The Commission has previously accepted exceptional events to include war, civil unrest or strikes and, subject to certain reservations and depending on the scale, major nuclear or industrial accidents and fires leading to major losses. The Commission considers that, in the absence of any evidence to the contrary, it is not possible to conclude that the aid granted to the beneficiary of the aid is compatible with the internal market. MS shall be free to determine in advance the criteria which will form the basis for official recognition. (Commission Communication2022/C 485/01C/2022/9120)

Aid cannot be granted for the following: for the purchase and planting of annual plants for the conservation of plant varieties threatened by genetic erosion in accordance with the Art. 107 (1) of the Treaty. However, they shall apply to the processing of agricultural products and the placing on the market of agricultural products to the extent laid down in these Guidelines. (Commission Communication2022/C 485/01C/2022/9120)

“Unlawful State aid”

State aid should not encourage undertakings to take unnecessary risks. In order to ensure the efficient and effective use of resources, MS should be able to impose on undertakings the obligation to provide information to the public on the use of their resources. The EC considers that the aid does not have an incentive effect on the beneficiary if work on the relevant project or activity has already started before the beneficiary submitted the application for support to the national authorities. (Commission Communication 2022/C 485/01C/2022/9120)

“An aid application must contain at least the name of the applicant and the size of the undertaking, a description of the project or activity, including its location, the dates of start and end of the project, the amount of aid needed and the eligible costs. In addition, large undertakings must describe in the application a situation without support, referred to as a counterfactual scenario, or an alternative project or activity, and provide written evidence supporting the counterfactual scenario described in the application”. “This requirement does not apply to municipalities which are autonomous local authorities with an annual budget of less than EUR 10 million and with less than 5 000 inhabitants”. The EC considers that the aid is compatible with the internal market (Art. 107 (3) (c) TFEU). In the case of a project or an activity, the beneficiary shall be able to demonstrate that the project or activity in question has been carried out in accordance with the principles of sound financial management. the following categories of aid shall not have, or be deemed to have, an incentive effect: aid schemes for set-aside and aid schemes with environmental, protective and recreational objectives, if the following conditions are met: the aid scheme determines eligibility for the aid in accordance with objective criteria and without further application of the MS’s discretionary law; the aid scheme was adopted and came into force before the eligible costs of the beneficiaries; the aid scheme covered only SME; support for sector-specific deficiencies arising from certain mandatory requirements; “aid for areas with natural or other specific constraints support for information activities in the agricultural sector”; “aid to make good the damage caused by adverse climatic events which can be assimilated to a natural disaster”; “aid to compensate for the costs of the prevention, control and eradication of animal diseases and plant pests and for the losses caused by those animal diseases and plant”; aid to cover the costs of removing and destroying fallen stock; aid to compensate for damage caused by protected animals; aid for the removal of damage to forests caused by regulated animals; support for information activities in the forestry sector, consisting of making information available to an indefinite number of beneficiaries; aid for promotional measures; aid for the costs of treating and preventing the spread of pests and diseases of trees and for the removal of damage caused by pests and diseases of trees. In order to ensure that the aid is limited to the minimum necessary to achieve the objective of common interest, the Member State may decide that the aid is limited to the minimum necessary to achieve the objective of common interest. In order to allow for a comprehensive assessment, the Member State shall, together with information on the pro- demand forecasts, cost forecasts and financial

forecasts, documents submitted to the investment committee describing different investment scenarios or documents submitted to financial institutions. (Commission Communication2022/C 485/01C/2022/9120)

“Transparency”

MS must ensure that the following information is published on the European Commission’s module on transparent granting of aid or on comprehensive national or regional state aid websites: (Commission Communication2022/C 485/01C/2022/9120)

- “the full text of the aid scheme and its implementing provisions or the legal basis for individual aid, or a link to that text”;
- “the aid provider identity”;
- “the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of grant, the type of undertaking” (SME/large enterprise),
- the beneficiary region (NUTS II level);
- the main economic sector of activity of the beneficiary (NACE group level).

“The Commission may adopt implementing acts. The amount of assigned revenue in accordance with Article 21 (3) of the Financial Regulation is estimated at EUR 100000. EUR 100 000 for beneficiaries active in the sectors of processing of agricultural products, placing of agricultural products on the market or forestry or engaged in activities not covered by the scope of Art. 42. TFEU. Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the public without restriction”. (Commission Communication2022/C 485/01C/2022/9120)

Conclusions

“EU competition policy seeks to ensure free competition an efficient allocation of resources and the unity of the EU market, whilst respecting the international commitments often EU. State aid rules in the agricultural sector are based on three different principles”:

1. “General principles of competition policy,
2. coherence with the EU’s common agricultural and rural development policies,
3. EU international obligations compatibility (WTO Agreement on Agriculture)”.

EC published a working document to the Commission services setting out the results of the evaluation of State aid rules for the agriculture and forestry sectors and for rural areas (2021). The evaluation found that those rules are fit for purpose, but that certain targeted adaptations are needed to align them with current EU priorities, in particular the future Common Agricultural Policy and the European Green Deal. The Commission

has therefore launched an impact assessment to gather additional information on the necessary improvements, inter alia, through an open public consultation launched in January 2022 and targeted consultations with Member States' authorities.

The main amendments to the Agriculture and Fisheries Block Exemption Regulations include a significant extension of the measures covered by the Block Exemption, namely: new categories of block exempted measures, such as aid to prevent or compensate for damage caused by protected animals, aid for environmental management obligations, aid for cooperation in the agriculture and forestry sectors or aid to prevent or compensate for damage caused by adverse climatic events in the fisheries and aquaculture sector; tailor-made measures covered by the block exemption for community-led local development projects aimed at promoting the development of rural areas at local level, a new ceiling for EIP Task Force projects targeting innovation in the agricultural sector and in rural areas. Projects with a value of less than EUR 500 000 or up to EUR 2 million per undertaking are now covered by the block exemption.

The new rules apply to almost half of the cases for which notification was previously mandatory. The revised agricultural guidelines introduce the following main changes: “a new and simplified procedure for the approval of State aid for measures co-financed under the CAP, the extension of measures targeting animal diseases and plant pests, allowing for the granting of support for emerging animal diseases and certain invasive alien species”; new incentives for farmers to commit themselves to programmes that meet environmental standards that go beyond legal standards”. The Commission notes that the aid granted to the beneficiary of the aid is limited to the minimum necessary to achieve the objective of common interest. In the case of aid for the development of certain economic activities, the aid must distort or threaten to distort competition and affect trade between MS, in particular by favouring certain undertakings or the production of certain goods. In the case of aid granted to an undertaking in difficulty, the aid must be limited to the minimum necessary to cover its operating costs. Unless exceptions are explicitly provided for in Union legislation or in Guidelines, State aid measures which simply seek to improve the financial situation of undertakings but which do not contribute in any way to the development of the sector, and in particular aid granted solely on the basis of price, quantity, production unit or unit of means of production, are considered to be operating aid which is incompatible with the internal market. In addition, such aid is likely, by its nature, to interfere with the mechanisms of the internal market organization.

The revised agricultural guidelines introduce the following main changes: “ a new and simplified procedure for the approval of State aid for measures co-financed under the CAP”, “the extension of measures targeting animal diseases and plant pests, allowing for the granting of support for emerging animal diseases and certain invasive alien species”; “new incentives for farmers to commit themselves to projects that meet environmental standards that go beyond legal standards.

In addition, it should be noted that measures to increase capacity are unlikely to be granted.

Conflict of interests

The authors declare no conflict of interest.

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