Ponkin I.V. On the contradictions between the draft “pandemic agreement” developed by the World Health Organization and public order and national interests of the Russian Federation

Conclusion on the draft international agreement on the prevention pandemic, preparedness and response, prepared by the World Health Organization (as amended on 04/22/2024)

Introductory part

The object of the study and the present conclusion drawn up based on its resultsis a documentNo. A/INB/9/3 Rev.1 dated 04/22/2024 “Proposals for the WHO Pandemic Agreement developed at the Ninth Meeting of the Intergovernmental Negotiating Body for the development and discussion of a convention, agreement or other international document on pandemic prevention, preparedness and response at her"[1], which is an integral draft agreement (hereinafter referred to as the draft Agreement, draft Agreement). The abbreviated name of the specified draft Agreement is the WHO Pandemic Agreement; Its colloquially simplified name is also known – “pandemic agreement”.

The subject of the study and the present conclusion drawn up based on its resultsare the content and focus of the specified the draft Agreement, the measure of their compliance with public order and the national interests of the Russian Federation, enshrined in the legislation of the Russian Federation, primarily in the Constitution of the Russian Federation.

Research methodology. Since the absolutely dominant subject-object area of this research relates specifically and exclusively to the sphere of legal science and legal applied analytics, the study involved not only general scientific methods and general analytical methods, but also private scientific legal methods and private analytical methods of applied legal analysts[2].

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[1]Proposal for the WHO Pandemic Agreement / Resumed Ninth meeting of the Intergovernmental negotiating body to draft and negotiate a WHO Convention, Agreement or other International Instrument on pandemic prevention, preparedness and response. Provisional agenda item 2. A/INB/9/3 Rev.1, 22 April 2024 [Proposals for an Agreement under the supervision of the World Health Organization on a pandemic, developed at the Ninth Meeting of the Intergovernmental Negotiating Body for the Development and Discussion of a Convention, Agreement or Other International Instrument on pandemic prevention, preparedness and response, No. A/INB/9/3 Rev.1 dated 04/22/2024] // <https://apps.who.int/gb/inb/pdf_files/inb9/A_inb9_3Rev1- en.pdf>.

[2]Set forth in:*Ponkin I.V.*Methodology of scientific research and applied analytics:

Main part

According to paragraph “e” of Article 1 of the draft Agreement: “*“**"Party" means state**or**regional organization for economic integration**, **who agreed to be bound**for them of this Agreement in in accordance with its terms and for which this Agreement has entered into force*"

At the same time, according to Article 27 of the draft Agreement, “*reservations*[3]*may be made to the WHO Pandemic Agreement if they do not conflict with the object and purpose of the WHO Pandemic Agreement*" Considering that the draft Agreement under consideration is an integral, internally interconnected and coordinated set of legal norms, we believe that it will be extremely difficult, almost impossible, to make reservations that deviate from the paradigm of this Agreement, which permeates all its provisions. There is no reason to have illusions on this score, since this is not what this Agreement is designed for.

In today’s difficult conditions, Russia’s chances of making any significant changes in its interests - amendments to the Agreement, in accordance with Article 29 “Amendments” of the draft Agreement, are practically reduced to zero (taking into account, by analogy, at least the voting results of the UN General Assembly in the last 10 years) .

A study of the draft Agreement reveals the following characteristic feature: the draft Agreement is clearly overly (redundantly) oversaturated with declarative language about human rights, justice, and the fight against discrimination - in the preamble and other provisions (with a complete absence of references to bioethical imperatives), but in reality not finding references to specific provisions of this draft Agreement and not expressed in real content and focus

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Textbook. Ed. 4th, additional and processed In 2 volumes. T. 1: Applied analytics. – M.: Buki Vedi, 2023. – 500 p. <https://moscou-ecole.ru/methodology4-1-2023/>.*Ponkin I.V., Lapteva A.I.* Methodology of scientific research and applied analytics: Proc. Ed. 4th, add. and rev. In 2 volumes. T. 2: Scientific research. – M., 2023. – 640 p. <https://moscou-ecole.ru/methodology_4_2_Scientific-research/>. *Ponkin I.V.*An illustrated introduction to applied analytics. Appendix to the textbook “Methodology of scientific research and applied analytics.” – M.: Buki Vedi, 2024. – 88 p. <https://moscou-ecole.ru/2024/04/02/analyst-training/>.

[3]According to the Vienna Convention on the Law of Treaties of May 23, 1969, a reservation is understood as a unilateral statement in any wording and under any name made by a state when signing, ratifying, accepting or approving an international treaty (international agreement) or acceding to it, by means of which it wishes exclude or change the legal effect of certain provisions of an international treaty in their application to a given state (subparagraph “d” of paragraph 1 of Article 2).

these provisions. As the experience of studying such destructive ("subversive") acts and draft acts, imposed on sovereign states by private international (overtly or latently operating) structures or foreign organizations suggests,[4], the positive declared goals in the vast majority of cases are only a cover for the real goals and objectives, functions and beneficiaries (beneficiaries) of the conclusion of such an agreement and the creation of the supranational structures provided for by it, which in this case are essentially endowed supranational public powers to
public administration in the areas of anti-epidemiological activities, control over the development, production, circulation and use of medicines and other medical products, and healthcare in general. The study of the draft Agreement ultimately confirms this assumption.

Paragraph 1 of Article 13 of the draft Agreement establishes: "*A Global Supply Chain and Logistics Network (the Network) is hereby established to expand equitable, timely, and affordable access to pandemic-related medical products. The network is developed, coordinated and convened by WHO****in partnership****with the Parties and****other relevant international and regional stakeholders****.****Parties prioritize exchanges through the Global Supply and Logistics Network****For equitable distribution based on public health risks and needs*..."

At the same time, subparagraph "d" of Article 1 establishes the following definition of the concept of "medical products related to the pandemic": "*"Pandemic-Related Medical Products" means****safe, effective, high-quality****and affordable products needed to prevent a pandemic, ensuring preparedness and response to it,****which may include, without limitation, diagnostics, therapy, vaccines****and personal care products protection*"

The proposed definition of this concept contains significant manipulative, unfounded declarative elements that are not accompanied in the draft Agreement by legal mechanisms to ensure the safety, effectiveness and quality of the specified products. Presumption of a priori unconditional safety, effectiveness and quality of such products only on the basis of their arbitrary assignment (attribution) to the established "global supply chain and logistics network"

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[4]See more details:*Ponkin I.V.*Deviantology of public administration: Textbook. 2nd ed., revised. and additional – M.: INFRA-M, 2024. – 324 p. – P. 156.

(clause 1 of Article 13) is not based on compelling legal and factual grounds.

The almost complete absence in the draft Agreement of provisions on the responsibility of the parties (participants), operators of the “global network”, officials of the World Health Organization involved for the purposes of the Agreement, the absence in it of provisions on guarantees of safety, effectiveness and quality of these products, including control mechanisms, validation and verification of the declared qualities of “pandemic-related medical products” that are isolated and transferred to the supranational level (in terms of management and control), with the planned loss by states of the ability to control this, obviously determines the high risks of medical and pharmaceutical errors and other defects in the provision of medical care[5] and its pharmaceutical supply.

Lexical construction of the provision of paragraph 1 of Article 13 of the draft Agreement: “***The parties give priority to exchange through the Global Network***"(English in the text of the draft Agreement - "*Global Supply Chain and Logistics Network*") – should be formally and legally understood and interpreted (in the direct semantic meaning and taking into account the established legal and linguistic understanding of the term “priority”) as providing for the transfer by states of their state-administrative powers in terms of the implementation of public policy to a certain legally uncertain and disordered “global network” in the field of anti-epidemiological measures and in the health sector in general **For all questions**, included in the broad and vaguely delimited scope of the draft Agreement.

It is obvious that the provision of paragraph 1 of Article 13 creates the legal grounds and conditions for the actual transfer in the interests of international private organizations under their dominant control of the processes of intranational (intrastate) and interstate supplies and distribution of medical products, which within the framework of the specified “global network” its actors designate (in a broad formulation, quite arbitrarily, voluntaristically) as “pandemic-related”, including in the purpose of such products (as indicated - “without restrictions”) diagnostics, therapy and prevention (vaccines).

The draft Agreement does not contain legal provisions that clearly define the legal status of the main actors (operators or participants) of the “global supply chain and logistics network,” including

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[5] See more details: *Ponkin I.V., Ponkina A.A.* Defects in the provision of medical care. – M.: GEOTAR-Media, 2021. – 312 p. *Ponkin I.V., Ponkina A.A.* Doctors' rights. Ed. 3rd, additional and processed – M.: GEOTAR-Media, 2020. – 264 p.

duties and responsibilities of this created structure, its organizer (the World Health Organization) and its actors.

Moreover, subparagraph “b” of paragraph 2 of Article 13 contains a wording on this matter that is absolutely surprising for a legal agreement: “***Network functions are performed by organizations<u>which are best suited to carry them out</u>***", which definitely gives legal opportunities to perform these functions by organizations that are not attracted on the basis of clearly stated, justified criteria, but, on the contrary, by organizations that are beneficial for some reason to an indefinite circle of other persons, for example, those whom officials of the World Organization point out health care or affiliated commercial (so-called “big pharma”) or political structures. The criteria for determining the organizations that are best “suited” to perform these functions, quite in line with the logic of the draft Agreement, are absent from it, giving the opportunity for unlimited latent arbitrary activities and abuses. That is, the initial assumption is almost unlimited, almost absolutely complete discretion (discretion) of officials of the World Health Organization, or those de facto controlling it, or organizations affiliated with it, including commercial ones, to exercise powers (managerial competencies), including including those that were previously carried out by the authorized bodies of the sovereign states parties to the draft Agreement.

This wording is in conjunction with the provision of paragraph 1 of Article 13 of the draft Agreement that the implementation of the “global network” is carried out in partnership with “other relevant international and regional stakeholders” - not legally defined by this Agreement, as well as with the provision of paragraph “e” Article 1: “*“Party” means a State or regional economic integration organization that has agreed to be bound by this Agreement in accordance with its terms and for which this Agreement has entered into force*", - establishing the scope of the parties to the draft Agreement, blurring the circle of sovereign participating states with such a position as “*regional economic integration organization*" This is also a legally insufficiently defined position, despite the definition in paragraph “h” of Article 1 of the draft Agreement, but the main thing is that it does not cover the above-mentioned “other parties”. Thus, the level of participation of sovereign states in the draft Agreement is reduced and their chances of being heard regarding their own positions are significantly reduced.

At the same time, the World Health Organization itself is positioning itself

merely as a “network organizer” who regularly “provides reports” (clause 7 of Article 13 of the draft Agreement). The main activities for the implementation of the Agreement will be carried out by other actors (commercial and other organizations) managed at the supranational level.

Moreover, in the draft Agreement, including Article 24, which indicates the inadmissibility of interpreting the provisions of the Agreement as granting the WHO Secretariat and the WHO Director General the authority to direct, order, amend or otherwise prescribe the national and/or domestic legislation of the states party to the Agreement, there are no provisions , preventing the interference of organizations (existing and attracted or created in accordance with this agreement) in the activities of states in the field of healthcare. Article 24, paragraph 3: “*Nothing in the WHO Pandemic Agreement shall be construed as conferring on the WHO Secretariat, including the WHO Director-General, any power to direct, order, amend or otherwise prescribe national and/or domestic laws, as appropriate, or the policies of any Party, or prescribe or otherwise impose any requirement that Parties take specific actions, such as banning or admitting travelers, imposing vaccination or therapeutic or diagnostic measures, or imposing isolation*"

There is a manipulative attempt to create the illusion of independent responsibility and the independent intention of the state to transfer arrays of competencies for sovereign public management in the field of healthcare to international or foreign private structures.

Consequently, by signing and ratifying the draft Agreement or otherwise recognizing the legal validity of the WHO Pandemic Agreement on its territory, the Russian Federation will de facto be obliged to transfer and will transfer some of the powers in the field of healthcare not even to the World Health Organization itself (which in itself would be absurd , given the clearly destructive behavior and abuses of this organization during the last several pandemics, primarily 2019–2021), and by some unaccountable and uncontrollable structures of Russia and, to a large extent, even the World Health Organization itself, but at the same time (according to numerous data) under the dominant control of the United States and other states hostile to Russia, acting on the basis of the notorious “world rules” (in the language of the US State Department).

Within the meaning of paragraph 5 of Article 13 of the draft Agreement, the operating organization of the “global network” is ensured “transparency” of national borders: “***In***

***during a pandemic, quick and unhindered access for personnel providing humanitarian assistance and their vehicles**,**items supplies and equipment** , and**his access to medical supplies, related to the pandemic**,**should be made easier**in accordance with the relevant provisions of international law, including international humanitarian law, and in compliance with the principles of humanity, neutrality, impartiality and**independence in the provision of humanitarian assistance**" According to this wording, the state is obliged to open borders and ensure unimpeded transit of an unspecified group of persons ("humanitarian assistance personnel") anywhere in its territory, provide these personnel with access to "pandemic-related medical supplies" (which is read as any such goods owned by other persons) will also not have the right to exercise state control and supervision, since the state assumes the obligation to comply with the specified "*the principle of independence in the provision of humanitarian assistance*" That is, this principle means, in essence, the neutralization of the legal ability of the state to fulfill its constitutional powers in the field of protecting the health of citizens of the Russian Federation in terms of humanitarian assistance during a pandemic.

There are no reasonable and rational grounds and justifications for such legal solutions proposed in the draft Agreement, since the World Health Organization itself has many times in the past been involved in international scandals, including corruption and related to illegal attacks on the public health of hundreds of millions of people, which cannot be trusted is no longer used by the majority of independent experts in the field of medical law (except for those who are openly or secretly in the pay of globalist structures in this area).

The Russian Federation cannot take on faith the imposed subjective judgment about the a priori absolute honesty and integrity of certain private organizations to which the draft Agreement requires the transfer of state powers in the field of healthcare on its sovereign territory and in respect of which no measures of control and accountability are provided. It is well known about the "neutral" activities, for example, of employees of the "independent" OSCE mission in Donbass, who carried out activities that were not neutral at all, and there are a great many similar examples.

In connection with this, the content of paragraph 4 of Article 13 should be understood: "***During a pandemic, emergency trade measures should***be

*targeted, proportionate, transparent and temporary and****Not create unnecessary barriers to trade or pandemic-related disruptions to medical supply chains***"

The phrase used is "*unnecessary barriers*", which has significant legal uncertainty, gives the legal opportunity, when applying this provision, to be guided exclusively by the private commercial interests of the real beneficiaries of the draft Agreement under study, neglecting and ignoring public policy and the national interests of the participating states, including the Russian Federation. The state, by signing and ratifying this Agreement or otherwise legally recognizing its effect on its territory, thereby completely surrenders all these issues to private organizations, no matter how dubious or hostile they may be.

Moreover, even the approximate, based on open data, volumes of capitalization of these commercial interests of the beneficiaries behind the draft Agreement are so colossal that this predetermines the highest level of corruption of the draft Agreement and its subsequent implementation, and the associated high-level real risks for the participating states. The noted features of the draft Agreement and the large scale of economic interests associated with its content and further application imply real-life and very high risks of personal latent bribery of representatives of the participating states in the process of discussion and (in the expected near future) acceptance (approval) of the draft Agreement, and therefore , determines the need for total and tightened control (including parliamentary control and prosecutorial control) on the part of the participating states over the actions of their official representatives in this process, over their real motivation and the content of decisions made, including over the compliance of such decisions with the interests of public order and the national interests of their states.

Paragraph “d” of paragraph 2 of Article 13 gives the created “global network” the powers and functionality “*equitable distribution of pandemic-related medical supplies*", that is, discretionary (at its discretion) full powers, and without indicating the source of receipt of such goods (that is, it must be assumed, including those that do not belong to this “network”) and without taking into account their admission to circulation in a given specific state, compliance with the conditions for successful undergoing full-fledged preclinical studies and clinical trials of drugs, action studies and

safety of other such medical products.

This wording is in conjunction with paragraphs 2, 5 and 6 of Article 13bis: "*2. During a pandemic, each Party in a position to do so shall, within its available resources and taking into account applicable law, set aside in a timely manner a portion of its total procurement of appropriate diagnostics, therapeutics or vaccines for use in countries facing difficulties in meeting the needs and demands of public health... 5. When exchanging pandemic-related medical products with countries, organizations or any mechanism facilitated by the Network, such products will be unlabeled and will be accompanied by all appropriate and appropriate conditions, requirements and characteristics, as well as ancillary products necessary for its distribution, application and distribution. 6. Each Party shall endeavor to ensure that contracts for the supply or* ***procurement of new pandemic vaccines*** *provisions on* ***compensation for losses*** *buyer/recipient, if any, provided for in exceptional cases and would contain* ***restrictions on time***"

In view of the above, the reference provision of paragraph 6 of Article 13: "*A multilateral system for managing compensation and liability related to vaccines and therapeutics during pandemics should be considered*" - means the obligation of states to establish in their legislation legal norms that unconditionally ensure the payment of "reimbursement" ("compensation") for real or imaginary expenses incurred by the "global network" for truly necessary, or unreasonable or even defective actions "related to vaccines and therapeutic drugs."

Article 12 of the draft Agreement establishes another formation - a certain supranational body "The World Health Organization System for Access to Pathogens and Benefit Sharing" (English in the text of the draft Agreement - "*WHO Pathogen Access and Benefit-Sharing System (PABS System)*"), which is also prescribed by the draft Agreement a significant amount of supranational powers in the field of healthcare.

A characteristic feature of the draft Agreement is the complete absence in it of provisions relevant to the subject of regulation on the responsibility of actors (parties (participants), operators, subjects) of the "global network", officials of the World Health Organization, private organizations affiliated with it and their founders (owners) and officials persons

The rare cases of mentioning the word “responsibility” in the text of the draft Agreement refer to the independent declaration by the participating States of their responsibility (paragraph 1 of the preamble, paragraph 2 of Article 34), as well as to the contextual mention of abstract responsibility in the implementation of some insignificant (in the context of the discussed) tasks in in accordance with the draft Agreement (clause 6 of Article 13, clause 1 of Article 14, clause 1 of Article 17).

It is significant that from the draft Agreement under study, the previously existing Article 15 “Management of Compensation and Liability” (“Management of Compensation and Liability” (“*Compensation and liability management*"), while it was stated that, allegedly, the provisions of this article (and also article 16) were included in articles 13 and 13bis (the very indications of these articles were preserved for the purpose of maintaining numbering). Whether the normative content of the excluded Article 15 is actually transferred to Articles 13 and 13bis of the current version of the draft Agreement does not change the matter, since Articles 13 and 13bis themselves do not establish any legal norms regarding the responsibility of the above-mentioned non-state actors.

Thus, all provisions of the draft Agreement containing the lexeme “responsibility” integrally create only an imitation and profanation of the consolidation of such responsibility. In addition, it does not contain provisions establishing the legal basis for monitoring the implementation of the Agreement (three mentions of the word “control” in the entire text of the draft Agreement are only secondary).

Thus, the draft Agreement provides for the transfer of significant amounts of competence of sovereign public authorities in the field of health care to private organizations (in any case, not public ones) with virtually complete silence regarding the establishment of any of their responsibilities and any control over them.

Essentially significant is the stipulation in paragraph 2 of Article 2 of the period of validity of the provisions of the Agreement: “*To achieve this goal****provisions WHO pandemic agreements apply both during and between pandemics****, unless otherwise specified*" That is, the Agreement will always be in force and regardless of the outbreak of pandemics in any part of the Earth.

At the same time, references in the draft Agreement to the sovereign rights of states in this context do not play a significant role, being secondary and not determining anything in the overall scope of legal regulation established by the draft Agreement (see, for example, paragraph 1 of Article 3).

The concept introduced by Article 5 of the draft Agreement seems extremely doubtful and entails significant risks for the participating states.

("an approach") "*One Health*"(English in the text of the draft Agreement - "*One Health approach*"). We believe that the introduction of the “One Health” approach at the level of an international agreement is aimed, first of all, at creating an ideological basis for the interception of national (at the level of sovereign states) public management in the field of health care and its transfer to globalist structures, promoted at the global level. There are a lot of similar purposefully designed norms of “dual” or even “triple” purpose in the draft Agreement.

According to Articles 10 and 11 of the draft Agreement, states are obliged to ensure access of private actors to controlled technologies and know-how, including those “for the development of which public funding has been allocated” (subparagraph “a” of paragraph 1 of Article 11). States are required by Article 11 to:

"*c)**encourage**research and development institutes and manufacturers, in particular those receiving significant government funding,**to refusal or reduction to a limited royalty period for using their technology**for the production of medical pandemic-related products;*

*d)**encourage transfer**private copyright holders of the respective **technologies and related know-how**for the production of medical products related to the pandemic on fair and most favorable terms, including preferential and preferential terms and in accordance with mutually agreed terms,**into created regional or global technology transfer centers**or other multilateral mechanisms or networks, and also publication of the terms of such agreements;*

*e)**encourage owners of relevant patents**who received government funding, and, where appropriate, other holders of relevant patents for medical products related to the pandemic,**waive royalties**or otherwise license any relevant patents for a reasonable royalty to developing country manufacturers for use during the pandemic of their technologies and know-how for the production of pandemic-related medical products; And*

*f)**encourage producers**within its jurisdiction**share**, V as necessary, during a pandemic, information relevant to the production of medical products related to the pandemic, when withholding such information prevents or interferes with the urgent production of pharmaceutical products necessary to respond to the pandemic*"

The requirements contained in the specified provisions of the draft Agreement,

providing "unheard of generosity" V benefit private supranational structures (directly or through "*established regional or global technology transfer centers"*) under the pretext of fair distribution of medical products related to the pandemic, do not have any convincing grounds, including legal and organizational mechanisms in the draft Agreement, which would ensure the priority of public interests over the private interests of the lobbyists of the draft Agreement and organizations interested in management flows of funds and medical products during the implementation of the Agreement. We believe that these provisions, supposedly aimed at implementing the principles of justice and solidarity (Article 3) in conjunction with other provisions of the draft Agreement, are extremely insufficient to ensure truly equal and conscientious consideration of the interests of all states in the implementation of the Agreement, since such norms, as shown practice are applied very selectively and unilaterally. A striking example of the inaction of the legal principles of equality, justice, respect for the legitimate interests of states in international relations is the biased policy of the World Anti-Doping Agency, which has launched legal wars against Russia in the field of sports, while ignoring the significantly larger scale of the use of doping agents by athletes in the USA, Norway, Canada and many other countries of the world. Therefore, to expect that by opening up to everyone and everyone regarding our unique innovative developments in the fields of pharmaceuticals, production of medical instruments, products and equipment, we will receive the same equivalent and equal disclosure in our favor is erroneous and absolutely groundless, since there are no effective guarantees of this by the project There is no agreement. It is important to note that the developers of the draft Agreement, through its Article 11, seek to consolidate their own and other organizations' private interests in this area.

It should also be noted that the substantial and systematic contributions from participating states, provided for in Articles 12 "Access and benefit-sharing" and 20 "Sustainable financing" of the draft Agreement, without establishing any restrictions or control mechanisms for this.

Considering the well-known fact of predominant control over WHO by the United States, it should be clearly understood that the Russian Federation will not have any comparable and any significant opportunities to protect its national interests in the implementation of the Agreement if, when signing and ratifying the Agreement, the Agreement is not formulated and implemented an appropriate set of reservations aimed at protecting the national interests of the Russian

Federation.

Conclusions.

The text of the draft international agreement on pandemic prevention, preparedness and response to it (as amended on April 22, 2024) grossly contradicts public order and national interests of the Russian Federation, contains a large number of provisions that are highly likely to have an extremely negative impact on ensuring national interests in the spheres of healthcare and national security of the Russian Federation, moreover, they are aimed at this.

The draft Agreement is aimed at the transfer by sovereign participating states of powers (competencies, functions) for public administration, which are under the jurisdiction of the state, in favor of private organizations and international structures, many of which are under the control of states committing hostile acts towards Russia. And at the same time, the specified draft Agreement does not contain provisions providing control and supervision over the activities of such private organizations and international structures, and does not contain provisions defining their responsibility. Such organizations themselves, to which the transfer of state administrative powers is requested, are defined by the draft Agreement in a legally unsatisfactory manner.

The signing by the Russian Federation of the WHO Pandemic Agreement without formulating a set of very significant clauses aimed at effectively protecting the national interests of the Russian Federation will be anti-constitutional and anti-state in nature and will cause significant damage to public order, national interests, and national security of Russia.

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