

Fact Sheet

October 2016

Proactive Transparency in Institutions of Bosnia and Herzegovina: good practices

The right to information is one of the fundamental rights of citizens in democratic societies. It is exercised in two ways: through the reactive and the proactive publishing of information public institutions have in their possession. The reactive approach comprises the publishing of information upon a citizen's request, while proactive publishing of information, or *proactive transparency*, means that institutions publish information on their own initiative, regularly and systematically, regardless of whether there is a request for access or not.

The increasing application of proactive transparency is a direct result of technological advances which have created ample opportunity to publish information on the websites of public institutions, and have made it easier for citizens to access that information.ⁱ For this reason, proactive transparency is now considered an integral part of good public administration, and many countries enact various regulations, most commonly freedom of information acts, obliging public institutions to publish information of public interest proactively. The trailblazers in this process of opening public institutions are the United States and the United Kingdom, but countries from the region, such as Serbia and Croatia, have followed suit.

However, Bosnia and Herzegovina (BiH) lags behind in this field. Proactive transparency has still not been laid down by the freedom of information acts in BiH, and information is by and large accessed reactively – by submitting a request to the institution which is in possession of the desired information.ⁱⁱ In that respect, freedom of information acts in BiH are outdated and do not meet the needs and expectations of the digital age. Although separate sectoral laws,ⁱⁱⁱ rulebooks^{iv} and guidelines^v address – partially, at least – the shortcomings of Access to Information laws, the overall proactive transparency legal framework is incomplete, fragmented, devoid of standards that apply to all institutions at a certain level of government, and with no valid implementation monitoring and evaluation mechanisms.

In this context, the initiative to improve the level of proactive transparency in BiH by applying Standards of Proactive Transparency in Public Administration in *BiH*^{vi} clearly stands out. The Standards contain a list of 38 documents and information which should be available on public institutions' websites. The information is divided into six categories: budget information, public procurement information, strategic documents, operational information, organisational information and information on freedom of access to information (Annex 1). This is the first attempt to make and implement a systematically conceived, comprehensive framework for proactive transparency in BiH, which would address the problem of obsolescence and the fragmentary nature of the existing laws and policies in that field. The four institutions that participated in the drafting of the Standards began to apply them in September 2015, and the Standards have been presented to other state-level institutions, although their application is optional; that is, they are not legally binding.

In order to create the preconditions for measuring the degree of development of proactive transparency in BiH, and in particular for evaluating the success of the implementation of these Standards, Center for Social Research Analitika analysed the websites of 68 state level institutions^{vii} in May 2016, with a view to recording the presence of the 38 types of documents/information listed in the Proactive Transparency Standards.^{viii} The goal was to take stock of

the situation and collect the data necessary for further monitoring of the progress of the implementation of the Standards. The results of the research have shown that the level of proactive transparency in the state-level institutions is very low, but that there are a few institutions which stand out when it comes to the application of the principles and standards of proactive publishing of information.^x As the May 2016 research mainly covered information published before May 2016, a second round of proactive transparency analysis was conducted in the first half of September 2016 (description of methodology in Annex 3). This second round of research focused only on the ten most advanced institutions (Table 1) from the ranking list from the previous round. The results of the research from September 2016 are presented here.

Table 1. Proactive transparency levels of ten state level institutions (May, September 2016)

Institution	May 2016		September 2016	
	Result (%)	Ranking	Result (%)	Ranking
Public Administration Reform Coordinator’s Office (PARCO)	63.16	3.	87.72	1.
Directorate for European Integration (DEI)	67.54	2.	78.07	2.
Agency for the Development of Higher Education and Quality Assurance of BiH	74.56	1.	77.19	3.
Agency for Statistics of BiH	50.88	7.	64.04	4.
Food Safety Agency of BiH	58.77	5.	57.89	5.
Ministry of Justice of BiH	50.00	8.	57.02	6.
Personal Data Protection Agency in BiH	50.00	8.	55.26	7.
Parliamentary Assembly of BiH	60.53	4.	55.26	7.
Ministry of Human Rights and Refugees of BiH	49.12	9.	53.51	8.
Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption of BiH	53.51	6.	48.25	9.

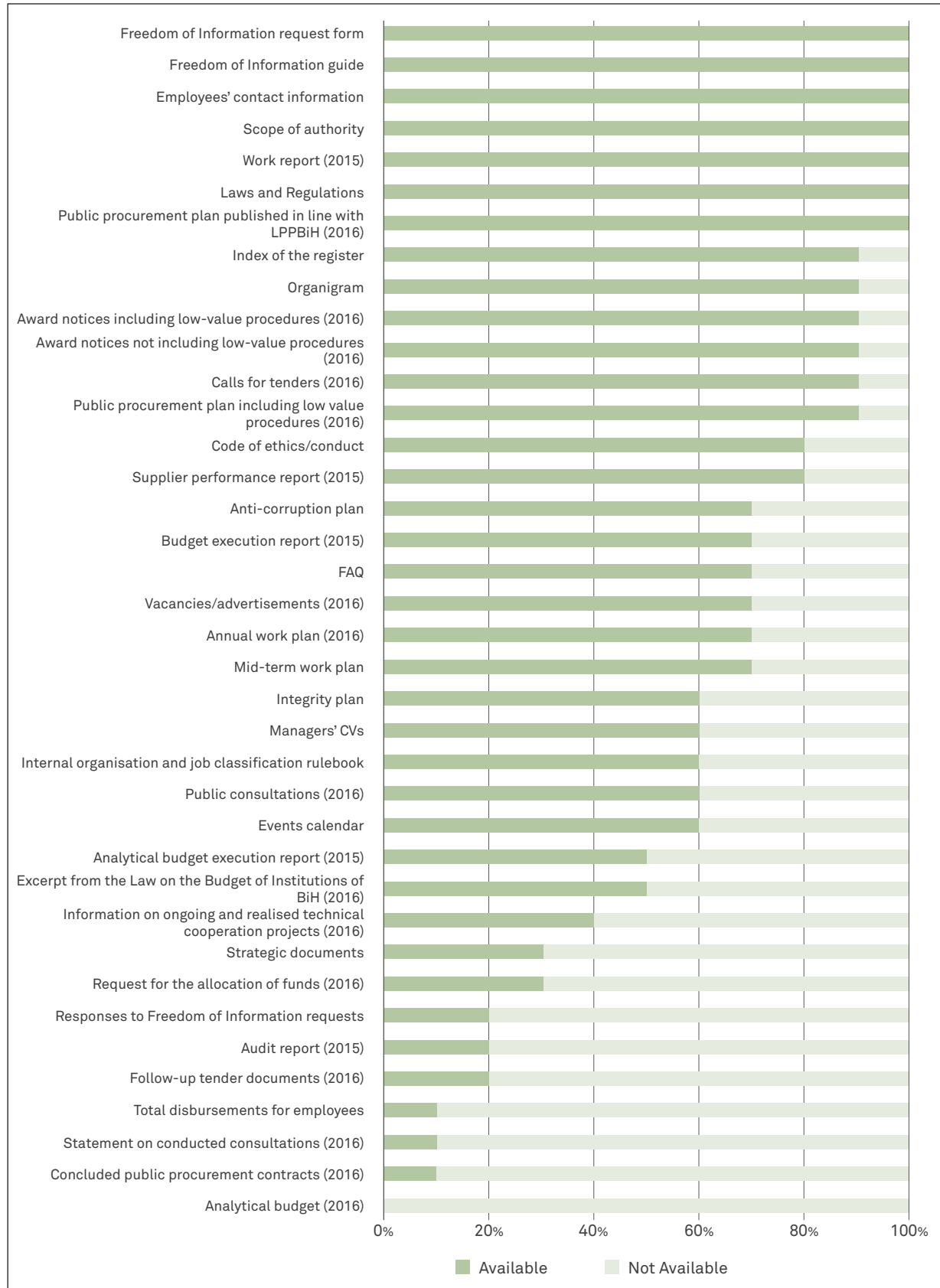
The results show that some institutions significantly improved their transparency level compared to the results of May 2016. The greatest progress was made by the Public Administration Reform Coordinator’s Office (PARCO), which increased its degree of standards fulfilment by 24 percentage points (from 63.13% to 87.72%), and the Agency for Statistics of BiH (BHAS), with a 13 percentage point increase (from 50.88% to 64.04%). PARCO is the only institution that has published its employees’ salaries, which is substantial progress considering that institutions are traditionally secretive when it comes to their employees’ remuneration.^x Furthermore, PARCO is the only institution that has published its public procurement contracts and statements on conducted consultations. The Agency for Statistics of BiH made a leap from the seventh to the third place on the list, mainly because it has complied with many more standards regarding the publishing of strategic, operative and budget-related information compared to May 2016.

The Directorate for European Integration and the Agency for the Development of Higher Education and Quality Assurance of BiH remain at the top of the list as they have achieved good results in each category – from at least 60% to the maximum 100%. With some institutions there are noticeable differences in how much information from different categories is published. Cases in point are the Parliamentary Assembly of BiH and the Personal Data Protection Agency in BiH, which fulfil a large number of proactive transparency standards regarding public procurement information, organisational information and information on free access to information, whilst they do not publish budget-related information on their websites. An overview of all results for each category, as well as the total average for each institution, is given in Annex 2.

PROACTIVE TRANSPARENCY IN INSTITUTIONS OF BOSNIA AND HERZEGOVINA: GOOD PRACTICES

Graph 1 shows an overview of availability of each of the 38 types of information and documents listed in the *Standards of Proactive Transparency in the Public Administration in BiH* on the websites of the ten analysed institutions.

Graph 1: Overview of availability of information on websites of BiH institutions (september 2016)



The results of the analysis shown on Graph 1 indicate the following:

- Overall, information on the scope of authority of the institution, laws regulating the work of the institution, contact information, work reports, FOI request forms and access to information guide books are the most widely available.
- A relatively high level of transparency has been recorded in the category of Information on Public Procurement: all ten institutions have published their public procurement plans, nine out of the ten have published calls for tenders and award notices. However, the availability of tender documents on the institutions' websites is still limited – only two of the ten institutions have published this type of information, PARCO being the only institution to publish public procurement contracts.
- In addition, PARCO is the only institution to publish statements on conducted consultations.
- Eight institutions have published their budgets on their websites. Still, good practices in the publishing of information on the spending of public funds have still not fully taken hold, seeing that only one institution has published its employees' salaries, and none have published their analytical budgets.
- Only two institutions have published their responses to the FOI requests and audit reports for 2015.

It should be pointed out that, although progress is evident, there are still problems, even with the publishing of the information which institutions are legally bound to publish, such as the index register or supplier performance report.

Finally, it is important to point out that it is quite understandable that the four institutions that participated in the drafting of the Standards of Proactive Transparency and have been applying them actively over the last twelve months should achieve higher levels of implementation of the Standards than the institutions that were not included in the drafting process.

Annex 1: Standards of proactive transparency

LEVEL	BUDGET INFORMATION
Basic	Budget, excerpt from the Law on the Budget of Institutions of BiH and International Obligations of BiH (for the institution)
	Budget execution report/Annex to the audit report
Intermediate	Budget in the form of the institution's request for the allocation of budget funds
Advanced	Budget, analytical
	Budget execution report, analytical
	PUBLIC PROCUREMENT INFORMATION
Basic	Public procurement plan
	Calls for tenders
	Award notice/notice of termination, in line with the Public Procurement Act
	Supplier performance report (List of basic elements of contracts for every public procurement procedure)
Intermediate	Annual public procurement plan including low-value procurement procedures
	Award notice/notice of termination, including low-value procedures
Advanced	Tender documentation after procedure
	Concluded contracts (confidential information protected)
	STRATEGIC INFORMATION
Basic	Strategic documents of the institution
	Mid-term work plan
	OPERATIONAL INFORMATION
Basic	Work report
	Annual work plan
	Audit report
	Advertisements, vacancy notices and their archive
	List of ongoing and realised technical co-operation projects
	Calendar of events
	Public consultation documents
Advanced	Statement on conducted consultations
	ORGANISATIONAL INFORMATION
Basic	Acts and/or articles of incorporation and other relevant regulations from the scope of the institution
	Scope of authority of the institution
	Organigram
	Internal organisation and job classification rulebook
	Employees' contact information
	Managers' biographies
	Anti-corruption action plan
	Integrity plan
Code of ethics/code of conduct	
Advanced	Total disbursements for appointees, supervisors, civil servants and employees by position
	FREEDOM OF INFORMATION
Basic	Index register
	Freedom of Information guide
	Freedom of Information request
	FAQ
Advances	Responses to Freedom of Information requests

Based on: Programme for Strengthening of Public Institutions in BiH. *Standards of Proactive Transparency in BiH* (Sarajevo: Programme for Strengthening of Public Institutions in BiH, 2015).

Annex 2: Level of proactive transparency of ten public institutions (September 2016)

	Type of document/information	Institution									
		1. Public Administration Reform Coordinator's Office	2. Directorate for European Integration	3. Agency for the Development of Higher Education and Quality Assurance of BiH	4. Agency for Statistics of BiH	5. Food Safety Agency of BiH	6. Ministry of Justice of BiH	7. Personal Data Protection Agency	7. Parliamentary Assembly of BiH	8. Ministry of Human Rights and Refugees of BiH	9. Agency for Prevention of Corruption and Coordination of the Fight Against Corruption of BiH
1	Excerpt from the Law on the Budget of Institutions of BiH (2016)	100	100	100	0	100	0	0	0	0	100
2	Request for the allocation of funds form (2016)	100	100	100	0	0	0	0	0	0	0
3	Analytical budget (2016)	0	0	0	0	0	0	0	0	0	0
4	Budget execution report (2015)	100	100	100	100	100	100	0	0	100	0
5	Analytical budget execution report (2015)	100	0	100	100	100	100	0	0	0	0
6	Public procurement plan published in line with the LPPBiH (2016)	100	100	100	100	100	100	100	100	100	100
7	Public procurement plan including low-value procurement procedures (2016)	100	100	100	100	100	0	100	100	100	100
8	Calls for tenders (2016)	100	100	100	100	100	100	100	100	100	0
9	Tender documentation after procedure (2016)	0	0	0	100	0	0	100	0	0	0
10	Award notice/notice of termination, not including low-value procedures (2016)	100	100	100	100	100	100	100	100	100	0
11	Award notice/notice of termination, including low-value procedures (2016)	100	100	100	100	100	100	100	100	100	0
12	Concluded contracts (2016)	100	0	0	0	0	0	0	0	0	0
13	Supplier performance report (2015)	100	100	100	0	100	100	100	100	100	0
14	Mid-term work plan	100	100	100	100	100	100	100	0	0	0
15	Strategic documents (strategic development plan, sectorial strategies, communication strategy)	33.33	66.66	33.33	33.33	0	66.66	0	0	33.33	33.33
16	Annual work plan (2016)	0	100	100	100	100	100	100	100	0	0
17	Annual report (2015)	100	100	100	100	100	100	100	100	100	100
18	Audit report (2015)	100	100	0	0	0	0	0	0	0	0
19	Advertisements/vacancy notices (2016)	0	100	100	100	0	100	0	100	100	100

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20	Ongoing and realised technical cooperation projects (2016)	100	0	100	0	0	0	0	100	100	0
21	Events calendar	100	100	100	100	100	0	0	100	0	0
22	Public consultations (2016)	100	100	100	100	100	100	0	0	0	0
23	Statements on conducted consultations (2016)	100	0	0	0	0	0	0	0	0	0
24	Laws and regulations	100	100	100	100	100	100	100	100	100	100
25	Scope of authority	100	100	100	100	100	100	100	100	100	100
26	Organigram	100	100	100	100	0	100	100	100	100	100
27	Internal organisation and job classification rulebook	100	100	100	100	0	0	100	0	0	100
28	Total disbursement for employees	100	0	0	0	0	0	0	0	0	0
29	Staff contact information	100	100	100	100	100	100	100	100	100	100
30	Managers' CVs	100	100	0	0	0	100	0	100	100	100
31	Anti-corruption plan	100	100	100	100	100	0	100	0	0	100
32	Integrity plan	100	0	100	0	100	100	100	0	0	100
33	Code of ethics/conduct	100	100	100	100	100	0	0	100	100	100
34	Index Register	100	100	100	100	0	100	100	100	100	100
35	Freedom of Information guidebook	100	100	100	100	100	100	100	100	100	100
36	FAQ	100	100	100	0	0	0	100	100	100	100
37	Freedom of Information request form	100	100	100	100	100	100	100	100	100	100
38	Responses to Freedom of Information requests	100	100	0	0	0	0	0	0	0	0

Annex 3: Methodology

The collection of data on the availability of information on the websites of the institutions was conducted by independent coders/analysts who had previously received training on the search and recording process. During their search, the coders used a guide which described the desired documents in detail. To make it easier to identify the necessary information, specimens of the desired documents were provided. To minimise the risk of error, two rounds of coding were conducted for each institution in the period 5-12 September, followed by a final, random result check which took place 14-16 September 2016. The purpose of the double coding and the additional check was to ensure uniformity in the coding process and remove potential coding errors, which ultimately ensured reliability of the results. For each of the 38 types of information listed in the Standards of proactive transparency, institutions would be awarded 100% if the information was available, or 0% if it was unavailable. The scoring system was modified during the scoring of availability of information which was divided into basic, intermediate and advanced level of advancement, as defined in the Standards. In such cases, if an institution published a piece of information in its advanced form, it would automatically receive 100% for lower-level information in that particular category, as lower-level information is by definition contained in the higher level information. Based on the availability of the 38 types of information, the average level of proactive transparency was calculated for each institution.

An important limitation in this research was the badly laid out and difficult to search websites of public institutions, as well as inconsistent and mismatching document titles. Furthermore, using this methodology, it was impossible to assess whether information of a certain type, such as information on technical cooperation projects, was unavailable on the website because the institution in question failed to publish it, or because no activities that would generate such information had been conducted. This type of limitation can only be overcome by using research methods which are beyond the scope of this research. However, as it was determined, following a result check, that omitting such information does not substantially affect the final score or the institution's ranking, scores based on the availability of such information were kept on the ranking list and the graph.

Endnotes

- i More on the concept of proactive transparency in: Helen Darbishire, *Proactive Transparency: The Future of the Right to Information? A Review of Standards, Challenges and Opportunities* (Washington: World Bank Institute, 2011); Rebecca Zausmer, *Towards Open and Transparent Government: International Experiences and Best Practices* (London: Global Partners and Associates, 2011); Alen Rajko, *Proactive Transparency in BiH: Status and Perspectives in Light of International Standards and Comparative Solutions* (Sarajevo: Analitika – Centar za društvena istraživanja, 2014).
- ii “Freedom of Access to Information Act for Bosnia and Herzegovina”, *Official Gazette of BiH* 28/00, 45/06, 102/09, 62/11 and 100/13; “Freedom of Access to Information Act for the Federation of Bosnia and Herzegovina”, *Official Gazette FBiH* 32/01; “Freedom of Access to Information Act for the Republika Srpska”, *Official Gazette of the RS* 20/01.
- iii For example; Law on Public Procurement”, *Official Gazette of BiH* 39/14, Arts: 17, 35 and 75; “Audit Law of BiH”, *Official Gazette of BiH* 12/06, Art 16; “Audit Law of the Federation of BiH”, *Official Gazette of the FBiH* 22/06, Art 16; “Law on Internal Audit in the Public Sector of the Republika Srpska”, *Official Gazette of the Republika Srpska* 98/05 and 20/14, Art 21.
- iv See, for example: Regulations on Consultations in Legislative Drafting”, Article 5; “Instruction on the Rules of Participation of Members of the Public in the Process of Drafting Federal Acts and Regulations”, Article 8.
- v The guidelines for editing the websites of the institutions of the RS even contains regulations on the publishing of data bases which the institutions have in their possession. Information Society Agency of the Republika Srpska (AIDRS), *Recommendations for the Development and Maintenance of Official Websites of Institutions of the Republika Srpska*, version 1.3. (Banja Luka: AIDRS, 2013), p. 15.
- vi The Standards of Proactive Transparency were drafted by a working group formed under the auspices of the Programme for Strengthening of Public Institutions in BiH, which is implemented by *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ), on the instruction of the Government of the Federal Republic of Germany. The following institutions took part in the process: Public Administration Reform Coordinator’s Office, Agency for Statistics of BiH, Directorate for European Integration, Agency for the Development of Higher Education and Quality Assurance of BiH, Transparency International BiH, Centre for Investigative Journalism (CIN), Center for Social Research Analitika and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).
- vii GIZ, the agency instructed by the Government of the Federal Republic of Germany to implement the Programme for Strengthening of Public Institutions in BiH, within which the *Standards of Proactive Transparency in Public Administration in BiH* were drafted, has engaged the services of Analitika in analysing public institutions’ websites in order to record the availability of the types of information listed in the Standards of Proactive Transparency, and monitor the progress in the application of the Standards.
- viii The results of the May 2016 analysis were published in: Analitika – Center for Social Research, *Results of the Research on Proactive Transparency of Public Institutions in BiH* (Sarajevo: Analitika, 2016). http://www.analitika.ba/sites/default/files/publikacije/proaktivna_transparentnost_eng_web.pdf
- ix Ibid.
- x Ibid.; Analitika – Center for Social Research, *Research Results: the Availability of Information on the Official Web Presentations of Public Institutions of Bosnia and Herzegovina* (Sarajevo: Analitika, 2014).

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This publication has been produced within the project “Research Study on the Proactive Transparency of Institutions in Bosnia and Herzegovina”, which is supported by GIZ on behalf of the Federal Ministry of Economic Cooperation and Development of the Federal Republic of Germany, as part of the Programme for Strengthening of Public Institutions in BiH. The publication was printed within the project “Advocacy for Open Government: Supporting the Right to Know in South East Europe”, financed by the European Union.



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