

LEGAL AND ACCOUNTING ASPECTS OF CONSTRUCTION CONTRACTS

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This article examines the legal and accounting aspects specific to construction contracts based on the provisions of the legislation of the Republic of Moldova, which mainly refer to: the classification and composition of construction contracts, the object of the contracts, the value of the contract, and the method of settlements. The construction contract is drawn up on the basis of the Civil Code of the Republic of Moldova, the National Accounting Standard "Construction Contracts," and the Regulation on the contracting of public investments.

In order to solve the aforementioned issues and correctly implement national regulations related to construction contracts, it is recommended to: revise the composition of construction contracts based on the advantages and disadvantages of construction contracts according to their type; specify the object of the contracts; specify the method for determining the value of the contract, taking into account possible cases of contractual price modification; establish clauses in the contracts regarding the settlement organization for the construction and installation works performed, either after the completion of all the works specified in the contract or at the completion of certain construction elements and types of works; establish clauses in the contracts allowing for modification of the initial construction contracts.

Keywords: *construction, contract, construction contract, fixed-price contract, cost-plus contract, mixed contract.*

ASPECTE JURIDICE ȘI CONTABILE ALE CONTRACTELOR DE CONSTRUCȚII

În prezentul articol sunt examinate aspectele juridice și contabile specifice contractelor de construcții, pornind de la prevederile legislației Republicii Moldova, care se referă în principal, la: clasificarea și componența contractelor de construcții, obiectul contractelor de antrepriză, valoarea contractului, modalitatea decontărilor. Contractul de construcții se întocmește în baza Codului Civil al Republicii Moldova, Standardului Național de Contabilitate „Contracte de construcții”, Regulamentului cu privire la contractarea investițiilor publice.

În scopul soluționării problemelor sus-menționate și al implementării corecte a reglementărilor naționale aferente contractelor de construcții, se recomandă: revizuirea componenței contractelor de construcții, pornind de la avantajele și dezavantajele contractelor de construcții în funcție de tipul acestora, concretizarea obiectului contractelor de antrepriză; concretizarea modului de determinare a valorii contractului, ținând cont de cazurile posibile de modificare a prețului contractual; stabilirea în contractele de antrepriză a clauzelor privind organizarea decontărilor aferente lucrărilor de construcții-montaj executate; după finalizarea tuturor lucrărilor prevăzute în contractul de antrepriză sau la

finalizarea unor elemente constructive și genuri de lucrări; stabilirea în contractele de antrepriză a clauzelor modificării contractelor de construcții inițiale.

Cuvinte-cheie: construcții, contract, contract de construcții, contract cu preț fix, contract "cost plus", contract mixt.

ASPECTS JURIDIQUES ET COMPTABLES DES CONTRATS DE CONSTRUCTION

Cet article examine les aspects juridiques et comptables spécifiques des contrats de construction en se basant sur les dispositions de la législation de la République de Moldavie, qui se réfèrent principalement à la classification et à la composition des contrats de construction, à l'objet des contrats d'entreprise, à la valeur du contrat et aux modalités de paiement. Le contrat de construction est établi sur la base du Code civil de la République de Moldavie, de la Norme comptable nationale "Contrats de construction" et du Règlement relatif à la passation des marchés publics.

Afin de résoudre les problèmes susmentionnés et de mettre en œuvre correctement les réglementations nationales relatives aux contrats de construction, il est recommandé de: réviser la composition des contrats de construction en fonction des avantages et des inconvénients de chaque type de contrat; préciser l'objet des contrats d'entreprise; préciser la manière de déterminer la valeur du contrat, en tenant compte des cas possibles de modification du prix contractuel; établir dans les contrats d'entreprise des clauses relatives à l'organisation des paiements pour les travaux de construction et d'installation effectués: après l'achèvement de tous les travaux prévus dans le contrat d'entreprise ou après l'achèvement d'éléments constructifs et de types de travaux spécifiques; établir dans les contrats d'entreprise des clauses relatives à la modification des contrats de construction initiaux.

Mots-clés: construction, contrat, contrat de construction, contrat à prix fixe, contrat "coût plus", contrat mixte.

ЮРИДИЧЕСКИЕ И БУХГАЛТЕРСКИЕ АСПЕКТЫ ДОГОВОРОВ НА СТРОИТЕЛЬСТВО

В данной статье рассматриваются юридические и бухгалтерские аспекты, характерные для договоров на строительство, исходя из положений законодательства Республики Молдова, которые относятся в основном к классификации и составу строительных договоров, предмету договоров подряда, стоимости договора, способу расчетов. Договор на строительство составляется на основе Гражданского кодекса Республики Молдова, Национального Стандарта Бухгалтерского Учета «Договоры на строительство», Положения о заключении государственных инвестиционных контрактов.

Для решения вышеупомянутых проблем и правильной реализации национальных норм связанных со строительными подрядами, рекомендуется: пересмотр состава договоров на строительство, исходя из преимуществ и недостатков таких договоров в зависимости от их типа; конкретизация предмета договоров подряда; конкретизация способа определения стоимости договора, учитывая возможные случаи изменения договорной цены; установление в договорах подряда условий, касающихся организации расчетов, связанных с выполнением строительно-монтажных работ: после завершения всех работ, предусмотренных в договоре подряда, или после завершения отдельных строительных элементов и видов работ; установление в договорах подряда условий изменения первоначальных договоров на строительство.

Ключевые слова: строительство, договор, договор на строительство, договор на строительство с фиксированной ценой, договор на строительство «затраты плюс», смешанный договор на строительство.

Introduction

Constructions represent one of the fundamental branches of the economy of the Republic of Moldova, at the level of which activities are carried out aimed at the technical

and material organization of the preparation and execution of works, carried out with the aim of completing the works under the conditions of maximum effectiveness of the new objectives, but also the improvement

and repair of objects already existing. Thus, the pace of the country's exit from the global crisis and the degree of competitiveness of the national economy largely depend on the effectiveness of the operation of this field of activity.

The main works carried out by the entities operating in the field of construction are the construction-assembly works (LCM): the construction works of the foundation, the foundation and the supporting constructions, the works regarding the construction of external and internal water supply networks, sewage, heat supply, gas, electricity, etc., technical and sanitary equipment installation works, works regarding the construction of oil and gas pipelines, overhead lines, telecommunications lines, etc., engineering works to prevent land erosion, landslides, avalanches; works aimed at the construction, expansion, reconstruction, repair, technical reuse of permanent and temporary construction objects.

In the process of execution of LCM by specialized organizations, two parties participate - *the beneficiary* (client) and the construction organization - *the contractor*. The activity of construction companies begins, as a rule, by establishing legal relations between these two parties, which are based on an act, the most often used being the contract.

The undertaking contract is drawn up based on the legislation in force of the Republic of Moldova: the Civil Code of the Republic of Moldova, the National Accounting Standard (SNC) "Construction contracts", the Regulation on the contracting of public investments. We specify that the SNC "Construction contracts" was implemented on 01.01.2014 and developed based on the provisions of the EU Directive and the International Accounting Standard (IAS) 11 "Construction contracts" [12]. On January 1, 2020, the changes made in the SNC [7], including those related to construction contracts, entered into force. These changes

were developed based on the provisions of Directive 2013/34/EU of 26.06.2013 [4].

The joint venture contract regulates the mutual relations between the beneficiary and the entrepreneur [1, art.377]. According to the Civil Code, *the contract* is "the agreement of will made between two or more persons by which legal relations are established, modified or extinguished" [1, art.666]. In this context, the SNC "Contracte de construction" defines *the construction contract* as an act concluded between the beneficiary and the contractor for the purpose of building, repairing, modernizing and reconstructing an asset or a group of assets that are in a close interrelationship or interdependence in terms of concerns their design, technology and operation [13].

National normative framework of accounting with the *acquis* communautaire, multiple problems arise regarding the correct application of European regulations in practice. In this article, the legal and accounting aspects specific to construction contracts are examined, mainly, which refer to: *the classification and composition of construction contracts, the object of joint venture contracts, the value of the contract and the method of settlements.*

Research methods used. In the framework of the research, the national legislative and normative acts, the results of the investigations of local and foreign scientists were used. The research is based on a deductive approach from the general to the particular, starting from the current state of knowledge of the theoretical and practical aspects of construction contracts. The study is based on the dialectical method with its fundamental elements: analysis, synthesis, induction, deduction, as well as on the methods related to economic disciplines - observation, comparison, selection, grouping, etc.

Obtained results and discussions

The construction process involves going through three stages:

1. Preparation for construction (technical-economic justification and technological design of the object);

2. Construction (execution of construction works);

3. Commissioning of finished construction objects.

These three stages involve the realization of different types of construction works, already mentioned. The basic participants in the construction investment activity are: *the investor, the beneficiary, the general contractor, the subcontractors, the users of the capital investment objects (natural or legal persons including non-residents, the state, administrative-territorial units, etc.), design entities, others (intermediary organizations, banks, insurance companies, etc.)*. At the same time, suppliers of machinery and equipment necessary for the construction of the object, suppliers of construction materials, etc. participate indirectly in the creation of production.

The investor is the natural or legal person who finances the construction of one or more objects from his/her own or borrowed sources. Therefore, *the joint venture contract* is the document that regulates the legal relations between the administration and the investor. The investor can fulfill the role of beneficiary, creditor, buyer of the built object. The investor is the subject of the investment activity on which depends the volume, the direction of the construction, the value of the investment, its organizational forms, etc.

The beneficiary represents the subject of the investment activity authorized by the investor to carry out the investment project. He/she, as a rule, takes over the function of organization and financial administration of the project from the stage of the feasibility study of capital investments to the commissioning of the built object and the achievement of the project's objectives.

The contractor represents the natural or

legal person who performs the construction works, and who must have a license to carry out this type of activity. Therefore, *the enterprise contract* is the document that regulates, in the given case, the relations between the entrepreneur and the beneficiary.

Thus, based on the concluded construction contract, the contractor undertakes to perform certain works stipulated in the contract and to deliver the object to the beneficiary in accordance with the project and the construction estimate in the established terms. The beneficiary undertakes to make available to the contractor the plot of land related to the construction, the project and the approved construction estimate in the established order, to ensure the financing of the construction works on time, to receive and pay for the executed works.

In order to perform the contractual obligations more operatively and efficiently, the contractor can call on organizations specialized in the field of construction - subcontractors. Likewise, in cases where the construction organization cannot perform all the necessary works with its own forces, it can assume the performance of concrete works to other specialized organizations on the basis of subcontracts. In this case, the contractual relations are established by signing *the subcontract*, the subjects of these legal relations being the general contractor and the subcontractor.

The general contractor is the construction company that is responsible to the beneficiary for the works performed, for the estimate documentation, as well as for the quality of the works performed by the subcontractors. In such situations, the beneficiary concludes a contract with the main executor, called the general contractor, who is entrusted with the coordination of all works and the latter is responsible, in accordance with the legislation in force [1, art. 378] for the qualitative fulfillment and within the established terms of

the works stipulated in the contract. As a rule, the general contractor performs the general construction works:

- embankments, foundations;
- structure (pillars, retaining walls, beams, slabs, brackets);
- non-structural closures (closing walls, windows and doors);
- roof (coverings, thermal insulation, skylights, etc.).

The subcontractor is a construction organization that undertakes to perform certain works in accordance with the instructions provided by the general contractor, and upon their completion, to hand over the results obtained to the general contractor. Thus, the execution of separate works (for example: thermal, sanitary, electrical, refrigeration, automated, etc.) installations takes place by *subcontractors* - based on the subcontracts concluded between the general contractor and the respective subcontractor. Therefore, the accounting is influenced by the fact, whether or not the execution of some works by subcontractors is foreseen in the contract.

The designer is represented by a natural or legal person who performs research and design work on the object. He is responsible for the quality of the project, the technical-economic indicators of the object being built, as well as for the correctness of the execution of the works by the contractor.

The object of the joint venture contract represents the content of the agreed legal will of the participants of the legal relationship. This can be: *the construction of a single object* (construction of a building, a bridge, highways, etc.), *the construction of a group of objects* (housing complex), *reutilization works* (to improve the entity's potential), *production expansion works, capital repair works* etc.

According to the provisions of the SNC “Construction contracts”, there are several criteria for classifying construction contracts. Depending on the method of setting the price,

construction contracts are classified into: *fixed price contracts, “cost plus” contracts and mixed construction contracts* [13].

The fixed-price contract is an agreement between the parties in accordance with which the contractor undertakes to carry out the construction work for a fixed amount that, as a rule, does not change in the event of an increase in costs, but there are exceptions. The fixed price contract is concluded if, at the time of signing, all project documentation has been drawn up with high precision and the beneficiary pays a significant part of the contract price in advance.

This type of contract has both advantages and disadvantages. One of the favorable aspects of this type of contract is the determination of the final value of the construction contract before work begins. This fact gives the entrepreneur the possibility of more efficient cash management. Also, in the case of the fixed-price contract, the contractor has incentives to reduce the cost of the construction work, which contributes to the increase in the overall profit margin on the contract. Another significant advantage of the fixed-price contract is the definition and nomination of the term of completion of the construction works. This facilitates the standardization of the LCM execution process and contributes to increasing the effectiveness of their execution.

As previously mentioned, the fixed price contract also has disadvantages. One of them is the high risk to which the contractor is exposed, because any deviation from the clauses stipulated in the contract will influence the costs, in most cases in the unfavorable direction, and arguing and obtaining the agreement of the beneficiary aiming to increase the price of the previously agreed contract is an arduous process. Another disadvantage of this type of contract is the difficulty of determining the final price of the contract before the start of the work, since this depends first of all on the accurate elaboration of the documentation

related to the project, a fact that requires the possession of a high qualification of the specialists who will work on the project, but also significant time costs. Establishing the final price of the contract becomes more verbose if it will run for several years, since the current economic instability does not allow making long-term forecasts regarding, for example, the prices of construction materials, machines and equipment, etc. - aspects that directly influence contractual costs. In this context, the reduced flexibility regarding changes to the design of the object of the construction contract should not be overlooked. After analyzing the favorable and unfavorable aspects of the fixed-price contract, it can be ascertained with certainty that the usefulness of this type of contract becomes practical only in the case of projects planned to be executed only in the short term.

The "cost plus" contract involves the recovery by the beneficiary of the contractual costs actually incurred and accepted by him/her and the granting of a compensatory payment in a fixed amount or a percentage agreed by both parties of the costs incurred. This type of contract is applied in the situation where the documentation on the project has not been drawn up thoroughly enough to be able to determine the final price of the contract before the start of construction work.

One of the advantages of this type of contract is the fact that the contractor can start the construction works even if the entire documentation related to the project is not finished. In this way, there is more effective management of time - a notable resource in this field of activity. Another favorable aspect of the cost plus contract is the lower risk of the contractor, given that deviations from the arrangements specified in the contract are more easily remedied. From here derives another positive characteristic of the given type of contract, in particular, the greater flexibility in the contractor's actions, due to

the development of the construction work execution process before the design stage is finished. A significant disadvantage of the "cost plus" contract is the higher risk of the beneficiary's inability to pay, due to the difficulty of estimating the final cost of the contract, and respectively the prolixity of the corresponding budgeting of the beneficiary's costs. The process of controlling contractual costs is also more difficult. The flexibility specific to this type of contract influences the speed of execution of construction works. This can be undermined, since, as a rule, any amendment introduced in the contract increases the deadline for the completion of the works. However, it is necessary to mention the fact that in economic practice the "cost plus" contract is applicable most often in the case of long-term projects.

The mixed construction contract combines the provisions of the "cost plus" contract and the fixed price contract. An example can be the "cost plus" contract with a maximum value negotiated in advance. The mixed contract is applicable in case of obscurity regarding the amount of unplanned costs, and the contractor expresses his agreement to perform the works at the maximum price, but agreed with the beneficiary. In practice, construction contracts with a fixed price per unit of work volume can be encountered. Thus, provisions created to cover unforeseen costs are factored into the price of a unit of work volume.

Another criterion for classifying construction contracts is that according to the way of segmentation and combination, according to which construction contracts are classified into: *object contracts and combined contracts*. There are several types of object contracts: contracts involving the construction of a single object, multiple assets, and the construction of a related asset [13].

In the case of the contract on objects, its value is established for each asset, and the recognition and accounting of the income

and expenses related to the contract is kept separately for each object.

According to the SNC “Construction contracts”, *the contract for the construction of several assets* requires compliance with a series of conditions on each object, namely [13]:

- presentation of separate offers for each asset;
- the existence of the beneficiary’s agreement to accept a distinct object;
- the possibility of identifying costs and revenues is for each individual object.

In the case of the construction contract of a *related asset*, the related works are treated as a separate contract if:

- there are notable differences regarding project documentation, technology and the way the asset is built;
- the price of the related asset is negotiated without taking into account the initial contract value.

The combined contract joins several contracts with one or more beneficiaries. The viability of this contract is possible if the following conditions are met [13]:

- negotiation of several construction contracts in one package;
- the existence of a connection between them and the recognition of a common amount of income and expenses;
- execution of construction contracts concurrently or in a continuous sequence.

It should be noted that the contract stipulates: *the value of the contract, the date of the start of the works, the deadline for their completion, the rights and obligations of the contractor and the beneficiary, settlement method.*

In the joint venture contracts, in addition to other important indicators, the total amount to be recovered by the beneficiary is reflected, i.e. the amount to be received by the contractor upon fulfillment of the contract (upon completion of the works).

This amount consists of two parts:

- the value of the contract;
- value added tax (VAT).

For the contractor, the value of the contract is nothing but the income related to the contract after the execution of the works. However, this indicator depends primarily on the type of contract concluded between the beneficiary and the entrepreneur: fixed price contract, “cost plus” contract or mixed contract.

The previously mentioned aspects denote the fact that the contract price cannot be established without determining the value of the construction works, the initial stage of which is the design. Currently, the basic norms in constructions that regulate this stage indicate the fact that the basis of the contract price is the estimate value made up of the value of construction works, assembly works, expenses related to the purchase of equipment, inventory, etc. [8, 9]. The estimate value represents, de facto, the amount of money established on the basis of the design documentation and the normative basis of the estimate. The estimate documentation, in turn, consists of lists of work quantities, local estimates, estimates per object, estimate calculations for certain categories of expenses, general construction estimate, etc. [10]. Lists of quantities of works serve for the preparation of local budgets by categories of works and expenses through the resource method. This involves the calculation in prices and tariffs of the elements of expenses necessary for the fulfillment of the project. Later, the information from the local currencies is systematized in the object-based currencies that are elaborated in current prices. Estimate calculations for certain categories of expenses are also included in the estimate documentation and are drawn up analogously to local estimates. The next stage consists in drawing up the general estimate of the value of the constructions by objects and the estimates by distinct expenditure categories, in current or planned prices. The information in the annex to the general estimate is relevant, and this, as

a rule, is taken into account when deciding on the financial capacity to execute the works [8, 9, 10].

Initial construction contracts may be subject to changes to clauses previously accepted by contractors and beneficiaries. These can result in:

- increasing or decreasing the quantity of any work included in the contract;
- abandonment of a work or part of a work;
- changing the nature or quality of the work;
- execution of additional works of any kind, etc.

Any changes will not void the contract and the value of all such changes will be taken into account in determining the price.

The contractual price can be changed by the parties only by mutual agreement and during the validity period of the contract. The frequent cases in which one of the parties can request a change in the price of the joint venture contract are:

Contractual price increase:

- The use of more qualitative and expensive materials;
- Execution of larger construction works than those provided for in the estimate documentation;
- Submission of complaints;
- Receipt of incentive payments.

Decrease in contract price:

- > Non-execution of some works provided for in the technical documentation, amendment carried out at the request of the beneficiary;
- > Improper execution of construction works by the contractor.

The submission of complaints can condition the increase of the contract price only if this is done by the contractor. Thus, the contractor can request in the respective manner the recovery of the expenses omitted in the estimate, incurred due to the beneficiary, but also in the case of the removal by the contractor of the

deficiencies of the technical documentation in the situation where it was developed by a design organization, but not by a subdivision of the company that performs the construction works. Providing incentive payments also increases the contract price. Usually, they are granted for the execution of the works before the deadline or the delivery of the works within the term specified in the contract, but also for the performance of the works with a higher quality than this was provided for in the technical documentation.

The joint venture agreement establishes the organization of settlements and the methods of accounting for completed and paid LCM settlement operations.

Settlements can be made in two ways:

- after the completion of all LCM provided in the joint venture contract;
- according to some stages of execution of the works, i.e. at the completion of some constructive elements and types of works at the presentation of payment invoices and documents of completion of the respective works.

Thus, one of the forms of settlement is the granting of advances by the beneficiary with the subsequent extinguishment of the debt following the reception of the works, the frequency, amount and consecutiveness of the granting of advances being expressly specified in the contract of employment. Another method of settlement is payment for the works performed after the receipt of the works on the contract as a whole or according to the stage of its completion.

Another important clause of the contract is *the reception of the works*. The Civil Code treats this process as a statement documented through the act of acceptance by which the beneficiary accepts the constructed asset or the works performed with or without reservations, and the contractor assumes responsibility for the completed works [1]. The reception of constructions is regulated by regulations

specific to the construction branch, according to which the process of reception of works is carried out in two stages [2, 3]. The first stage involves the reception at the completion of the works, which is carried out by a reception commission appointed by the investor or beneficiary, in the composition of which there are at least 5 people, whose task is to detect deviations and defects. The second stage is the final reception, which is carried out no later than 15 days after the expiry of the warranty period, in which the committee nominated by the investor, the designer and the contractor participate in turn. Thus, the construction contract must specify the time of reception, as well as the responsibilities of the parties participating in the process.

There are some situations in which several joint venture contracts were concluded for each object or group of objects, which, later, were brought together and are considered a single contract. This happens if a unique project documentation and estimate (general estimate) is drawn up for the group of contracts, the contracts are closely related to each other and constitute a part of a project, their execution takes place simultaneously in a continuous sequence.

Specialists in the field must be able to distinguish between these types of contracts in order to correctly choose the method of determining and ascertaining the results of concluded construction contracts.

The construction contract may contain *complaints (claims)* - the amount that the contractor intends to collect from the beneficiary as a recovery of the contracting costs not included in the value of the construction contract.

According to the general procedure for drawing up contracts, construction contracts contain clauses regarding the resolution of disputes between the parties, the termination of the contract at the initiative of one of the parties, as well as additional contracting

conditions (by adding new articles to the existing ones) or by referring to articles in the chapters existing in case of changes through special conditions). The additional contract conditions prevail over the general contract conditions.

We emphasize that in construction organizations, there are no clauses for *remediation of waste (deficiencies) stipulated in the joint venture contracts*. In our opinion, such ambiguities can have unpredictable repercussions on the reception of the executed works, on the settlements regarding the final payments, as well as on the remediation of the scraps that occurred after the handover-reception of the completed works. From here derives the proposal regarding the necessity of stipulating in the undertaking contract the clauses regarding the remedy of deficiencies and a penalty in the event of their detection.

Conclusions

The field of construction is one of the most exuberant sectors of the national economy. The scope of activity of this branch has particular aspects that influence the way of recording the patrimonial elements of the construction entity. The correct determination of the results of the activity of these entities depends on the concluded construction contracts.

The construction contract is drawn up based on national regulations. Thus, according to SNC “Construction contracts” there are several criteria for classifying construction contracts:

- depending on the method of setting the price: *fixed price contracts, “cost plus” contracts and mixed construction contracts*;

- according to the mode of segmentation and combination: *contracts on objects and combined contracts*. Object contracts involve the construction of a single object, multiple assets, and the construction of a related asset.

We mention that construction specialists must be able to distinguish the types of

contracts, know their advantages and disadvantages.

In the construction contract are stipulated: the value of the contract, the date of the start of the works, the deadline for their completion, the rights and obligations of the contractor and the beneficiary, the settlement method.

Our research highlighted the legal and accounting issues specific to construction contracts. *In order to solve these problems and to correctly implement the national accounting regulations, it is recommended:*

- reviewing the composition of construction contracts starting from the advantages and disadvantages of construction contracts according to their type;

- concretization of the object of the joint venture contracts;

- specifying the method of determining the value of the contract, taking into account the possible cases of changes in the contract price;

- establishing in the contracting contracts the clauses regarding the organization of settlements related to the executed construction-assembly works: after the completion of all the works provided for in the contracting contract or upon the completion of some constructive elements and types of works;

- the establishment in the joint venture contracts of the clauses for the modification of the initial construction contracts, of the clauses for the remediation of scraps, as well as a penalty in the event of their detection.

The practical application of the above-mentioned recommendations will ensure construction specialists to stipulate in the contract of employment specific clauses for the type of contract concluded in order to correctly recognize contractual income, costs and expenses, the correct choice of the method of determining the results of construction contracts and, as therefore, their successful completion.

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