

Oil & Gas 2020

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1. What department/agency regulates oil and gas extraction - what are the main laws which apply?

Under the Turkish Petroleum Law, Turkey Law No. 6491/2013, the term “petroleum” includes both crude oil and natural gas. Therefore, upstream oil and gas activities (extraction processes, investigation, exploration, and production) are regulated by the Turkish Petroleum Law, whereas downstream activities are regulated by the Petroleum Market Law, Turkey Law No. 5015/2012, the Natural Gas Market Law, Turkey Law No. 4646/2001, and the Liquefied Petroleum Gas (LPG) Market Law, Turkey Law No. 5307/2005.

The Ministry of Energy and Natural Resources (*Enerji ve Tabii Kaynaklar Bakanlığı*) (**MENR**) is responsible for the energy sector and the determination and implementation of energy policies as well as the transit passage of petroleum. The General Directorate of Mining and Petroleum Affairs (*Maden ve Petrol İşleri Genel Müdürlüğü*) (**GDMPA**) is the main service unit /department of the MENR and the regulatory authority for all upstream petroleum activities. The Energy Market Regulatory Authority (*Enerji Piyasası Düzenleme Kurumu*) (**EMRA**) – is the regulatory agency that regulates and monitors energy market activities, grants licenses to conduct market activities (for all downstream oil and gas activities), and has the authority to impose administrative fines and cancel licenses due to non-compliance with applicable legislation.

2. Are there international laws those working in this jurisdiction need to consider?

Turkey is a signatory to several conventions and international agreements for the international oil and gas market. The major international agreements Turkey is party to are:

- • The International Energy Program Agreement 1975 (Paris) (Uluslararası Enerji Programı Anlaşması);
- • The Energy Charter Treaty, 1994 (Lisbon) (Enerji Şartı Anlaşması);
- • The International Convention on Readiness, Response and Cooperation for Oil Pollution and its annexes (27 November 1992) (London) (Petrol Kirliliğinden Doğan Zararın Hukuki Sorumluluğu ile İlgili Uluslararası Sözleşme in Turkish);
- • The International Agreement on the Establishment of an International Fund for the Indemnification of Damages Caused by Oil Pollution (27 November 1992) (London) (Petrol Kirliliği Zararının Tazmini İçin Bir Uluslararası Fonun Kurulması ile İlgili Uluslararası Sözleşme in Turkish); and
- • The International Convention on Civil Liability for Oil Pollution Damage 1992 (London) (Petrol Kirliliğinden Doğan Zararın Hukuki Sorumluluğu ile İlgili Uluslararası Sözleşme in Turkish)

3. What are the licensing procedures for carrying out different oil and gas extraction processes?

The GDMPA is the authority in charge of licensing for all three types of upstream activities.

Under the Turkish Petroleum Law, Turkey Law No. 6491/2013, there are three major types of licenses required to conduct upstream activities: (i) an investigation permit, (ii) an exploration license, and (iii) a production lease. The investigation permit grants the right to survey land by gathering data from the ground and air through topographic, geological, geophysical, geochemical, and similar methods for petroleum exploration purposes, and to perform drilling works to gather geological information. However, an investigation permit does not grant its holder the right to drill a bore or appraisal well. An exploration license gives the holder the right to explore for petroleum within the exploration area defined in the license. On discovery of a petroleum reserve for commercial production, an exploration license holder should apply for a production lease, which entitles its holder to develop and produce petroleum in the area defined in the lease as well as transport and trade the petroleum to downstream licensees holding a petroleum market activity license issued by EMRA.

Under Article 5 of the Turkish Petroleum Law, Turkey Law No. 6491/2013, the GDMPA issues an investigation permit on execution of an agreement between the applicant and the GDPA. This agreement defines the permit terms and conditions as well as the rights and obligations of the applicant and determines the license fee payable by the applicant. Exploration licenses can be granted as onshore and offshore licenses. These applications are announced in the Official Gazette, and all applications concerning available areas, business, and investment plans with at least one well bore plan should be submitted to the GDMPA together with a bank letter of guarantee for 2% of the total investment.

Applications for production leases are also submitted to the GDMPA and are granted for a term of 20 years. At this stage, lease holders should also pay the state share, equal to one-eighth (12.5%) of the petroleum produced from the area subject to the production lease.

Investigation permit, exploration license, and production lease holders are also required to provide collateral to secure compensation for any damages that could occur during petroleum-related activities.

4. Is there any appeal process if licenses are denied?

Yes, under Article 41 of the Implementing Regulation of the Turkish Petroleum Law, the MENR is authorised to resolve claims if a license is denied. MENR's decisions can be challenged before the Council of State, which acts as the court of first instance for any dispute. However, the licensing process is mainly procedural and conducted on paper, so does not usually necessitate an appeal process.

5. Is a national partner or government body required to be involved?

For upstream activities, involvement from a national partner or government body is not required.

6. What checks/monitoring is carried out on extraction equipment?

The Turkish Petroleum Law, Turkey Law No. 6491/2013, and its secondary legislation does not regulate a specific process for checking/monitoring extraction equipment. However, the legislation provides for certain technical criteria and exemptions on extraction equipment imported into Turkey (e.g., imported equipment approved by the GDMPA is not required to satisfy the standards accepted by the Turkish Standards Institute).

7. What checks/monitoring is carried out on extracted oil and gas?

For downstream activities, EMRA is entitled to conduct monitoring using its own staff or, if necessary, using other public institutions and organisations. EMRA can also establish stationary and mobile laboratories in cooperation with the Turkish Accreditation Authority for audits.

Under Article 5 of the Regulation on Technical Criteria, all petroleum products marketed in Turkey should comply with the technical standards set out under this regulation. Products should comply with Turkish Standards, if not with European Standards. If these standards are unavailable, products should comply with other standards accepted by the Turkish Standards Institute.

8. Who holds title on oil and gas reservoirs?

Petroleum resources (including oil and gas reservoirs) in Turkey are owned by and at the disposal of the State.

9. Is the position different for offshore, surface or subsurface extraction?

No, title over petroleum extraction from Turkish territories, whether onshore, offshore, surface or subsurface, belongs to the State.

10. Are there any specific rules governing the ownership of pipelines?

No, current regulation for oil and natural gas does not provide any limitations on the ownership of pipelines due to Turkey's liberalised energy regime. The Turkish Petroleum Pipeline Corporation (Boru Hatlarıyla Petrol Taşıma Anonim Şirketi) ("BOTAŞ") is a state-owned economic enterprise involved in the construction and operation of oil and gas pipelines. BOTAŞ used to have a monopoly over the oil and natural gas transmission license market; however, the Natural Gas Market Law, Turkey Law No. 4646/2001, and the Petroleum Market Licensing Regulation grants new transmission companies' licenses to construct and operate new pipelines that connect with existing lines.

Apart from BOTAŞ, the Baku-Tbilisi-Ceyhan Pipeline Company, the owner of the Baku-Tbilisi-Ceyhan (BTC) Petroleum Pipeline which transports crude oil from the Caspian Sea to Ceyhan, was also involved in the construction of a private natural gas transmission network for the project's own needs. As this project was realised within the scope of an IGA/HGA regime (Intergovernmental Agreement/Host Governmental Agreement), with the "force of law" effect, BTC has benefited from exclusive rights in relation to the construction of this special purpose natural gas transmission work.

11. Are there any restricted areas where extraction is not allowed?

Unless the Energy and Natural Resources Minister provides its consent, extraction related activities are not permitted in the following areas:

- • Within a kilometre of state borders;
- • In military restricted zones and security zones; or
- • Within 60 meters of public areas and facilities such as places of worship, schools, hospitals, libraries, roads, railways, and historic places

To obtain a license for extraction in areas located within military restricted zones and security zones, prior consent from the relevant military authorities should be obtained. Additionally, to obtain licenses/permits in areas falling within the scope of the Forestry Law, Turkey Law No. 6831/1956, applicants must also fulfil the obligations in Article 17 of the Forestry Law (Orman Kanunu), including payment of a forestry fee for a maximum term of 49 years.

12. Are there any restricted extraction practices, e.g. fracking?

Applicants must submit a detailed production program—indicating their extraction methods— together with their license application. To utilise non-traditional extraction practices such as fracking, re-entry, horizontal, and diagonal drilling systems, extra collateral (a maximum amount equal to 2% of the total investment) from applicants may be required.

13. Are there any specific environmental laws which need to be considered by those operating in the oil and gas sectors?

The Environmental Law, Turkey Law No. 2872/1983, (Çevre Kanunu) and its secondary regulations are the main pieces of legislation governing environmental matters. In addition, the Petroleum Law, Turkey Law No. 6491/2013, and the Petroleum Market Law, Turkey Law No. 5015/2012, impose rules and standards for environmental protection. Below is a list of the relevant legislation:

The Turkish Environmental Law, Turkey Law No. 2872/1983: All related parties must prevent, stop, and take the necessary precautions to mitigate the effects of pollution. The law contains a strict liability rule.

The Turkish Petroleum Law, Turkey Law No. 6491/2013: Petroleum rights holders should not directly or indirectly commit any dangerous act while conducting petroleum operations. A dangerous act is defined as any act of negligence during petroleum operations that endangers or is likely to endanger the life or health of any person within the field, or which gives rise to environmental pollution, or the destruction of property or places designated under the Law on the Conservation of Cultural and Natural Properties (Kültür ve Tabiat Varlıklarını Koruma Kanunu) Turkey Law No. 2863/1983.

The Turkish Petroleum Market Law, Turkey Law No. 5015/2012: Persons who conduct petroleum market activities should take all necessary precautions to prevent damage to the environment and notify public authorities in case of any risk of damage to the environment.

Environmental Impact Assessment Regulation (Çevresel Etki Değerlendirmesi Yönetmeliği): Petroleum refineries, natural gas facilities, and petroleum, natural gas, or chemical transportation or storage facilities are subject to an environmental impact assessment (“EIA”) process. Parties must submit an EIA report, prepared by authorised companies, to the Ministry of Environment and Urbanisation (“MoE”). The MoE assigns a committee to examine the report in line with the proposed environment protection measures. Upon the committee’s review, the MoE issues either a positive or negative decision on the impact of the project. For projects within the scope of the regulation, unless a positive decision or an “EIA not required” decision is issued, no approval, permit, incentive, or usage license can be issued. The MoE has the authority to evaluate the application and make a final decision.

Environmental Permit and License Regulation: Facilities where petroleum market activities are conducted, are required to obtain either an environmental license or an environmental license and permit prior to the commencement of their activities. Non-compliance with environmental licenses and permits can result in administrative fines or the cancellation of licenses and permits.

14. How are oil/gas firms regulated - do they need to have specific capital, professional status, ownership credentials?

Although owners of certain types of downstream licenses must be Turkish companies, in general, upstream and downstream license holders can be Turkish or foreign individuals or entities that have obtained licenses in accordance with the applicable regulations. In addition, there is no limitation on the licensee company from being wholly or partially owned by foreign individuals and/or legal entities. The legislation also imposes minimum share capital requirements for these licensees.

15. Is there any specific regulation over accreditation firms involved as sub-contractors in oil /gas business?

No, there is no specific regulation. The Turkish Accreditation Agency is the exclusive authority that provides and confirms accreditation services to certification and inspection institutions and determines/changes criteria for these institutions. Under Article 11 of the Regulation on Technical Criteria, analysis of samples is carried out by either stationary or mobile laboratories accredited by valid accreditation bodies.

16. Are royalties paid to the Government?

For upstream activities, exploration license and production lease holders must pay the State a one-eighth share (12.5%) in royalty fees for petroleum produced from an exploration or production area.

Licensees of downstream activities do not pay any royalties; their contributions are instead limited to licensing fees.

17. How does the royalty process work for oil and gas?

The royalty fee is calculated separately for oil and gas.

For domestic crude oil, the market price is based on the price set by the nearest port or refinery to the delivery point.

For natural gas, royalty calculations must be made based on the sale price of natural gas to consumers and/or distribution companies.

18. What other taxes are levied on the production and sale of oil and gas products?

Upstream and downstream licensees are subject to: (i) corporate tax, (ii) withholding tax, (iii) value added tax, (iv) private consumption tax, and (v) other taxes and charges. License holders must make the necessary declarations required under the Income Tax Law, Turkey Law No. 193/2016, (Gelir Vergisi Kanunu) and the Corporate Tax Law, Turkey Law No. 5520/2006 (Kurumlar Vergisi Kanunu).

Under the Petroleum Law, Turkey Law No. 6491/2013, the sum of taxes that a petroleum rights holder is liable to pay or withhold should not exceed 55% of the licensee’s taxable income. Additionally, if a licensee imports materials, tools, fuel, or transfer vehicles for petroleum activities, or buys these items from a domestic provider, the license holder is exempt from custom duties and levies and stamp tax duty.

Downstream license holders do not benefit from a special regime. The only special tax incentive is for activities involving the transportation of foreign crude oil and natural gas through pipelines and the construction and modernisation of pipelines. These activities are therefore exempt from value-added tax in accordance with the Value-Added Tax Law, Turkey Law No. 3065 /1984 (Katma Değer Vergisi Kanunu).

However, under Council of Ministers Decree No. 2012/3305 (Yatırımlarda Devlet Yardımları Hakkında Karar), LNG investments with a minimum of TRY50 million are entitled to benefit from various government incentives, including value added tax exemption, customs tax exemption, tax deduction, and advantages relating to social security premiums.

19. Are any environmental taxes levied on the production of oil and gas products?

Currently, there are no environmental taxes on the production of oil and gas products. However, Turkey is in the process of preparing legislation to conform with the Kyoto Protocol. Therefore, environmental taxes may be introduced on the production of oil and gas products in the near future.

20. How long are licenses/concessions? Can they be renewed if so how?

As indicated above, reconnaissance licences cannot be granted for a period exceeding three years.

Under the Turkish Petroleum Law, Turkey Law No. 6491/2013, the maximum term for an oil and gas exploration license is 5 years for onshore activities and 8 years for offshore activities, with the ability to extend. However, the extension period cannot exceed 9 years for onshore exploration licenses and 14 years for offshore exploration licenses. The term of an exploration license can be extended multiple times for up to 2 years for onshore sites and 3 years for offshore sites. Production leases can be granted for up to 20 years with a right of extension (two extensions, each with a maximum term of 10 years). The remaining term of an exploration license is also added to the term of a production lease issued for the same area.

Under the Natural Gas Market Law, Turkey Law No. 4646/2001, natural gas market licenses for downstream gas activities are granted for a term of 10 to 30 years. Licensees can file an extension request with EMRA one year prior to the expiry of the relevant license at the earliest, and nine months prior to expiry at the latest. Licenses can be extended for a term of 10 to 30 years.

Under the Petroleum Market License Regulation, all licenses for downstream oil activities are granted for a maximum of 49 years. There is no specified minimum term for licenses. License holders can apply to EMRA for an extension of the license term six months prior to expiry at the earliest, and two months prior to expiry at the latest.

21. If offshore production - how far does the seaward regime operate?

Under the Turkish Petroleum Law, Turkey Law No. 6491/2013, offshore areas are split into two categories: inner territorial waters and exterior territorial waters. Extraction from inner territorial waters is subject to the same extraction procedures as the mainland. However, for the extraction of petroleum from resources located within exterior territorial waters, consent from the President of the Republic of the Turkey is required.

22. How is transportation regulated - onshore and offshore - are permits required?

Under the Petroleum Market Law, Turkey Law No. 5015/2012, holding a license is obligatory for the transportation and transmission of petroleum products, regardless of whether activities are for onshore or offshore production. However, EMRA can introduce an exemption from the obligation of it being necessary to have a transmission license at its own discretion.

23. How do you obtain rights to construct pipeline or storage facilities for oil and gas?

To obtain the right to construct pipelines or storage facilities for oil and gas, a legal entity should obtain various licenses, such as:

- (a) An environment impact assessment approval from the MoE;
- (b) A construction license from the relevant public authority (the relevant municipality or governorship depending on the location); and
- (c) A transmission license from EMRA

Additional licenses may be required depending on the characteristics of the product being transported or stored.

24. Can pipeline or storage facility owners be required to allow other producers to use their facilities?

Under the Petroleum Market Law, Turkey Law No. 5015/2012, transmission and storage licensees with spare capacity in their facilities will be liable for transmission and storage demands subject to certain criteria. For example:

- - demands should conform with the tariff of the licensee, as well as the quality of the facility and the transmitted or stored petroleum, and must be suitable for the capacity of the relevant facility; and
- - demands should not pose a risk for deterioration of the licensee's facilities, operational rules and conditions, or the petroleum transmitted or stored by the licensee.

Third party access to the transmission network and activities of natural gas storage facilities are regulated under the Transmission Network Operation Regulation (Doğal Gaz Piyasası İletim Şebekesi İşleyiş Yönetmeliği), and the Transmission Network Operation Principles (İletim Şebekesi İşleyiş Düzenlemelerine İlişkin Esaslar) ("Network Code"). In line with the Network Code, BOTAŞ currently operates the transmission network and manages and co-ordinates third party access to the network. To access the network, a connection agreement must be entered into between BOTAŞ, as owner of the existing national transmission network, and the respective import, wholesale, generation, or export company.

Following the connection agreement, a standard form transportation contract will be entered into for the transportation of gas through the transmission system, and for capacity allocation at an entry or exit point. The Network Code sets out detailed technical criteria and formulae for the calculation of tariffs applicable to the natural gas transmission activities of third parties.

25. What specific health and safety rules apply to the industries - and how actively are they monitored/violations prosecuted?

The Occupational Health and Safety Law, Turkey Law No.6331/2012, (İş Sağlığı ve Güvenliği Kanunu) and its secondary regulations are the main pieces of legislation governing occupational health and safety. All employers must ensure the safety of employees and take all necessary precautions to ensure employees' health and safety.

In addition, the Turkish Petroleum Law, Turkey Law No. 6491/2013, the Petroleum Market Law, Turkey Law No. 5015/2012, the Regulation on the Application of the Petroleum Law, the Petroleum Market License Regulation, and the Natural Gas Market Law, Turkey Law No. 4646/2001, impose sector specific rules and standards for occupational health and safety. Obligations of license holders include: (i) refraining from any dangerous acts or activities that could jeopardise human health, the environment, or cultural assets, and (ii) adopting all necessary measures in a manner that eliminates circumstances which may be potentially hazardous.

Licensees are also required to comply with various obligations imposed under sector specific legislation, such as:

- The Regulation on the Protection of Employees from the Dangers of Explosive Environments (Çalışanların Patlayıcı Ortamların Tehlikelerinden Korunması Hakkında Yönetmelik): Employers should prepare a precautionary document setting out the health and safety precautions to be adopted for the protection of employees from incidents that may arise from possible explosions in the workplace.
- The Regulation Regarding the Prevention of Major Industrial Accidents and Mitigation of their Effects (Büyük Endüstriyel Kazaların Önlenmesi ve Etkilerinin Azaltılması Hakkında Yönetmelik): Entities storing hazardous substances should take all necessary precautions to mitigate the effects of major industrial accidents. Furthermore, operators of such entities should prepare a major accident- prevention policy document (büyük kaza önleme politikası belgesi) and submit this document to the MoE within one year of the commencement date of their operations.

Entities that fail to comply with the regulations are subject to monetary fines. In general, the relevant authorities impose a very strict screening/monitoring process to ensure liable parties' (primarily license holders) compliance with these obligations.

26. Is certification required for specific areas of production?

Under the Regulation on Natural Gas Market Certification (Doğal Gaz Piyasası Sertifika Yönetmeliği), to undertake natural gas production, a construction and service certificate, and an interior installation and service lines certificate is required. These are granted for a term of 10 to 30 years.

27. How does Emiratisation and preference for local workers work in the oil/gas industry?

Current legislation does not impose any specific requirements on the use of local goods and services, local employment, or training programs in the oil/gas industry. However, in general, in accordance with criteria determined by the Ministry of Employment, Social Services and Family, foreign invested companies employing foreign employees must employ at least 5 Turkish citizens per foreign employee. A company employing foreigners must also have at least TRY 100,000 in paid capital.

28. Do foreign workers need specific qualifications/accreditation?

Under Article 15 of the Petroleum Law, Turkey Law No. 6491/2013, a petroleum right holder can employ expatriate professionals for petroleum operations in Turkey for a maximum of six months with the consent of MENR, provided the employee obtains a residency permit.

If the duration of employment exceeds six months, employees must apply for a work permit or a work permit exemption under the International Workforce Law, Turkey Law No. 6735/2016, (Uluslararası İşgücü Kanunu) and the Turquoise Card Regulation (Turkuaz Kart Yönetmeliği).

29. Are there specific rules governing the sale and marketing of oil and gas products produced in this jurisdiction?

Under the Petroleum Market Law, Turkey Law No. 5015/2012, and the Petroleum Market License Regulation, to distribute and/or sell petroleum, a distributor or dealership license is required. The legislation also imposes additional criteria that must be satisfied for these activities. Refinery license holders are obliged to store twenty times the daily average supply of petroleum/petroleum products in storage facilities to satisfy the national petroleum storage obligation. Distribution license owners are obligated to have the technical capacity, equipment, and financial capability to satisfy annual white product (gasoline and diesel oil) sales of 60,000 tons.

Under the Natural Gas Market Law, Turkey Law No. 4646/2001, for the wholesale and distribution of natural gas, a wholesale license/distribution license should be obtained from EMRA.

A natural gas producer is entitled to sell the gas it produces directly to consumers as long as the volume of gas sold does not exceed 20% of the national consumption forecast determined by EMRA for that year.

Import license holders can conduct the wholesale of natural gas without obtaining a separate wholesale license, provided they notify EMRA of their natural gas suppliers, the types of transportation methods they intend to use, and their technical and financial capabilities.

30. How does price setting operate for oil/gas sales and oil/gas distribution - are there mandatory requirements?

EMRA determines the tariffs and pricing policies for petroleum and natural gas activities in accordance with the Petroleum Market Pricing System Regulation (Petrol Piyasası Fiyatlandırma Sistemi Yönetmeliği) and the Natural Gas Market Tariffs Regulation (Doğal Gaz Piyasası Tarifeler Yönetmeliği).

Pricing for the purchase and sale of oil products are based on the nearest accessible global free market conditions under the Petroleum Market Law, Turkey Law No. 5015/2012. For domestic crude oil, the market price set by the nearest delivery port or refinery is accepted as the price.

For natural gas, EMRA has the right to determine the principles and conditions to be taken as a basis for connection tariffs, transmission and storage tariffs, wholesale tariffs and retail tariffs in accordance with the Natural Gas Market Law, Turkey Law No. 4646/2001.

31. Are there any specific competition rules which apply in the oil and gas sectors?

The Competition Law, Turkey Law No. 4054/1994 (Rekabetin Korunması Hakkında Kanun) is the main piece of legislation under which concerted practices and abuse of a dominant position is prohibited. The Turkish Competition Authority is in charge of ensuring that the oil and gas sectors are competitive. Apart from the Competition Law and its secondary regulations, sector specific legislation imposes specific restrictions on market players.

For instance, under the Natural Gas Market Law, Turkey Law No. 4646/2001, no legal entity except for generation companies in Turkey can sell more than 20% of the national natural gas consumption forecast determined by EMRA for the current year. Furthermore, any legal entity undertaking activities in the natural gas market can only participate in one of the legal entities undertaking activities in a field other than its own field of activity; however, the legal entity cannot establish a separate company. There are no specific restrictions under the Petroleum Market Law, Turkey Law No. 5015/2012.

32. Are there any specific rules on the ownership structure of oil and gas companies?

There are no specific rules on the shareholder structure of oil and gas companies. However, transfer of licenses or share transfers resulting in a change of control in the license holder company is subject to certain restrictions.

The Petroleum License Regulation and the Natural Gas License Regulation generally prohibit the transfer of any downstream licenses, with the only exception being project lenders. Accordingly, depending on the terms and conditions of the financing agreements, lenders are entitled to request that EMRA re-issue the subject matter license in the name of another legal entity, provided all the initial license holder's undertakings in relation to the license are transferred to the third party, and the new licensee satisfies the criteria for license applicants.

Exploration licenses and production leases for oil and gas, as well as the petroleum rights arising from these licenses, can be subject to encumbrances in favour of third parties, provided the prior consent of the GDMPA has been obtained and the encumbrances are registered with the petroleum registry kept by the GDPA. The granting or transfer of exploration licenses and production leases, and the establishment of any encumbrances must be published in the Official Gazette and registered with the petroleum registry.

The GDMPA can refuse to give its consent for the transfer of shares, licenses, leases, or the establishment of any encumbrance over the shares of a licensed entity/licenses due to lack of experience or financial and/or technical capacity.

33. Does oil and gas regulation differ inside freezones?

Specific legislation for freezones does not impose different requirements on oil and gas activities carried out in freezones.

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