

# CCBE comments on the possible future priorities of the Commission in the area of digitalisation of justice

October 2024

The CCBE welcomes the opportunity to submit its observations on the possible future priorities of the Commission in the area of digitalisation of justice. The present submission is based on the input from CCBE members and on the CCBE work on digitalisation to date. The CCBE is also ready to engage with the EU institutions and relevant stakeholders on further development of the European e-justice environment.

## General remarks

The CCBE set out its broad observations on digitalisation of justice and impact of new technologies on lawyers in its statement on the European Declaration on Digital Rights and principles (2023).<sup>1</sup> It stressed that:

- e-justice systems need to be secure and the need to protect the confidentiality of the communications between lawyers and their clients and professional secrecy
- e-justice systems must ensure electronic equality of arms and access to justice;
- digitalisation should not be full or completely mandatory, and should be accompanied by sufficient training for citizens, professionals and administrations, and should always be human centred; and
- judicial decision making must remain a human-driven activity with human judges taking full responsibility for their decisions.

The CCBE would also like to point out that for digitalisation to be truly successful, it must address the needs of the legal profession, and this can only be achieved through the profession's ongoing involvement and feedback on e-justice solutions.

Lastly, the CCBE considers that the possibility of communication and exchanges by paper should be maintained to respond to certain situations, in order to prevent infringements of the rights of the defence and access to justice, and more generally to the law.

## Question 1: Do you think that the use of digital, in particular AI, tools and digital infrastructure will make justice more efficient?

**All judicial systems require proper financial, human and technological resources and this can contribute to the delivery of justice in a timely manner in order to avoid justice delayed being justice denied.**

<sup>1</sup> CCBE Statement on the European Declaration on Digital Rights and principles (2023):  
[https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/IT\\_LAW/ITL\\_Position\\_papers/EN\\_ITL\\_20230216\\_CCBE-Statement-on-the-European-Declaration-on-Digital-Rights-and-Principles.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Position_papers/EN_ITL_20230216_CCBE-Statement-on-the-European-Declaration-on-Digital-Rights-and-Principles.pdf)

Regarding technology, the answer to this question must be qualified as it depends on many factors, such as the quality of the technologies used, the type of cases and procedures for which they are used, the extent to which all court user needs have been addressed, and the resources dedicated to the supporting of the digitalisation efforts.

Achieving efficiency is one of the most obvious benefits of digitalisation, including the use of AI. In its position paper on the proposal for a regulation on digitalisation of cross-border judicial proceedings,<sup>2</sup> the CCBE pointed out that the digitalisation could have several advantages, such as:

- increasing the accessibility of information and easing access to judicial procedure (particularly where information can be more searchable, retrievable, and foster collaboration as appropriate or when hearings can take place online);
- lowering costs of handling cases for administrations, citizens and businesses (for example by providing easy and secure access to the relevant documentation); and
- speeding up cross-border procedures and make them more efficient.

**These benefits, however, cannot be achieved at the expense of fundamental rights and safeguards.**

In the CCBE comments on the Commission communication on digitalisation,<sup>3</sup> the CCBE stressed that digitalisation needs to be coupled with sufficient safeguards and due process procedures. It made several recommendations as to the essential elements of the initiatives to support the digitalisation of judicial procedures:

- endeavours on e-justice must respect and ensure fundamental rights and principles, as they are recognised by the EU Charter of Fundamental Rights and the European Convention on Human Rights;
- e-justice systems need to consider lawyers' deontological and statutory duties which serve the interests of their clients and the rule of law in general;<sup>4</sup> and
- e-justice systems must ensure electronic equality of arms and access to justice.

When considering the use of AI tools by courts, several key issues require specific attention. First and foremost, it is crucial to differentiate between the various stages of a trial where AI tools are applied. The CCBE has further elaborated on this topic in its Considerations on the legal aspects of AI.<sup>5</sup> Below, we summarise several key points that we believe are relevant to the present consultation.

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<sup>2</sup> CCBE position paper on the proposal for a regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters (2022):

[https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/IT\\_LAW/ITL\\_Position\\_papers/EN\\_ITL\\_20222907\\_CCBE-position-paper-on-the-proposal-for-a-regulation-on-the-digitalisation-of-judicial-cooperation-and-access-to-justice-in-cross-border-civil-commercial-and-criminal-matters.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Position_papers/EN_ITL_20222907_CCBE-position-paper-on-the-proposal-for-a-regulation-on-the-digitalisation-of-judicial-cooperation-and-access-to-justice-in-cross-border-civil-commercial-and-criminal-matters.pdf)

<sup>3</sup> CCBE comments on the Communication on Digitalisation of Justice in the EU (2021):

[https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/IT\\_LAW/ITL\\_Position\\_papers/EN\\_ITL\\_20210328\\_CCBE-comments-on-the-Communication-on-Digitalisation-of-justice-in-the-European-Union.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Position_papers/EN_ITL_20210328_CCBE-comments-on-the-Communication-on-Digitalisation-of-justice-in-the-European-Union.pdf)

<sup>4</sup> For example, lawyers must be able to use digital services, especially cloud services, in a way that assures all legal aspects of provision of legal services and in particular the client confidentiality principle, which often lacks relevant procedural protection by cloud services providers.

<sup>5</sup> CCBE Considerations on the legal aspects of AI (2020):

[https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/IT\\_LAW/ITL\\_Guides\\_recommendations/EN\\_ITL\\_20200220\\_CCBE-considerations-on-the-Legal-Aspects-of-AI.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Guides_recommendations/EN_ITL_20200220_CCBE-considerations-on-the-Legal-Aspects-of-AI.pdf)

Use of AI by Courts					
Stages	Management of cases	Pre-trial	Trial	Judges' deliberation/ decision-making	Post sentencing
(Potential) AI applications	<ul style="list-style-type: none"> <li>- Case management system</li> <li>- Electronic communications</li> <li>- Digital platforms accessible for lawyers/clients</li> <li>- Automatic monitoring of procedures</li> <li>- Automatic system for monitoring procedural delays</li> <li>- Automatic system for completing procedural formalities</li> <li>- Automatic decisions on the progress of the case</li> <li>- Queue management</li> <li>- Automatic sorting of appeals</li> </ul>	<ul style="list-style-type: none"> <li>- Plea-bargaining: Prosecutor's databases</li> </ul>	<ul style="list-style-type: none"> <li>- Use of videoconference</li> <li>- Automated transcription / automated translation</li> <li>- Automated presentation of file's document on screens during hearings</li> <li>- Case management (in a situation of complex cases)</li> <li>- Use of emotional AI (detection of emotions, etc....)</li> </ul>	<ul style="list-style-type: none"> <li>- Case law tools</li> <li>- Prediction technology</li> <li>- Legal researches and analysis / autonomous researches</li> <li>- Scoring of risks / assessment of the suspect (probability of recidivism)</li> <li>- Automated judgments (decision trees)</li> <li>- Writing assistance tools and drafting judgments</li> <li>- Decision making systems</li> <li>- Intelligence assistant systems (identification of patterns, analysis of data...)</li> </ul>	<ul style="list-style-type: none"> <li>- Scoring of risks / probability of recidivism / parole opportunities</li> </ul>
Main principles and issues to be taken into account					
Principles	<ul style="list-style-type: none"> <li>- Adversarial proceedings</li> <li>- Rule of law, due process, security</li> <li>- No restriction of access to justice</li> <li>- Equality of arms</li> <li>- Transparency of decision-making</li> <li>- Access to data by lawyers</li> </ul>	<ul style="list-style-type: none"> <li>- Adversarial proceedings</li> <li>- Equality of arms</li> <li>- Access to data by lawyers</li> <li>- Data protection and compatibility with fundamental rights</li> </ul>	<ul style="list-style-type: none"> <li>- Adversarial proceedings</li> <li>- Fair trial</li> <li>- Transparency</li> <li>- Neutrality (in profiling)</li> <li>- No use of emotional AI when videos are used during a trial</li> </ul>	<ul style="list-style-type: none"> <li>- Adversarial proceedings</li> <li>- Fair trial</li> <li>- Transparency about use of AI by judge</li> <li>- Transparency of decision-making process</li> <li>- Algorithms and accountability</li> <li>- Liability if errors occur</li> <li>- Access to evidence</li> <li>- Right to request for a human intervention (judge)</li> </ul>	<ul style="list-style-type: none"> <li>- Adversarial proceedings</li> <li>- Fair trial</li> <li>- Transparency of decision-making process</li> <li>- Algorithms and accountability</li> <li>- Right to appeal</li> </ul>

In order to fully evaluate the potential risks associated with the use of AI tools by courts, it is important to first understand the key characteristics and architecture of the current decision-making process of courts which is based on several key principles.

- Firstly, decisions are made after **due hearing of the parties**, ensuring fairness and thorough examination of all evidence presented. Because, when deciding a case, the judge, relies on the parties involved in the case to provide them with the necessary information to make an informed decision. This includes facts, evidence, arguments, and case law. This process is commonly referred to as the principle of adversarial proceedings, where parties present and debate evidence in front of an impartial judge or a panel of judges. This principle ensures that both parties have an opportunity to present their case and challenge evidence presented by the opposing party.
- Moreover, **decisions are made by the judge themselves**, and not delegated to a third party.
- Decisions must also be rendered by an **impartial judge**, who acts in a fair manner towards all parties without favour, bias or prejudice.
- Finally, decisions are reasoned and explained, ensuring transparency and accountability in the decision-making process, making it possible for the parties involved to understand which legal provisions and precedents justify the decision.

Understanding these key characteristics and architecture of the current decision-making process of courts is essential in assessing the potential risks associated with the use of AI tools in the decision-making process.

Due to their inherent nature and characteristics, AI tools have the potential to **disrupt** the dynamics of this process completely which gives rise to a number of concerns regarding the use of AI by courts:

- Firstly, the **use of data and elements** that have not been the subject of an adversarial debate among the parties involved.

- The **use of conclusions** produced by AI tools that have not been obtained through the reasoning of judge, which leads then to the **transfer of part of the decision-making power of the judge to the machine (AI tool)**.
- Another concern is the **lack of transparency of the process**, since it becomes impossible to know what should be attributed to the judge and what is the outcome of artificial intelligence.
- There can also be a **lack of level playing field (or an equality of arms)**: if e.g. the prosecution office has advanced capacities to analyse huge data sets which the defence does not possess, the defendant is placed at a significant disadvantage.
- Another problem that can arise is the **undermining of the principle of impartiality** due to the impossibility of knowing the **biases** of the system designers.
- **And, finally, there can be a breach of the principle of explicability**, because of the existence of results produced by AI tools that are beyond human reasoning and cannot be traced. The particularity of systems that use machine learning techniques is the difficulty in understanding how they achieve the results they propose. This is of course a big problem when it comes to judicial decisions because, for obvious reasons, these always need to be duly justified and explained and there is a strong demand and social need for transparency about how a judge came to a certain conclusion.

**The judge's use of AI tools could therefore lead to a radical reconsideration of the trial rules. However, compliance with the principles underpinning these trial rules is necessary to ensure the right to a fair trial** as guaranteed by the EU Charter and ECHR.

Therefore, when introducing the use of AI tools in justice systems, 3 requirements must be met:

1. The use of AI tools in judicial systems must be **thoroughly controlled and regulated**.
2. The rules governing the use of AI tools must be **grounded on a clear set of ethical principles** which therefore need to be set beforehand. The CEPEJ Ethical Charter on the use of AI in judicial systems provides a good starting point for this, outlining the key ethical principles that must be respected. These principles include the need to respect human rights, ensure transparency and accountability, and uphold the rule of law.
3. These principles must also be **turned into specific operational rules and guidelines** that must be followed when introducing AI tools into the justice system to make sure that they **don't go against the principles of a fair trial**. This means that for each use-case scenario, specific rules need to be elaborated to ensure maximum legal certainty and avoid any risks. This obviously requires careful consideration and knowledge of the potential risks and benefits of different AI tools, as well as a deep understanding of the ethical principles that underpin the justice system.

**What essentially needs to happen is that before being implemented, AI tools are properly adapted to the justice environment**, taking into account the principles and procedural architecture underpinning judicial proceedings. To this end, the following general operational rules and guidelines need to be taken into account:

- Firstly, **all parties involved in a judicial process should always be able to identify, within a judicial decision, the elements resulting from the implementation of an AI tool**. There should be a strict separation between data or results from the operation of an AI system and other data in the dispute.

- **Under no circumstances should judges delegate all or part of their decision-making power to an AI tool.** In other words, the right to a human judge should be guaranteed at any stage of the proceedings.
- Moreover, when the court's decision is based on data or outcomes provided by an AI tool, the parties and their lawyers should be given the opportunity to **access that tool and assess its characteristics**, the data used and the relevance of the outcomes it provides.
- It is also essential that the parties retain the opportunity to **discuss in an adversarial manner the data and conclusions** deriving from an automated system. Therefore, the deployment of AI should be carried out outside the deliberation phase and with a reasonable time for discussion by the parties.
- Moreover, **applicable data protection principles (such as the European General Data Protection Regulation) must always be respected:** Any party subject to data processing should be informed about the existence of any automated decision-making by a court, public prosecutors' office or other body of the law enforcement and judicial systems. They should be entitled to meaningful information about the logic involved, as well as the significance and the envisaged consequences of such automated decision.
- **The neutrality and objectivity of AI tools** used by the judicial system should be guaranteed and verifiable.

An illustration of the challenges includes an example from Belgium where the recently adopted law on the Central Register of Judgments and Decisions (so-called CEREBRO-law)<sup>6</sup> which created a legal framework for the new database on judgements and rulings. In contrast to lawyers and litigants, the judiciary will have broad access rights to the database, will be able to use more powerful AI search engines and be allowed to develop algorithms and AI tools. The latter will be impossible for lawyers since the necessary bulk download of data is forbidden by that law. This shows a lack of respect to the principle of equality of arms. For these reasons, OVB (Flemish Bar Association) and OBF (French and German-speaking Bar Association) have lodged an appeal for annulment of the law with the Constitutional Court.

Last but not least, the CCBE would like to caution about the use of the term '**efficiency.**' Although it may be understood as increasing speed of delivery of services, it also includes aspects such as achieving the stated and just outcome in an acceptable timeframe. Digitalisation, including AI, can help to shorten timeframes, and facilitate administrative or procedural processes. **However, the primary goal must remain ensuring the quality of judicial procedures, with a strong focus on a human-centric approach, safeguarding fundamental rights, and maintaining access to justice.**

## **Question 2: What kind of needs, e.g., in terms of infrastructure, hard-/software, skills, would your members have in order make digital justice more efficient?**

**Training emerges as one of the key needs of the profession.** The success of digitalisation relies heavily on the extent to which all legal professionals know how to use the relevant tools such as e-identification, e-filing, e-service of documents, electronic payment orders, electronic registers, video-

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<sup>6</sup> De Cerebro-wet getoetst aan de Grondwet en het EVRM, Pierre Thiriart: <https://www.jubel.be/de-cerebro-wet-getoetst-aan-de-grondwet-en-het-evrm/> (4 June 2024), see also point 7.2 of 'Ambitienota - memorandum OVB' (Orde van Vlaamse Balies), July 2024: <https://www.advocaat.be/nl/fetch-asset?path=files/Ambitienota-Memorandum-OVB.pdf>

conferencing or access to cross-border e-justice systems. This applies not only to lawyers but to other legal professions such as court staff, prosecutors and judges. The CCBE views the possession of necessary skills as a major task which, in addition, is likely to be greater for older than for younger lawyers.

It is equally important that the legal profession understands the potential barriers when it comes to accessing and using technologies for justice, as well as how the relationship with those who interact with the digital justice system may differ from the systems currently in place. For example, to what extent people speak to, or are able to speak to, a human when they encounter any issues, and whether there are appropriate measures for redress or challenging automated or semi-automated decisions.

As digital and AI tools become more widely accessible, lawyers may not only to learn how to use such tools but also find the best ways to adapt their services to ensure they provide what cannot be offered by AI. This may involve tailoring their expertise towards areas where human skills, such as emotional intelligence and creativity, are essential and where machines are unable to replicate them.

**Another major need identified by members is security** both in digital legal practice and within the activities of the Bars. E-justice tools and systems must ensure that lawyers are capable of complying with their professional obligations, in particular with the principle of professional secrecy/legal professional privilege.

Members reported that making justice more efficient is also to be able to **develop and use professional software** to communicate with other lawyers, submit electronic files, using electronic signatures, or having integrated management systems for Bars.<sup>7</sup> This can also be extended to the need to have **professional e-identity** as many of the e-justice solutions, existing and proposed ones, will require proper authentication in order to be accessed and used.<sup>8</sup>

Finally, in view of some members, efficient justice is justice that is accessible to all individuals or groups so that they can enforce their rights.

### **Question 3: Which measures should be adopted to promote digitalisation of justice while avoiding/addressing possible risks?**

The CCBE stresses the need and importance of having **EU-wide minimum standards** to ensure that national e-justice systems are able to guarantee rights to a fair trial, and to take the following organisational measures:

- structured monitoring of e-justice systems provided by Member States, with service-level objectives and standards, so that the effective operation of these e-justice system become transparent for users EU-wide, including:
  - (i) mandatory complaint handling procedures to be followed, sharing the number and category of complaints received,

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<sup>7</sup> For some examples, see the materials from the recent 6th Technology Conference on digitalisation of Justice (Gijon, Spain): <https://www.icagijon.es/JornadaTecnologica/ponenciasVIJornadas.html> (in Spanish, machine translation possible) (access on 25 September 2024)

<sup>8</sup> For example, the recently adopted Regulation on Digitalisation of Cross-Border Judicial Proceedings envisages the setting up of Electronic Access Portal. The portal is to be used for various purposes, including to initiate proceedings under certain instrument such as Small Claims Procedure or European Payment Order. It is therefore essential that lawyers possess appropriate solutions to be able to use these new tools.

- (ii) reliable and public registration of any outages of e-justice systems provided by Member States, and proper contingency mechanisms in case of interruption of such systems, and
- development of a sound generic process to test national e-justice systems by all categories of users before they are used as live systems.

These actions must **respect the specificities of national systems** including the roles and responsibilities of the various actors involved, in particular Bars and Law Societies. A number of Member States have already in place well-developed e-justice systems, and in some countries, Bars are partially or fully involved in the daily operation of such systems. The advantages of such well-proven systems should be taken into consideration.

The CCBE would also like to point out that **different areas of law may need different treatment** and considerations when it comes to digitalisation of justice. What works in the field of family law does not necessarily need to work in the field of criminal law.

Moreover, the fostering of interoperability should not undermine any existing well-functioning national systems.

Courts first of all need the **financial resources and personnel** to advance in the field of digitalisation. Such resources are also necessary for **training judges, court staff, and lawyers** in the use of digital tools. This includes showing the limits of what these tools can do and providing effective measures against judgements in the future being written by AI systems and only superficially reviewed by human judges.

The CCBE also believes that the action at EU level should include supporting the development of AI tools for the legal sector that take due account of the language differences and respect for diverse legal traditions throughout Europe. The CCBE fears that a lack of coordinated action may result in a digital divide among lawyers from different countries and within them (e.g. based on the size of their practice or the sector in which they are active).<sup>9</sup>

Furthermore, the CCBE would like to recall that increasing digitalisation also comes with increased cybersecurity risks. It is therefore important to **provide effective cybersecurity measures** against cyberattacks, data loss and other dangers of the digital world.

#### **Question 4: Can action at EU level help to promote further digitalisation of justice? If so, how can the EU help, e.g., funding national efforts, non-legislative/legislative means like guidance for the use of AI tools in justice, technical standards or procedural requirements for videoconferencing tools in justice, digitalising further judicial cross-border procedures or other forms of support?**

There are a range of actions at EU level that the CCBE considers useful, including the ones mentioned in the question.

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<sup>9</sup> For more information, see the CCBE-ELF reports '[Opportunities and barriers in the use of natural language processing tools in SME law practices](#)' (2021) and '[Overview of the average state of the art IT capabilities of law firms in the EU and gap analysis compared to the US / UK / Canada best practices](#)' (2021)

The CCBE membership's view is that one of the main actions to be taken at EU level is investment in more training on the use of digital technologies and AI in legal practice and justice system. Such funding could be directed to Bars and Law Societies to support their training efforts towards their members.

Another action at EU level is focusing on **proper implementation of the existing legislation**, including through training and awareness raising, but also through constant feedback and engagement with the profession. This can also include exchange of best practice. The implementation also covers **providing guidance of the use of digital and AI tools in justice, including under the newly adopted AI Act**. Such guidance could be issued not only for judges or legal profession but also for the general public. This can support a more nuanced understanding of the benefits, challenges, and how those challenges are being tackled.

Another action is developing **technical standards and procedural requirements for tools such as videoconferencing in justice**. This is important to ensure that there is equal treatment insofar as possible for individuals going through the justice system.

Regarding the use of videoconferencing, the CCBE considers there are potential risks and drawbacks that must be considered before using it in judicial proceedings. Its use should not undermine fundamental principles of a fair trial especially with respect to defence rights or with respect to witness testimonies.

In cross-border cases, particularly where the parties might not be native speakers and will be subject to different cultural influences, the investigative judge, prosecutor or opposing counsel might not be able to examine so easily the nuances of the parties' or witnesses' appearances and responses through a video-link.

Moreover, judicial authorities might tend to ask fewer questions and be less likely to interrupt an argument, which might not be a beneficial outcome for the parties. Concerning the rights of the defence, particularly in the context of criminal trials, the use of videoconferencing could affect the inner conviction of the judge, the reality of the defendant's situation, the impressions of the hearing, and the publicity of the debates.

These are not just hypothetical concerns. Our members from Belgium have recently carried out a survey among youth lawyers and judges on the use of videoconferencing. The survey showed that there was no real possibility for confidential consultation between lawyer and client, the equipment in place did not create involvement / participation similar to a physical appearance, and videoconference was more often than not applied without the consent of the client, despite this being a legal condition.<sup>10</sup>

## Further resources

[CCBE Statement on the European Declaration on Digital Rights and principles 16/02/2023](#)

[Guide on the use of Artificial Intelligence-based tools by lawyers and law firms in the EU \(2022\)](#)

[CCBE position paper on the proposal for a regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters \(2022\)](#)

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<sup>10</sup> For more information over videoconferencing in Belgium, see: <https://www.ordevanvlaamsebalies.be/nl/nieuws-en-events/wet-videoconferentie-treedt-in-werking-waar-moet-u-op-letten> (in Dutch, machine translation possible)

[CCBE comments on the Communication on Digitalisation of justice in the European Union 26/03/2021](#)

[CCBE Position paper on the proposal for a Regulation on a computerised system for communication in cross-border civil and criminal proceedings \(e-CODEX system\) and amending Regulation \(EU\) 2018/1726 \(the “e-CODEX proposal”\) 26/03/2021](#)

[CCBE position paper on the proposal for a regulation laying down harmonised rules on Artificial Intelligence \(Artificial Intelligence Act\) 8/10/2021](#)

[CCBE Guidance on the use of remote working tools by lawyers and remote court proceedings 27/11/2020](#)

[CCBE Considerations on the legal aspects of AI \(2020\)](#)

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## **About the CCBE:**

The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law Societies of 46 countries, and through them more than 1 million European lawyers. In most Member States, the Bar authorities are entrusted with the responsibility of adopting regulations designed to ensure the proper practice of the profession.

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