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Commission of the European Communities

WORKING IN THE EEC

a guide to your rights

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Introduction

One worker in every twenty in the EEC is working away from his or her own country. He or she is what is known as a migrant worker. Over a quarter of these workers (one in every eight) workers in the EEC) comes from another EEC country. This puts him or her in a rather special category for it automatically entitles the migrant to be placed on a completely equal footing with workers from the country in which he or she has found a job.

The migrant worker is entitled to compete for jobs on exactly the same terms as nationals of the country he or she has chosen to work in. EEC migrant workers must get the same pay and social security benefits as local employees and all other conditions of work and employment must be exactly the same as if the worker carried the passport of the country he or she is working in (except in certain cases for UK passport holders). In addition any housing available must be on offer

on the same terms as to local workers. Members of the worker's family have equal rights to schooling and vocational training.

All this does not mean that there are no formalities involved. But it does mean that the process of obtaining a residence permit is automatic. The authorities cannot turn down an application from an EEC national and the residence permit will have a section on it quoting the relevant EEC legislation establishing the worker's rights.

Migrant workers from countries outside the EEC may have some similar rights to EEC migrants if their Governments have concluded special agreements with the EEC or individual Member States. A special section of this booklet deals briefly with such special arrangements where they apply to the EEC as a whole and not just to individual countries.



But equality on paper is not everything. For some years the Community has recognized that migrant workers have social handicaps which are inherent in living abroad to which special attention must be paid. Since 1974 monies have been available for special training schemes under the EEC's Social Fund; work has begun on pilot schemes for housing and on special educational programmes for migrant workers' children. In the case of non-EEC countries the Community is drafting plans for consultations with non-member countries on immigration and emigration policies and the possibility of programmes for training foreign workers returning to their country of origin, illegal immigration and illegal employment, family reunification in the host country, and recourse to non-Community manpower should the need arise again.

This guide is designed for the EEC migrant intending to take up

work in another EEC country. It is a basic introduction to the EEC legislation, which guarantees EEC migrants fundamental rights to work in any Member State and be treated in the same way as nationals.

To find out how this legislation applies to your particular situation we recommend that at an early stage you get in touch with the authorities in your country. The address is given on page 30.

A basic right

The right for EEC citizens to go and work in other EEC countries as and when they please is clearly set out in the Treaty of Rome.

It has since been bolstered by additional EEC legislation spelling these rights out in detail.

Freedom of movement should be seen as an opportunity for workers to improve their living and working conditions and promote their social advancement to achieve a better balance between job opportunities and manpower availabilities in the Community.

A growing trend

There are now about 1.6 million EEC migrant workers scattered throughout the EEC. The largest number — over 600 000 — are in the United Kingdom, but two-thirds of these migrants are from Ireland, whose history of emigration to Britain goes back much, much further than 1973 when these two

countries joined the EEC. The second largest number is in the Federal Republic of Germany, where almost three-quarters of the EEC migrants are from Italy. There are 300 000 EEC migrant workers in France, of whom again three-quarters are

from Italy. Belgium has 170 000 EEC migrants, over half from Italy.

There are 55 000 EEC migrant workers in the Netherlands, almost a third of whom are Belgians, many of whom cross the frontier each day





to go to work. (Almost as many Dutch workers work in Belgium as Belgians work in the Netherlands, but they do not make up such a large proportion of the migrant workforce there.) Luxembourg numbers 31 500 EEC migrants (a third from Italy) and Italy 23 915. Italy is most popular with Germans (almost 40%), British and French workers. There are only 12 500 EEC migrants in Denmark — mainly German and British, and only 872 in Ireland. (But this does not include immigrants from the UK.)

The right to equal treatment

The right of EEC workers to equal treatment is conferred directly by Article 48 of the Treaty. Subsequent legislation (notably the regulation 1612/68) spells out what is involved. If the additional legislation still leaves areas of doubt — after all, offshore oil rigs which move around EEC waters, thus pos-

ing special problems, were not so widespread when the legislation was drafted — then the European Court of Justice is the ultimate arbiter. National courts will often refer disputes (over social security benefits, for example) to the Court in Luxembourg for its ruling. The Court's word is final.

The Court has so far clarified a wide range of rights. It has made it clear, for example, that since EEC migrants are to be treated the same way as nationals, they cannot be put in prison or deported merely for not having completed the necessary formalities connected with getting a residence permit. It has also ruled that the handicapped child of an EEC migrant is entitled to go on receiving host country benefits even after the age of 21 if he or she was brought up in that country.

What it means in practice

Any permanent, seasonal or frontier worker is entitled to apply for a job in another Member State. If they wish, the worker's spouse, children under 21, and even his or her parents if they are dependent on the worker, can join the migrant in the host country. They are entitled to take jobs there even if they themselves are not EEC nationals.

Employers and employment offices must treat workers from other Member States in exactly the same way as their own nationals. Medical, vocational or other criteria, which discriminate solely on grounds of nationality, are illegal.

For example, a worker from another EEC country cannot be obliged to have a medical if local workers do not have to. The employer can insist, however, on the migrant worker speaking enough of the language to be able to handle the job.

Workers from other EEC countries enjoy the same social and tax advantages and treatment as nationals and have the same right to training in vocational schools and retraining centres. (To take one concrete example: military service for the worker's own country must be counted towards job seniority if a local worker's military service for the host country is counted towards his seniority entitlements.) Rights are naturally identical in the event of redundancies.

EEC migrants can also be members of and officers in trade unions on the same terms as national workers. Their children are entitled to the same education as local worker's and this includes equal access to vocational training and apprenticeships.

Even a criminal record is not necessarily a bar to going and working in another EEC Member State. Residence permits can only be re-

fused on grounds of 'public order' but not merely on economic grounds.

A life-long right

These rights do not stop on retirement. A worker and his or her family can go on living in the country he or she was working in on retirement providing he or she had been working there for at least a year and living there for at least three years. (The period may be less if retirement was enforced as the result of an accident at work or an occupational disease.) Even these requirements do not have to be met if the worker's spouse is a national of the host country (or was one before marriage).

If the worker dies, the family can nevertheless stay on providing the worker had been working for two years before he or she died (or died as the result of an accident at work or occupational disease) or if the

surviving spouse is a national of the host country or was before marriage.

In circumstances where the family stays on after a worker has died, the family is entitled to just the same treatment as if the worker had still been alive (right down to continuing to benefit from the reduction on some railways for large families, as the Court of Justice ruled in one recent case.)

Special rules apply to certain professions, however. Some progress has been made in getting Member States to recognize each other's professional or technical qualifications, among those who can readily go and work in another EEC-country are doctors, nurses and machine-tool operators.

Someone who is unemployed when the residence permit expires, may not get it renewed for as much as five years (the normal period),

but it will be renewed for at least one year.

A vacancy clearing system

In order to make equal access to the job market throughout the Community a reality, it has long been the EEC's aim to set up a clearing system for job openings and job seekers. This system, which is known as SEDOC (European international vacancy clearance system), will have the effect of ensuring a clearer picture of job opportunities in many occupations.

Social security rights, who benefits

Equal rights to social security are the logical corollary of free movement of workers and equal treatment with workers in the host country. This too is recognized by the Treaty of Rome, which broadly also specifies that the Council of Ministers is to ensure that migrant workers and their dependants can add together all 'recognized periods of insurance, residence and employment taken into account in the different Member States in order to make sure that they qualify for benefit in one of these Member States and that benefits can be paid anywhere inside the EEC. In other words benefits may be 'exported' and in many cases when they are exported, they may be higher than those obtainable locally once the migrant worker returns home or has moved on to another EEC country. About 3.5 million people are eligible for social security rights in the EEC and the local cost of benefits involved was some 20 000 million Belgian francs in 1975. Pensions



are the biggest item followed by health care benefits claimed by those making a temporary stay (generally tourists, since they benefit from the same principles) and family allowances.

The basic principles

The essential regulations in this field (1408/71 and 574/72) apply to any worker or pensioner who is pursuing or has pursued an activity

as an employed person within the Community and who is a national of a Member State, to members of that person's family and to survivors of such a person regardless of nationality. It is immaterial whether the person's family is in the host country, the country of origin or another EEC State. (It may make a difference in some cases if they are outside the EEC.)

At the moment these regulations do not generally apply to the self-employed (although there are some exceptions), to those who have been self-employed, or to those who are non-employed (such as those with private incomes, for example, who are contributing voluntarily to national schemes). This may change in the near future.

Which Member State's social security legislation applies?

Regulation 1408/71 provides that a worker shall be subject to one

legislation only. Generally the legislation is that of the Member State where the person works. Therefore if the person works in France and resides in Luxembourg he will be subject to French social security legislation. Special rules apply to workers posted abroad temporarily (for less than a year), those employed in more than one Member State and international transport workers.

The benefits covered

The Regulations deal with the following benefits:

- sickness and maternity benefit;
- invalidity benefits;
- pensions, survivors' pension and death grants;
- accident benefits;
- unemployment benefits; and
- family benefits.

Other types of benefit, such as those for the handicapped may or

may not be depending on whether there exists what the European Court of Justice has called 'a legally protected right' to that benefit.

Retirement pensions and survivors' pensions

Someone who has been insured for a short period in one Member State, but who was not there long enough before moving on to be entitled to a pension in that country, can total recognized periods of insurance and residence completed in other countries with the period completed in the first one in order to claim a pension (and a number of other benefits). For example, someone who had been insured in Member State A for five years and then went to Member State B for ten years and needed to have worked for fifteen years in either of these countries (the so-called 'qualifying period') in order to be entitled to the minimum pension, can aggregate

the two periods in order to ensure qualification.

Each country then calculates what the pension should have been for someone who had completed fifteen years in that country and then pays the relevant fraction of that sum. In other words, country A would pay one-third of the pension to which somebody who had worked for fifteen years was entitled in that country and country B would pay two-thirds of whatever the appropriate sum was in that country.

Where, however, someone has worked the full qualifying period in one or other of the two countries, the country in which the qualifying period had been completed will first calculate the pension due under its own law; it will then calculate the amount due under the system described above. Whichever calcula-

tion is the higher will be paid. Under no circumstances can the pension be less than the minimum pension fixed by the country of residence (providing that country has a minimum pension and is one in which the person is entitled to a pension, i.e. has worked at some point).

Sickness and maternity benefits (including medical benefits), accidents at work

The rules for aggregation of recognized periods of insurance, employment and residence apply for sickness benefit so that a worker who leaves the Member State where he has been insured and who starts work in another Member State where he has become insured and where he shortly afterwards falls ill, may aggregate the recognized periods completed by him in the first Member State with those com-

pleted in the record Member State so as to assist him in obtaining entitlement to sickness benefit in that second Member State.

Special rules exist to enable the provision of cash benefits and medical care in respect of sickness or accident at work for a worker who is insured in the Member State and who goes to another Member State where he needs immediate medical treatment. The cash benefits will be those provided by the Member State where he is insured and the medical care will be that provided under the legislation of the Member State where he falls ill. So as to benefit from these rules the worker will need a special Community form (see paragraph entitled: Special Social Security Guides referred to later) which he may obtain from the institution with which he is insured, prior to his departure for another Member State. These rules apply by

analogy to Members of a workers' family in respect of sickness benefit.

Special provision also exists for the provision of sickness benefit to unemployed persons and pensioners who are outside the Member State where they are insured.

Invalidity pensions and invalidity allowances

The same broad principles which apply to retirement pensions apply to invalidity pensions and invalidity allowances. But there is a complication in the fact that some countries pay invalidity pensions irrespective of the length of the period of insurance whereas there is a qualifying period in others. Where two pensions of the first type are involved (i.e. where the countries concerned are Belgium, Ireland, the Netherlands, the United Kingdom, or, except for miners, France), the pension paid is the one available



in the country where the worker became disabled. If, however, the pension payable is calculated by reference to the period of insurance or residence, then the same principles of aggregation and calculation of fractions applies as to retirement pensions.

Unemployment benefit

The same principle of totalling recognized periods of insurance and employment to arrive at a qualifying period applies to unemployment benefit so that a migrant worker who has arrived in a Member State, started work there and shortly afterwards become unemployed, may be entitled to draw unemployment benefit. Someone who is unemployed and wants to go to another EEC country to look for a new job can have the unemployment benefit to which he or she is entitled in the country where he is insured, paid in another Member State for a period

of three months on condition that that person has previously remained available for employment in the country of insurance for a month (less in special circumstances), and providing he or she is registered as a person seeking employment in each Member State to which he goes. The right to the benefit lapses if the person stays away for more than three months.

Family allowances

The principle of aggregating periods of residence in order to qualify for benefit applies in this case too. Where the person works in one Member State and his family resides in another, the amount of the family allowance (or child benefit) paid is that prevailing in the country of employment, except in the case of France, which pays the amount that would be due in the country of residence of the family. National rules dictate which spouse receives the payments.

Standardized procedures

A series of identical Community forms for identical problems is in use throughout the European Community, and are designed to make the migrant worker's (and the civil servant's) job easier. There is Form E 303 for exercising the right to export unemployment benefit for three months, Form E 124 for claiming death grants, Form E 119 concerning entitlement to sickness benefits when going abroad to look for a job, etc. Every local authority or social security office has copies of these forms and can help with filling them in.

Special social security guides

But the realm of social security rights for migrant workers is a complex one. It has been described as being as 'dense as a tropical forest'.

Therefore, the European Commission has produced detailed guides to each country's system and the migrant worker's rights within it. These guides are available in each of the official languages of the Community. There is a general guide called 'Social security for migrant workers', of which there are nine versions – one for each Member State. This is Guide No 1. Guide No 2 deals with 'Temporary stay' (holidays, family visits, business trips etc.); Guide No 3 deals with 'workers posted abroad or employed in more than one Member State' (e.g. international transport workers or commercial travellers); Guide No 4 is for 'Pensioners', and Guide No 5 is for 'Members of the family'. These guides can be obtained free of charge either from local social security offices in each country or from:

Office for Official Publications of
the European Communities
Boîte Postale 1003,
Luxembourg.



Third countries

A number of southern European, North African and near Eastern countries which have trade and cooperation agreements with the Community have had special rights for their migrant workers incorporated in them, for the bulk of the migrant workers in the Community in fact come from outside. Whereas there are 1.6 million migrant workers from EEC countries, there are 4.5 million from outside (plus maybe half a million or more illegal immigrants). They come mainly from Turkey, Portugal, Spain, Yugoslavia, Algeria, Morocco, Greece, Tunisia and, in the case of the United Kingdom, from the Commonwealth.

The case of Greece

After Greece joins the EEC in 1981, Member States will until 1988 be under an obligation to accord the same priority to Greek migrant workers applying for jobs

as workers from the Member States in cases where they are trying to fill vacancies which cannot be filled by workers from the national or Community labour market. Thereafter, the free right of movement will apply. The families of Greek workers will not have an immediate right to employment for the first five years. During the first three years – until 1 January 1984 – family members will only be allowed to take up jobs if they have been resident for three years. For the two years thereafter this waiting period is reduced to eighteen months.

Member States may apply more generous requirements if they wish, but there cannot be any further tightening of the rules. Up until Accession Greek workers have no special rights.

The Maghreb

The Maghreb countries (Algeria, Morocco, and Tunisia) obtained a

commitment from the Community when they negotiated their cooperation agreements which came into effect in November 1978 that their workers should not be discriminated against in pay or working conditions in the countries where they are authorized to work. Migrant workers from these countries will also benefit from special social security arrangements once implementing legislation is passed. At that point the same principle of aggregating recognized periods (in EEC States only) will apply to Maghreb citizens as to EEC citizens in the case of old age and survivors' pensions, invalidity pensions, sickness and maternity benefits (for the whole family irrespective of whether they are in the same EEC country providing they are somewhere inside the Community) and family benefits if the family is inside the Community.

Portugal

Portugal concluded analogous arrangements to those for the Maghreb when it negotiated an additional protocol to its existing trade agreement which came into effect in 1978.

Turkey

Turkish workers are placed in a special situation by Turkey's Association Agreement with the EEC which provides for the principle of free movement of workers to be implemented between 1976 and 1986 along lines based on Articles 48 and 49 of the Rome Treaty, which are the basis for the free movement of Community citizens. Essentially this means at present that they are entitled to priority consideration when a country is hiring outside the Community, that they have free access to all jobs in the Member State in which they are working once they have been there

for five years and that they will have social security rights along the lines applying to the Maghreb. This is a first step towards the system of free movement to be implemented subsequently.

Having the same legal rights as citizens of the host country, is, however, not always enough in practice to ensure that a migrant or immigrant has the same chances as in the country of origin. Most migrant workers in fact start off at a disadvantage of some kind.

This was recognized by the EEC Commission in 1974 when it put forward an action programme for both EEC and third country migrants.

The action programme aims at achieving a genuine equality of treatment between migrants and national workers. Special emphasis was placed on the need for improving vocational and language training, on improving housing and

health services and on seeing that special provisions are made for the needs of migrants' children, who often suffer from language barriers and social adjustment problems.

A migrant action programme

Civic and political rights

In the long term the Commission would like to see migrant workers have civic and political rights, particularly the right to vote in local elections because decisions at municipal level often have a marked impact on the living conditions of migrants. Wherever possible, therefore, it has encouraged the existing trend in some countries towards setting up municipal consultative committees of migrant workers in some areas. At some time in the future it would like to see migrant workers allowed to participate fully in local elections once they have been living in the host country for a specific period. In cases where migrant workers still have voting rights in their country of origin and there is no way of exercising that right other than going home to vote, the Commission believes Community rules entitle migrant workers from other EEC countries special time off without loss of acquired advantages.



The European Social Fund

One of the European Commission's main means for turning these goals into reality is the European Social Fund. In 1978 this Fund, which is financed out of the EEC's budget and part-finances the training of around one million workers each year, committed almost 569 million European units of account to help finance training schemes throughout the EEC.

Much of the money is spent in backward regions, but there is a special allocation for migrant workers. In 1979 18.32 million EUA was specifically allocated to programmes for migrant workers and their families. In addition migrant workers were certainly among those benefiting from other types of programme as well. But the money available still falls far short of demand.

Migrant workers cannot apply directly for grants from the Fund. The applications come either from



government bodies or private organizations operating schemes for migrant workers.

Priority for integration

Priority is given to programmes which deal with several phases of a migrant worker's integration into the host society of 'Community migrants' as well as language training of adults, the training of teachers and social workers and innovative programmes of specialized teaching of children. The bulk of the applications in fact involve programmes to help the children of migrant workers make the most of the local language. At present migrant worker's children normally find themselves struggling to understand schooling in an unfamiliar language and not being particularly successful at either. The Commis-

sion has helped finance special tuition and has also recently started to look at ways of helping children be educated in their mother tongue – at least initially, and learning the language of the host country as a special subject separately.

A lot of help also goes to schemes for young people to learn the language well enough to be able to benefit from vocational training or get a job. Sometimes training schemes may fulfil more than one purpose. Help with schooling may not necessarily be in the shape of actual classes; it may also take the form of help with homework. Assistance has also been provided for helping migrant worker's wives to learn the language as well and to help migrants who suffer the double disadvantage of being handicapped.

It is estimated that in 1979 the grants supplied by the EEC contributed to tuition for about 85,000

children of migrant workers, to language and training courses for about 200 000 adult migrant workers and to the training of about 3 500 teachers and social workers. In addition a further 180 000 migrant workers were benefiting from operations approved in previous years and still going on in 1977.

Housing

Another area where the European Commission helps with finance is housing — although its work in this area is only on a very limited scale so far. It is done in cooperation with the authorities or private bodies. Migrants cannot apply direct.

The Commission has already many years experience with providing housing for coal and steel workers. Recently it has turned its attention to the need to provide migrant workers with information and guidance about housing because they often find themselves living in sub-standard accommodation in run-down areas in city centres. It has financed some pilot schemes to help renovate and improve migrant workers' housing and is also looking at the special problems faced by migrant workers in getting housing loans or in transferring rights acquired under housing loans schemes to the country of origin if they return home and want to buy a house there.



Member States

Although the basic legislative framework of EEC migrant workers' rights is set by the EEC as a whole, EEC Member States have an important part to play. Most countries have national programmes for helping migrant workers become an integral part of their new community and helping when in difficulty while at the same time having an opportunity to retain the culture of their original country. The training of social workers with a special knowledge of migrant workers' problems, educational help for migrant workers' children and vocational training schemes for the first generation of migrant workers, and now increasingly for the second generation of migrants as well, get particular attention. As economic growth has started to flag, some retraining schemes and resettlement programmes for migrant workers returning home have started up, although they are very limited so far. As a result of the economic slow-

down, a number of countries — including the Federal Republic of Germany, Belgium, France, and Luxembourg — have halted immigration from non-EEC countries in all but a few cases, but this in no way affects the rights of migrants inside the EEC.

When it comes to getting a job, there are Government employment agencies all over the EEC which will provide migrant workers with advice. Some even have information through the EEC clearing house network of job vacancies in other EEC countries (the SEDOC system). In some places there are specialist officers trained in the particular problems faced by migrants. In certain countries — the Netherlands and France are just two examples — there are special reception centres to which migrant workers can go if they are in difficulties. In some countries, also, there are government-sponsored hostels for migrant workers.

The work of governments is generally supplemented by private agencies. These are often church-backed charities. In some areas there are also voluntary organizations run by migrants for migrants. The trade unions often pay special attention to the problems of migrant workers and the EEC keeps in touch with the unions and consults them on proposals affecting migrant workers through the Standing Committee on Employment, the Tripartite Conference and the Economic and Social Committee (on which employers, unions, consumer and other interests are all represented). In some cases the migrant worker's local embassy or consulate may be able to help with advice.

Of the 6.1 million migrant workers in the EEC (and 4.5 million from outside the EEC), the largest concentrations are in the Federal Republic of Germany and France, where there are about 1.9 million

each, but the bulk of these migrants come from outside the EEC.

There are 632 000 migrant workers from the other countries of the EEC in the United Kingdom, but more than two-thirds of these (452 000) are from Ireland; there has been free movement of labour between the United Kingdom and Ireland for many years and this explains the high figure. Only since Ireland joined the EEC has emigration to other parts of the Community started to creep up as an alternative to the traditional route of going to Britain for a job. Otherwise the United Kingdom is most popular with Germans and Italians (about 70 000 each). Most migrants from other EEC countries (apart from Ireland) go to Britain to work in service industries of one type or another.



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Dublin 2

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I-00187 Roma

Luxembourg

Bâtiment Jean Monnet
Rue Alcide de Gasperi
Luxembourg-Kirchberg

Netherlands

Lange Voorhout 29
Den Haag

United Kingdom

20 Kensington Palace Gardens
London W8 4QQ

Windsor House
9/15 Bedford Street
Belfast

Governmental addresses

Belgium

Office National de l'Emploi
Bld de l'Empereur 7
1000 Brussel
tel. (02) 513 96 80

France

Agence Nationale Pour l'Emploi
53, rue Général Leclerc
92136 Issy-les-Moulineaux
tel. 645 21 26

Luxembourg

Administration de l'Emploi
34, av. de la Porte Neuve
Luxembourg-Ville
tel. 26 7 93

Denmark

Arbejdsdirektoratets 2. Kontor
Ørnevej 30 I
2400 København NV
tel. (01) 87 27 77

Ireland

National Manpower Service
50 Mespil Road
Dublin 4
tel. 76 58 61

Netherlands

Directoraat-generaal voor de
Arbeidsvoorziening
Volmerlaan 1
Rijswijk (ZH)
tel. (070) 99 31 77

FR of Germany

Zentralstelle für Arbeitsvermittlung
Feuerbachstr. 42-46
6000 Frankfurt/Main
tel. (0611) 71111

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UMOTEM
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Roma
tel. 46 05 75

United Kingdom

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Employment Service Division
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The guide is designed for the EEC migrant intending to take up work in another EEC country. It is a basic introduction to the EEC legislation, which guarantees EEC migrants fundamental rights to work in any Member State and be treated in the same way as nationals.

The guide contains information for the migrant workers and their families not only on social security but also on EEC legislation covering the right of EEC workers to vocational training, housing, education of their children, etc.

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