
# Issue 21 - 11 December 2013

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## Editorial – Grand Coalition , Small Ambition

**Financial reforms in the new German coalition agreement**

*By Peter Wahl*

After two long months of negotiations Christian Democrats (CDU/CSU) and Social Democrats (SPD) have agreed on a programme for a coalition government. The members of the SPD still have to agree to the document in a referendum by mid December, but there are no doubts that the majority will accept the text. The new government would then be established before Christmas. Looking at the three pages of the chapter on financial reforms - out of 185 - one can find a lot of business as usual and, with one remarkable exception, no innovative impulse.

**In the middle of the mainstream**

Apart from some strong language against speculation, the concrete proposals for regulation remain modest and mainstream. No concern is voiced over a reform process in the EU, which is stuck in the petty trifles of more than 20 different directives, or over the finance industry and its allies in governments, who try to water down any meaningful reforms.

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No fresh idea is being proposed by the biggest economy of the continent, thereby missing the opportunity to take a front-runner role in EU financial reforms..

The programme promises to implement Basel III, an accord that aims to regulate capital requirements, and refers to the proposals by the Financial Stability Board regarding shadow banking, that may lead to a draft law - perhaps in 2015. As for rating agencies, previous ideas for a European independent agency are not mentioned anymore. As for the banking structure, the parties declare their support for the Liikanen Report, that suggests a moderate and limited separation of investment banking while sticking to the old model of universal banking. However, it is uncertain whether the Liikanen proposals will reach the stage of a draft directive. The issue of ‘too big to fail’ is not mentioned at all. The European banking union is welcomed, but the agreement does not go a single millimetre further than what has been negotiated already by the previous government. The document contains nothing on shrinking the finance sector, on closing the big casino and on subordinating finance to real economy.

**FTT – the light in the darkness**

However, there is one exception where the agreement pokes out of the shadows of grey mediocracy: the Financial Transaction Tax (FTT). The agreement sticks to a broad based tax, which explicitly should curb speculative business models. It even goes beyond the draft proposal of the European Commission as it includes currency spot transactions – the old idea of the Tobin Tax - into the tax base. In a currency spot transaction foreign currency is purchased and sold for immediate delivery. Spot trades are settled "on the spot", i.e. within 24 hours at the latest as opposed to at a set date in the future. The Commission had argued, that this would not be possible for legal reasons, as it would touch upon a holy cow of the EU: the free flow of capital.

As substantial negotiations between the eleven countries, willing to participate in the FTT, will start in January 2014, it remains to be seen how much the new government will be able to push through in the end.

**Muddling through continues**

All in all the agreement will not turn the tide in the sluggish process of financial reforms in the EU. Such a weak programme will not be able to cope with the challenges ahead. Muddling through will continue.

## Summaries of the articles and brief updates

### Subsidised attacks on labour

The next tool under development to make member states stick to a course of neoliberal reforms is contracts on economic policy. These contracts enable the European Commission to push member states on reforms to increase competitiveness. They provide the Commission with a new way to indirectly reduce measures that protect labour and as such they can be significant. But, if it is up to the German government, this will be but one step in a much bigger project.

For the full detailed article see below.

### A Bit of Action – the global and European initiatives against tax evasion and money laundering

Politics at EU and global level is tackling tax evasion and money laundering with ever stronger commitments. To address tax crimes by individuals, automatic information exchange was supported by G20 leaders and a growing group of countries has now decided to commit to the initiative. However, at European level real progress is still not taking place. On corporate tax avoidance, the G20 endorsed an Action Plan that is now implemented by the OECD. On money laundering, the main EU law is now debated in the Parliament and amongst governments. It is not clear yet if the most controversial issue – of public registers on beneficial ownership of companies and the like – will finally be seriously debated or whether a decision will even be reached. Without an active civil society monitoring all these processes, real progress is at risk.

For the full detailed article see below.

### Brief update: Financial regulation further discussed by EU-US negotiators of a Transatlantic Trade and Investment Partnership (TTIP)

Photo: Courtesy of the President of the European Council

The TTIP negotiations have continued amongst raising protests from civil society organisations and discussions even at parliamentary levels about the dispute settlement that would also allow banks and financial investors to sue governments over financial regulation. The EU-Canada FTA negotiations (CETA) have agreed that a special panel would have to judge whether financial measures would be 'prudential' and therefore exempt, or not, from the dispute settlement system.

The EC also strongly wants to have a financial regulation cooperation framework to be included in TTIP. After resistance by the US and new arguments and documents presented by the EC, there was a special EU-US negotiation session in Brussels on 27 November 2013. The EC clarified that the ultimate goals are that the EU and US laws would be based on 'interoperability,' i.e. the financial regulation / measures in one country would automatically be accepted in the other, and on international standards developed cooperatively by the EU and US in international bodies. To achieve this, the TTIP financial regulatory framework would aim at allowing banks and other financial companies with their home in one territory to operate in the other territory based on laws from the home country. Also, before a new law is presented to parliamentary bodies, it would be discussed (behind closed doors) within the TTIP framework. Although the US continued to oppose the EC proposals after the 27 November meeting, the item is again on the agenda on the 16-20 December 2013 negotiation session. For more details, see the SOMO website.

## Brief update: Final negotiations on Food Price Speculation and High Frequency Trading (MiFID review)


The European Parliament and the Council of Ministers are still negotiating behind closed doors in the 'trilogue process' on final compromise texts for a new Markets in Financial Instruments Directive (MiFID-II/MiFIR) (for more information, see the October 2012 newsletter, and the December 2012 newsletter). The Directive's draft regulation of food price speculation has again been under attack by the UK, who re-opened the debate about position limits for financial speculators. While this attempt is rather unlikely to be fully successful, the resulting discussion might water down the effectiveness of the rules and give national authorities much more leeway in the interest of speculators. By 6 December 2013, the negotiators were still horse trading between the financial sector interests especially of those from the UK and Germany which makes the outcome difficult to predict. Controversial issues are the potentially too weak rules on high frequency trading, which players and instruments are covered by the new laws, trade transparency, investor protection, regime on third country firms, sanctions, and access to clearing. What was agreed regarding the obligation of current over-the-counter (OTC) derivatives to be traded on trading platforms, might result in most OTC trade moving to the newly created and lightly regulated platforms called "organized trading facilities" (OTFs).

## Brief update: Benchmark index regulation to prevent another Libor scandal

On 18 September 2013, the European Commission (EC) proposed a Regulation on the 'use of indices serving as benchmarks in financial and other contracts'. The Proposal is a reaction to the different scandals around benchmarks such as the Libor (the benchmark of the London interbank offered interest rate) and the Euribor (the benchmark of interest rates among European banks in Euro), that serve as the basis for billions of financial products. These benchmarks were manipulated by banks and consequently the banks were fined or a settlement was reached (totaling around 6 billion dollars in total so far). Some banks still have to be sanctioned. While the EC proposal to prevent such fraud in the future seems a step in the right direction, further improvements are required. (See for example Finance Watch's submission to the EC's consultation in 2012.)

## Brief update: European Long Term Investment Funds

In June 2013, the European Commission made a proposal to introduce a new type of fund called the 'European Long Term Investment Fund' (ELTIF). The overall aim was to make it easier for investors to put money into companies and projects that need long-term capital. The ECON committee of the European Parliament is currently discussing its position and is likely to vote on 23 January 2014. As Finance Watch explains, key issues on which amendments are expected include the scope (e.g. limiting investments to infrastructure assets), access of retail investors to ELTIFs, and possibilities for leaving the fund early ('early redemption'). In a hearing, Finance Watch also warned that ELTIFs could foster further privatisation of public infrastructure, with negative effects for society. A more detailed assessment will follow in the next newsletter.

The ECON will also vote on a report on long-term financing of the European economy in January 2014.

# Full articles

## Subsidised attacks on labour

*By Kenneth Haar, Corporate Europe Observatory (corporateeurope.org)*

The EU summit on 19-20 December is set to decide 'on the main features of contractual arrangements and of associated solidarity mechanisms'. The so-called 'contractual arrangements', or quite simply 'contracts', are a new tool for 'further strengthening economic policy coordination' that is already based on the budgetary disciplines imposed by the EU (see for instance: Newsletter nr. 10). The contracts are supposed to enable 'structural reforms' in Eurozone member states, such as reforms of labour laws, to ensure the 'competitiveness' of companies and of the overall economy. The familiar slogan of 'competitiveness' pops up in a host of existing EU rules, strategies and procedures. However, the contracts could become a new significant step towards common economic rules and policies at the EU level. Rules that will further tie the steering wheel to a neoliberal course in all EU member states. They are geared towards promoting 'reform' in a new and potentially path-breaking way in that they will provide a binding instrument that leads to attacking social rights, an area that the EU can only target indirectly since social policy legislation remains a national matter according to the

EU constitution. The objective of the contracts is simple and was already explained by Angela Merkel in her speech to the World Economic Forum in January 2013, meant to influence other member states to introduce the same kind of sweeping attacks on labour and social expenditure that Germany did a decade ago.

**The blueprint**

The basic idea is as follows: Member states are encouraged to conclude a contract with the European Commission (EC). The contract would include a number of specific reforms that the member state in question will have to implement. To support the reform process, the EU member state would receive some sort of financial support, either in the form of a loan or a grant.

What kind of reforms would they be? The most informative document so far is the 'Blueprint' published by the EC in November 2012 (page 22), written to chart the way to a 'deep and genuine' Economic and Monetary Union. Here, the contracts were but one of many elements, but singled out to be implemented in the short term: 'The financial support should be designed as an overall allocation to be used to contribute to financing measures flanking difficult reforms. For example, the short-term impact of reforms raising the flexibility of workers could be accompanied by training programmes financed in part through support...'

In broader terms, the contracts will be set up to make sure member states act with resolve on so called 'macroeconomic imbalances', especially if they are lacking behind on 'competitiveness'. In practical terms, that means attacks on labour rights in order to drive down wages. Since the competence of the EU is limited in this area, the contracts provide the EC with a procedure to establish obligations for member states in the area. The EU wants to buy the consent of member states to further neoliberal reforms with 'solidarity mechanisms' and financial support, and given the dramatic economic situation in the crisis countries, such 'incentives' constitute a new type of sophisticated pressure.

**Who will sign a contract**

The blueprint document was supported by the EU summit in December 2012, but since then, little has been revealed to the public about the further thoughts of the Council of EU heads of state on the matter. In November 2013, however, a document from a Council working group was leaked and showed that the project is on track, and the objective is to agree on 'the main features' at the 19-20 December 2013 summit.

The question still to be clarified is which member states would be covered and in what situations. In the EC's original proposal, the contracts were to be mandatory for Eurozone member states in the so-called 'excessive imbalance procedure' (a new tool not used so far for countries experiencing severe 'macroeconomic imbalances'), who were not being subjected to adjustment programmes of the Troika. This would target countries such as Spain, Belgium, Italy and possibly more Eurozone members. According to the leaked document, however, that issue is not settled. Here, the mechanism of contracts is foreseen to include all Eurozone member states not in the so-called 'excessive imbalance procedure' or a Troika adjustment programme. That could mean that all Eurozone member states are covered, either by contracts or by the 'excessive imbalance procedure' disciplines, except Greece and Portugal, who are under Troika disciplines.

Such criteria would make the contracts a more important instrument, and would be a significant step towards a common economic policy – firmly based on a neoliberal approach.

**Some disagreement**

Clearly, there are some hurdles before the contracts can be adopted, and the most important one seems to be about the nature of the funding of the 'solidarity mechanisms', whether it is to be loans or grants. A wide range of options are enumerated in the leaked document, including grants from a separate fund, the Convergence and Competitiveness Instrument, that is based on contributions from member states. This is in line with an earlier EC proposal tabled in March 2013. Another proposal is to merely give the support as loans.

Another sign of disagreement is the emphasis put on 'ownership' and support from not only parliaments of member states, but of 'stakeholders' as well. Several member states are skeptical about further obligations and the effect they will have at home. But in the end, this game of words is not about democracy, but about legitimacy. The actual content and thrust of the reforms will not be able to be questioned fundamentally, and the contracts are firmly another step towards the non-democratic development of a form of authoritarian neoliberalism.

**Ambitious German government**

The speed and depth of that transition, however, is under dispute, and the pace of the process has developed differently from what the EC hoped in its blueprint last year. This is partly due to reform fatigue in some countries, but there is another important factor: since Germany is the driving force and has been preoccupied with elections at home, and negotiations for a new government (see the editorial), some lack of momentum was bound to occur.

The question is what will happen now that the German government is in place with a common programme that stresses the need for further disciplines on economic policy at the EU level. It reflects Angela Merkel's plea in October 2013, well before the conclusion of the negotiations with the SPD, for new EU disciplines, including changes to the treaty that would give more powers to the Commission. The coalition agreement between Christian Democrats and Social Democrats expresses support for the EC 'blueprint' proposals, including that the contracts should be 'democratically legitimized' and that 'solidarity' is attached to the basic aim of competitiveness (Deutschlands Zukunft gestalten. Koalitionsvertrag zwischen CDU, CSU und SPD. 18. Legislaturperiode. p. 159). The vagueness of such language seems to indicate that it is more rhetoric to accommodate skeptical members of the Social Democratic party than a change in the neoliberal substance of the proposal.

So, when or if the mechanisms of the contracts are adopted at the EU summit in December 2013, it could be the beginning of a much more profound neoliberal economic project, and no less worrying than the strict budgetary disciplines already agreed.

## A Bit of Action – the global and European initiatives against tax evasion and money laundering

*By Markus Henn, WEED*


At the global and EU level, the fight against illicit financial flows is making progress. The most important initiatives are about automatic information exchange to tackle tax evasion by individuals, about the reform of corporate taxation to prevent tax avoidance and about measures against money laundering by criminals.

**Information exchange goes automatic**

The debate about the EU's Savings Tax Directive, which tackles tax evasion of individuals through automatic tax information exchange, is hardly moving forward (for an overview on the dimensions of the debate see May 2013 Newsletter). While an extension of the Directive to untaxed companies and trusts now seems to be generally supported by most EU member states, progress still depends on the participation of Austria and Luxembourg. They again resisted to any automatic exchange at the last EU Finance Ministers' ECOFIN meeting on 15 November as long as third countries such as Switzerland will not be included either. Instead, they held on to anonymous taxation on interest payments to protect banking secrecy – a position which puts the entire reform of the Directive at risk.

At least, automatic information exchange is making progress on the international level. As in some previous G20 communiqués, it was included as 'new global standard' in the G20 leaders' declaration at the St. Petersburg summit in September 2013. The OECD is now working on finalising the technical specifications for its implementation. Its main body on tax issues, the Global Forum on Transparency and Exchange of Information for Tax Purposes, on 21/22 November 2013 committed to form a new Automatic Exchange of Information Group, 'open to all interested countries and jurisdictions'. Beyond this, a group of 37 countries – including the UK's Crown Dependencies, such as Jersey and seven of its Overseas Territories such as the Caymans – even committed to an 'early adoption of the Common Reporting Standard being developed in the OECD'. This coalition of the willing is the extension of an initiative launched by France, Germany, Italy, Spain and the UK in April this year. What is still open is how developing countries can be integrated into the exchange, something for which a group of development NGOs had pleaded before the Global Forum meeting.

**Corporate Taxation: G20 Action Plan implementation and new EU proposal**

Tax avoidance by corporations remains a big problem even though politics has started to address it. As a recent SOMO report shows, Portuguese multinationals shifted at least € 2.5 billion in profits, in the period from 2009 to 2011, while the Portuguese government had to announce cuts in public spending of € 1.3 billion in April 2013.

The G20, at their St. Petersburg summit in September 2013, endorsed an Action Plan prepared by the OECD on – as they call it – 'Base Erosion and Profit Shifting' (BEPS) by corporations. As described more in detail in the September 2013 Newsletter, the plan lists measures such as tackling letter-box companies, restricting intra-corporate lending, reforming transfer pricing (on prices between affiliated parts of one corporation) and strengthening anti-tax avoidance rules. The OECD is now working on the implementation of the plan which shall take place in about the next two years. The first issues on the agenda were transfer pricing and intangibles (non-physical goods that can facilitate tax avoidance particularly well). So far, it is not clear if the whole process will only lead to minor adjustments in the system. Any real system change in corporate taxation has already been rejected by the initial Action Plan. At least, the OECD recently released an overview of the opportunities to comment on draft documents and give input during consultations. To do so, civil society and tax experts also have formed a BEPS monitoring group. Other civil society activities include a campaign by the German NGO Attac which particularly addresses Starbucks, amongst others with a fake website called 'Sparbucks' ('spar' means 'save' in German).

The EU has already been working on some of the measures now envisaged by the G20. Following a consultation in June this year, the Commission released on 25 November 2013 a proposal to revise one of the important EU laws on corporate taxation, the so-called Parent-Subsidiary Directive. This Directive, which has been in force since 1990, determines how the internal profit payments of corporations in the EU are taxed. It more or less says that the profit payments of a subsidiary in one EU country to a parent company in another will be taxed only once either at the subsidiary or at the parent level. The idea behind is also that there is at least once an appropriate taxation of the corporate profits (and possibly another one for individuals, if dividends are paid out). As this is not always the case and some EU states relieve the companies and individuals of (almost) any tax, the Commission has proposed to prescribe taxation in one EU country in those cases where the other country does not tax ('double non-taxation'). In addition, so called general anti-avoidance rules shall be strengthened which prohibit tax planning only aimed at circumventing taxation. However, there is no minimum taxation envisaged.

In June 2013, the Commission also intended to revise another corporate tax law, the Interest and Royalty Payments Directive. It remains to be seen if this will indeed occur or if the Commission decides not to get active on this. The latter would mean a victory for the business lobby which in June tried to tackle any proposal on more appropriate taxation.

The Commission not only proposes new laws but also uses its existing EU competition policy competences. It has recently launched investigations on Gibraltar, and the Netherlands, Luxembourg and Ireland because they might grant unlawful subsidies (state aid) to (specific) corporations with their tax system.

Also crucial is the so-called Country-by-Country Reporting (CbCR) by corporations, depicting in which countries a company is doing business and where it pays tax. Such reporting to the authorities is also in the G20/OECD Plan, however, without an obligation to make the information public. In the EU, the issue is currently again on the political agenda after a first proposal to introduce it for all companies, was narrowed down to only extractives and forestry companies in spring this year. Now, in a directive which is actually on non-financial reporting, some requirements on CbCR could be included. But while the EU states' governments committed to this in May, they have now again changed their minds in the negotiations. On 16 December 2013, the leading Parliament committee (JURI) will vote on its final position. It is now up to civil society to push governments to include CbCR and to keep a close eye to the transposition of the earlier CbCR adopted legislation for the extractives industry, as well as for banks (CRD-IV). Implementing the directives in national law creates room for national governments to weaken the CbCR measures.

**Anti-Money Laundering: public registers on ownership remain controversial**

The revision of the EU's anti-money laundering directive is stepping up the law making ladder (for an introduction see May 2013 Newsletter). On 11 November 2013, the two leading committees of the European Parliament (ECON and LIBE), with rapporteurs Judith Sargentini (Greens) and Krišjānis Kariņš (European People's Party), launched their joint draft report with proposed amendments to the initial draft by the European Commission. The other committee members provided their own amendments beginning December , and the final report is scheduled to be voted on in the committees on 22 January 2014.

The most controversial issue still is the introduction of a register which displays the beneficial owners, i.e. the true economic beneficiaries, of a company. While the European Parliament had previously supported public registers, the draft report by the EP rapporteurs now only gives the authorities access to the ownership information, but not the public. However, the report at least calls for a central register, which was not the case in the initial Commission draft. Some other MEPs have proposed to include public registries and it will now be up to the final vote in January 2014 what will be the EP's position. The member states are still divided. At the Finance Ministers' ECOFIN summit in November, they discussed registries but gave no indication for a position. The coalition-agreement of the possible new German government is calling for the establishment of a public register for 'trust constructions' but not for companies and foundations. This is less than what British Prime Minister David Cameron called for: he announced that the UK will have a public register for companies – but seemingly without trusts.

Besides the register, there are several other important issues. The Council discussed the role of the European supervisory authorities and monitoring at EU level which is indeed crucial to address transnational criminal activities. It also discussed in how far similar laws in non-EU countries would be accepted as 'equivalent' to EU laws, thus making the latter redundant for activities of EU company affiliates in these other countries. Another crucial point will be the implementation, i.e. appropriate sanctions for banks to effectively comply with anti-money laundering rules. However, the EP draft report on money laundering weakens the Commissions' proposal with amendments that would make the publication of breaches optional while the Commission intended to have them obligatory, as it is the case in the United States. A final issue is related to so-called politically exposed persons (PEPs) and how to prevent banks from taking money from illicit capital owned by such persons. While the initial Commission draft does aim to strengthen the rules, the EP draft report cancels some proposals on the broader definition of PEPs.

There is still a long way to go on money laundering prevention globally. As the new Financial Secrecy Index launched by the Tax Justice Network in November 2013 has shown, there are still many secrecy jurisdictions out there, with Switzerland still on top. The dubious role of Germany as the 'second home-country' of the Italian 'Ndrangheta is also visible in the Index and has been elaborated on in a new report released by WEED and others.

## Calendar of official events

For background to the official agenda of European institutions, see the following websites:

- The European Commission (EC)
- The Economic and Financial Affairs Council (ECOFIN)
- The European Council
- The Economics and Monetary Affairs Committee (ECON) of the European Parliament
- The Financial Stability Board

The links below give the website with updates and overviews of documents and dates related to the EU decision making process.

**2013**

**December**

- **9-13, EP (Strasbourg):** Plenary, vote scheduled on Recovery and resolution framework for non-bank institutions
- **12-13 NGOs (Brussels):** TTIP strategy meeting
- **16, JURI (Brussels):** Vote on Non-financial Reporting, possibly including country-by-country reporting on taxes for large companies
- **16-17, ECON (Brussels):** Meeting
- **16-20, TTIP (Washington):** Negotiation session
- **19-20, European Council (Brussels):** Heads of State Summit, Agenda includes Taxation and contracts for Economic Policy Coordination

**2014**

**January**

- **1, Council (Brussels):** Greek Presidency begins
- **1, G8:** Russian Presidency begins
- **1, G20 (Canberra):** Finance Ministers and Central Bank Deputies meeting
- **9, ECON (Brussels):** Meeting
- **13-16, EP (Strasbourg):** Plenary, possibly vote on MiFID-II and MiFIR
- **20, ECON (Brussels):** Vote scheduled on Long-term financing of the European economy
- **21, ECON (Brussels):** Meeting
- **22, ECON (Brussels):** Vote scheduled on Money laundering and terrorist financing
- **23, ECON (Brussels):** Vote scheduled on the European Long Term Investment Fund
- **27, ECON (Brussels):** Meeting
- **27-28, ECOFIN (Brussels):** Meeting (also Eurogroup meeting)
- **30, ECON (Brussels):** Vote scheduled on Indices used as benchmarks in financial instruments and financial contracts

**February**

- **3-6, EP (Strasbourg):** Plenary sitting date
- **12-13, ECON (Brussels):** Vote scheduled on Money Market Funds
- **13-14, European Council (Brussels):** Meeting
- **17, ECON (Brussels):** Meeting
- **20, ECON (Brussels):** Meeting
- **22-23, G20 (Sydney):** Finance Ministers and Central Bank Governors Meeting
- **24-27, EP (Strasbourg):** Plenary, 1st reading/single reading on European Supervisory Authorities and on a Framework for recovery and resolution for credit institutions and investment firms

**March**

- **3 ECON (Brussels):** Meeting
- **10-13, EP (Strasbourg):** Plenary, vote scheduled on Money laundering and terrorist financing, and on Indices used as benchmarks in financial instruments and financial contracts
- **17-18, ECON (Brussels):** Meeting
- **17-18, ECOFIN (Brussels):** Meeting (also Eurogroup)
- **20-21, European Council (Brussels):** Meeting
- **24-25, ECON (Brussels):** Meeting

**April**

- **1, ECON (Brussels):** Meeting
- **2-3, EP (Strasbourg):** Plenary
- **14-17, EP (Strasbourg):** Plenary, 1st reading/single reading on Money Market Funds
- **7, ECON (Brussels):** Meeting

**May**

- **5-6, OECD (Paris):** Annual Forum
- **15-16, European Council (Brussels):** Meeting
- **22-25, EP (EU member states):** Elections

**June**

- **5-6, G8 (Sochi):** Heads of State Summit
- **17-19, C20 (Melbourne):** Summit civil society organisations in the G20 process
- **26-27, European Council (Brussels):** Meeting

**November**

- **15-16, G20 (Brisbane):** Heads of State Summit

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