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HumMingBird

UNDOCUMENTED MIGRANT WOMEN IN EUROPE IN THE POST-COVID PERIOD: CASES OF IRELAND, MALTA AND POLAND AND EU-WIDE IMPLICATIONS

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**EUROPEAN NETWORK
OF MIGRANT WOMEN**

Abstract

In Europe, undocumented migrant women constitute one of the most at-risk groups across several socio-economic domains, with frequent, severe and often tragic consequences for these women, as well as their children and families. Already in the pre-COVID period in Europe, undocumented migrant women suffered financial exploitation, often exposed to discrimination, homelessness, intimate partner and domestic violence, and sexual harassment and abuse, both at work and in the public sphere. During and post-COVID, the inequalities and discrimination to which undocumented migrant women are subjected have intensified.

This briefing paper summarises the key areas of concern and offers a number of recommendations to inform EU and national decision makers and stakeholders for improved formulation of policy responses and strategies to address the situation of undocumented migrant women in Europe. The main intention of this paper is to highlight the lack of protection of undocumented migrant women, and to help ensure their well-being during the post-COVID pandemic period, in particular, in the context of a number of key international legal instruments, including the EU Fundamental Rights Charter.

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Introduction

Since early 2020, the COVID-19 pandemic has had an unprecedented mental, physical, social, and financial impact on the lives of all European residents. By October 2022, there were 611,421,786 confirmed cases and more than 6 million deaths worldwide.* The number of undocumented migrants in Europe in 2017 was between 2.9 and 3.8 million.** This figure did not account for the number of asylum seekers, which totalled 1 million at the end of 2017, with 765665 pending applications in December 2020.*** All these figures include women and girls, yet there is no specific data on undocumented/ irregular migrant women, whose position of vulnerability and precariousness has worsened significantly during the COVID-19 crisis.

This discussion paper, which is drawn from surveys and subsequent in-depth interviews with experts from grass-roots organisations in Poland, Malta, and Ireland, and from the very recent report by the European Network of Migrant Women "Undocumented Migrant Women in Europe: a Neglected Chapter in Fundamental Rights Protection", aims to provide a synergic analysis of the impact of Covid-19 on the lives of undocumented migrant women in relation to accessing services, and the escalation of pre-existent challenges or difficulties, vis-a-vis some of the legal rights available to them in EU legislation. The experts who collaborated for this brief respectively are from ENoMW member organisations: AkiDwA (Ireland), Migrant Women Association Malta (Malta) and Fundacja Polskie Forum Migracyjne (Poland). The report, which was produced by ENoMW in partnership with the legal firms of TrustLaw (Thomson Reuters Foundation), provided a legal mapping of undocumented migrant women's access to fundamental rights in nine European countries (Belgium, France, Germany, Italy, Portugal, Hungary, Spain, Sweden and Greece) as well as at EU level.

* WHO international: <https://covid19.who.int/>

** <https://www.pewresearch.org/fact-tank/2019/11/14/5-facts-about-unauthorized-immigration-in-europe/>

*** <https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe>

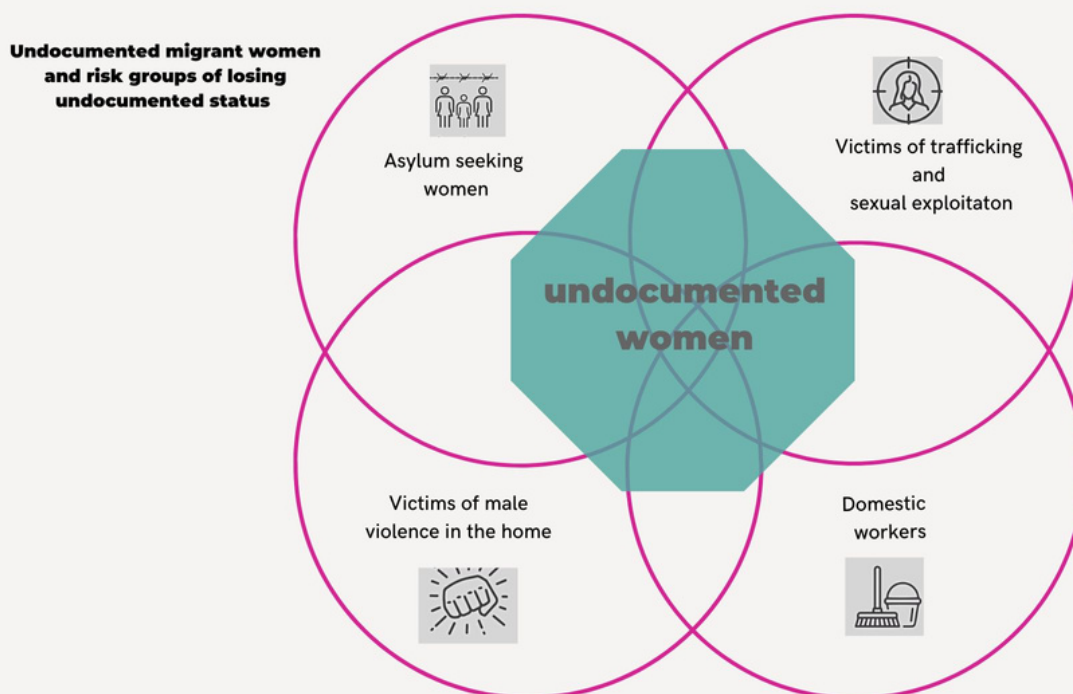
Note on Terminology:

The terms 'irregular' and 'undocumented' migrant are used interchangeably by the policy-makers, and they refer to: persons with rejected and/ or unprocessed applications for asylum; persons overstaying their work, education and/ or tourist visas; persons with non-recognition status, including victims of human trafficking; persons who have lost documented status as a victim of domestic violence, as well as those who have come of age and not been granted a residence permit, and those born within an undocumented household (i.e. to undocumented parents).

Groups at Risk

According to the report "Undocumented Migrant Women in Europe", several groups among migrant women with documented status are at a particular risk of being pushed into irregular situations.*

The four at-risk groups highlighted by the report are as follows:



* UNDOCUMENTED MIGRANT WOMEN IN EUROPE: A NEGLECTED CHAPTER IN FUNDAMENTAL RIGHTS PROTECTION; <https://usercontent.one/wp/www.migrantwomennetwork.org/wp-content/uploads/UMW-Report-2022.pdf>

Recommendations



EU legal-
framework

- The European Union as a whole, as well as its individual member states, must strive to devise a reporting system whereby undocumented migrant women can report domestic violence, sexual abuse, and discrimination at work without fear of being arrested and deported.
- In cases of public health emergency, the EU and its member states should provide access to public health measures, including vaccinations for all, without legal barriers associated with a person's legal status.
- The EU and its member states should review the already existing legal framework on the rights of undocumented migrant women, with regard to income and labour market, as well as independent legal status.
- The European Commission and European Parliament, in their recommendations to and negotiations with member states, should more diligently employ the protection frameworks offered to undocumented women by international legal instruments such as CEDAW (Convention on the Elimination of Discrimination against Women) and The Istanbul Convention, as well as the recommendations offered by the treaty bodies on the two conventions.



Data
collection

- Data collection on migrants, including those who are undocumented, at national level should be disaggregated by sex and age in order to identify the specific challenges experienced by different groups of migrant women and girls.
- In needs analysis and recommendations on migrants/refugees, policy-makers and researchers alike must apply a differentiated approach with targeted analysis, taking into account such variables as sex, family and legal status, formal and informal education, skill-sets and work experience, among others. Such disaggregated analysis will benefit both migrants/refugees and receiving communities allowing to produce more realistic and effective policies.
- Data on undocumented migrants should be guarded to avoid unauthorised usage.



Service
provision

- Support and facilitate undocumented migrant women's access to technology, IT literacy and technological software.
- Put more resources in specialist services available to women, and increase the number of such services, while ensuring migrant women access to such services.
- Migrant women, including undocumented women, should have easy access to safe housing and shelters, without legal or financial barriers and with shorter waiting times to access safe housing.
- Facilitate access of undocumented migrant women to mental health services. These services should collaborate with women-led migrant and community organisations by implementing a holistic mental well-being approach which features elements such as safe spaces for group networks and skill-building activities where women will feel empowered without being targeted.



Awareness
raising

- All professionals - including police and legal practitioners - need women-centred training that incorporates content concerning violence against women or sexual exploitation, in relation to migrant women and their needs. Such training must also incorporate cultural sensitivity and awareness-raising regarding individual needs.
- More clear and precise information in different languages should be widely available and made accessible to undocumented migrant women in order to facilitate access to services.

Fundamental rights of undocumented women in Europe

"A Member State has the right to decide on its own immigration policies; however, immigrants' fundamental rights must be protected and guaranteed in accordance with EU and international law, by which Member States are bound."

European Parliament resolution (2014) on undocumented women migrants in the European Union, par. C

In Europe, undocumented migrant women face multiple challenges in accessing their fundamental rights, including the right to shelter, education, essential health care and justice.

Under the Charter of Fundamental Rights of the European Union (CFR), the member states and EU institutions generally, must distinguish and implement two sets of rights "(a) civil and political rights- e.g. right to life, protection from torture and inhuman or degrading treatment or punishment, protection from slavery and forced labor, respect for private and family life, the right to marriage, and (b) social and economic rights- e.g., adequate housing and shelter guaranteeing human dignity, emergency health care, rights in employment, reasonable working conditions, access to courts to defend rights, trade activity, and the right to primary and secondary education for all children."^{*}

At the same time, "under Art. 51 of the CFR, the EU institutions and EU member states are obliged under CFR only when they are implementing European Union law. As a result, the EU Charter has no jurisdiction in areas over which the EU has no competence."^{*} In practice, this means that, although undocumented migrant women are protected under the EU Charter of Fundamental rights, member states are not restricted by these laws and each EU state has their own set of policies^{**} - including those concerning undocumented persons' access to housing, social benefits, employment, legal and health services- all of which have a practical impact on the lives of undocumented migrant women.

The importance of CFR, however, is that it spells out the protection of fundamental rights of all those residing on EU territory. Articles 21 and 23, "prohibits any discrimination based on sex and provides that equality between women and men must be ensured in all areas, including employment, work and pay"^{**} without distinguishing between citizens and migrants, and extending also to undocumented migrant women.

"Member States should ensure that migrant, refugee and asylum-seeking women and girls do not face discrimination on any grounds"

"Member States are encouraged to take measures to enhance the ability of undocumented migrant women and girls to access their fundamental rights, and for those of them who are victims of violence against women or trafficking in human beings, to report the crimes without fear of removal"

Council of Europe (CoE) Committee of Ministers Recommendation (2022) on protecting the rights of migrant, refugee and asylum-seeking women and girls, par. 5 and par. 7

^{*} UNDOCUMENTED MIGRANT WOMEN IN EUROPE: A NEGLECTED CHAPTER IN FUNDAMENTAL RIGHTS PROTECTION;
<https://www.migrantwomennetwork.org/2022/06/23/new-report-undocumented-migrant-women-a-neglected-chapter-in-fundamental-rights-protection/>

^{**} Unless in those cases when they apply the Directive 2003/109/EC on Rights of Third-country nationals who are long-term residents in the EU, The Return Directive 2008/115/EC and the international legal framework on asylum if an undocumented person is a refugee. Such compressive application of legal frameworks is rarely the case.

Escalation of existing inequalities and discrimination

The Covid-19 pandemic and its consequences aggravated pre-existing challenges, difficulties and discrimination many migrants face in the EU. For undocumented migrant women and girls, both during and post COVID, these challenges multiplied in a manner proportionate to their already highly marginalised position in society, i.e. being a woman, being migrant and being without a legal status guaranteeing rights in the eyes of law. Many extraordinary measures taken by the EU states during the first stages of the pandemic (such as the lockdowns, restrictions on travel and extended closures of services and businesses) had a particularly grave impact on undocumented women, who simultaneously lost their already precarious income, and the possibility to flee abusive situations and seek help.

"The delay of their legal status caused by the change of the asylum application procedure - because all the procedures became online since COVID- 19 the Commissioner for Refugees launched a new procedure of online appointments - has affected these women. Additionally, most of the information about the services such as Covid related health measures was shared online, and this meant that for the women who do not have access to internet, it was impossible to access this information. This was the case especially for the women in the open centres, where access to internet is very limited."

(Migrant Women Association Malta; Malta)

Severe Economic Impact & Loss of Documented Status

Overall, the disruptions in European economies, the labour market recession during COVID-19 that led to closure of small business, job redundancies and losses in many countries, impacted undocumented migrant women's income and finances in unprecedented ways. According to the respondents, many of these women worked in small businesses such as restaurants, corner shops, small private supermarkets, grocery shops, hair and beauty parlours, as well as in care and domestic work, with the overwhelming majority of them losing their jobs as a consequence of COVID measures. For example, in Ireland domestic workers, women working in low-skilled jobs and as carers, were severely affected with practically all of them losing their income. Furthermore, many documented migrants became undocumented because of the delay in processing their documents. Ireland witnessed considerable delays in the process of soon-to-be-expired visas, whereas in Malta, an online application system was introduced which resulted in difficulties for migrant women who did not know the language and /or lacked technological literacy in accessing the internet and filling in the asylum or visa extension applications. For these women, becoming undocumented meant losing their jobs and/ or social assistance from the state.

Loss of Housing

Because of the exacerbated financial strain, access to housing for undocumented migrant women became even more difficult. According to the respondents, in Ireland, as a particular consequence of COVID-19 measures, many undocumented women lost their housing and, being forced into homelessness, started 'living rough' on the streets. In Malta, the respondent reported that the government had set up services providing shelter to undocumented women during the Covid pandemic, however because of the lack of dissemination of information about such services, and the general lack of access to information among migrant women, very few undocumented women benefitted from these shelters.

“Women who were victims of violence from their partners and were in therapy, stopped benefiting from psychological health support. Before the pandemic they could come to our office and speak freely about what was happening. During COVID lockdowns, even though this counselling was available online, with the presence of their husbands, they didn't have the space to speak about this to a counsellor. As a result, providing them effective therapy - or not even therapy, but just a space so to release the tension and frustration - become impossible; we couldn't do it.”

Fundacja Polskie
Forum Migracyjne
Poland

Sexual Exploitation and Abuse

It is widely recorded that in Europe, undocumented migrant women are already at an exceptionally high risk of sexual exploitation and abuse.* This exploitation and abuse might be perpetrated by their partners (both European and non-European nationals), extended family members, employers, and by organised criminal networks who target undocumented women by exploiting their financial, legal and housing vulnerabilities. During the lockdowns and the period that followed, in conjunction with losing housing and not having access to any services, becoming economically dependent following the loss of work, meant an increased risk of sexual exploitation for many undocumented women. Furthermore, according to reports from the interviewees, many women became sexually exploited and abused without recognising it as exploitation or abuse. For example, in Malta, some undocumented women were ‘befriended’ by men who asked the women to enter into relationships with them in exchange for material and financial ‘compensation’. This form of sexual coercion was not immediately understood by these women as an abuse of their vulnerability, and, having no recourse to support and no material protection, the women conceded to such arrangements, only later concluding that the ‘support’ they received was sexually abusive, and coercive in nature.

Obstacles to reporting violence and leaving abusive situations

While undocumented migrant women’s exposure to multiple forms of violence and discrimination has increased during and post COVID, according to the interviewees in Ireland, Poland and Malta, their already compromised capacity to seek help from authorities and/ or to disclose the abuse to any third party, dramatically decreased.

Overall, factors deterring migrant from leaving abusive relationships include: 1) fear of losing custody/parental rights over their children, 2) fear of being deported to the country of origin, 3) fear of retaliation from perpetrators, 4) lack of awareness of mechanisms, organisations and authorities where they could safely report violence, 5) language barriers.

The five intersecting circumstances also apply to women who are discriminated or sexually abused at work. Firstly, according to respondents, women who worked without documents were paid below the average rate and sometime were not paid at all, because the employer was able to leverage the

lack of documentation and the threat of reporting her to authorities. Secondly and similarly, women without legal documentation felt unable to report sexual harassment or abuse by employers or male colleagues - again, due to the risk of being detained and deported. The third factor was a consequence of this: a massive rise (concurrent to Covid-19 lockdowns) in the cases of violence against women, both in private spaces such as the home, and public spaces such as the workplace, with little to no access to any support system. Finally, access to legal support, or official sources of advice and information regarding their rights were closed to them, and going to the police was not an option for fear of being arrested, detained and deported. A respondent in Poland summarised thus: “Covid-19 increased domestic violence, but at the same time, it decreased the ability of women to seek support.” (Fundacja Polskie Forum Migracyjne; Poland)

* European Parliament's report on undocumented women migrants in the European Union; https://www.europarl.europa.eu/doceo/document/A-7-2014-0001_EN.html#_section1

Obstacles to accessing health services, including vaccination

In the majority of the EU countries, undocumented migrants' access to health services is very limited. Most commonly, this access is predicated upon such criteria as having a national ID card or health insurance (state or private). Not having these documents prohibits access to public health in the overwhelming majority of cases, including those healthcare services which are essential. According to the respondents, regardless of how acute or severe a health condition may be, for undocumented women, the absence of a national ID card and/or insurance, deters them from seeking professional medical help, even when they are very ill. Even though undocumented women are eligible for emergency health services, most avoid going to the emergency for fear of being detained and deported.

In Poland, as long as one has a valid passport, s/he can access health services. In Malta, during lockdowns, access to services depended on migrant NGOs which acted as mediators and communicated with the authorities on a case-by-case basis. During the Covid-19 lockdowns in Ireland, health services became available to everyone - including undocumented migrants - however, health authorities during that period remained underfunded in many areas, resulting in delayed and insufficient service provision.

Accessing vaccination during COVID was another challenge for undocumented migrant women. According to our respondents in Ireland, Poland and Malta, the three countries follow a similar process with regards to vaccination vis-à-vis legal status: having a valid identification document (passport or residence document), health insurance (with health ID card and a special pin number) or a valid residential address were (and remain) some of the prerequisites for accessing vaccination. In Poland, migrants could obtain an identification number if they had links to Polish institutions - for example, through their children's school and/ or through employment - however, those did not apply to the situation of undocumented women. In Malta, on the other hand, mandatory online registration became a real hindrance for migrant women who either did not have internet access, or did not know the language, and/ or lacked IT skills. In Ireland, to be vaccinated, people were asked to provide their residential address, which became a barrier for many undocumented women due to their fear of being identified by the authorities.

Although the lockdowns are over and services are trying to return to normal, undocumented women continue to struggle to access the basic health services which, apart from the health risks they are exposed to, according to our respondents, has serious detrimental consequences for the mental health of these women.

"In just 10 of the 28 EU Member States do undocumented migrants have the right under national law to access primary care; in 6 their access is limited to emergency care. The remaining 12 EU countries are in between, entitling undocumented migrants to something more than emergency care, but often far less than the full complement of primary and secondary health care services... Even when they are legally entitled to care, undocumented women face practical barriers. These can be due to complex administrative requirements, cost, or the risk (sometimes imposed by law) of being denounced by hospital administrators to immigration authorities."*

* MIGRANT WOMEN'S HEALTH ISSUES: ADDRESSING BARRIERS TO ACCESS TO HEALTH CARE FOR MIGRANT WOMEN WITH IRREGULAR STATUS: https://www.euro.who.int/__data/assets/pdf_file/0017/330092/6-Migrant-womens-health-issues-irregular-status.pdf

Conclusions

In post-COVID Europe, migrant women and girls in Europe- specifically irregular migrant women- continue to face multiple obstacles: from being denied access to formalised unemployment to discrimination in housing, from homelessness to difficulties in accessing essential services. These obstacles persist against a background of high rates of unreported sexual exploitation, abuse and other forms of male violence. The COVID-19 pandemic exacerbated these forms of discrimination, limiting or ending access to services, including essential healthcare and vaccination. Even though in Malta, Ireland, and Poland (the foci of this paper) health services became available to undocumented migrants, the majority of women without documents did not access these services since such access required an ID-card and/ or health insurance, which became the source of a justified fear of detention and deportation.

Respondents from all three countries highlighted the lack of availability of information about essential services as well as the overall rights of undocumented women. Furthermore, during Covid lockdowns, access to many public services became digitalised, presenting a significant challenge for many undocumented women. Those who did not have access to the internet/ hardware, were IT-illiterate, or did not know the language, found it extremely difficult to fill in application forms, book appointments online and attend virtual meetings.

The reality is that for most undocumented migrant women it is impossible to present the needed documents when accessing vaccination or any other basic health services, when they simply do not have such documents. Due to the nature of their residency, undocumented women feel they should hide and not expose themselves to any state institutions or authorities. It is very, very difficult for them to present themselves anywhere where vaccinations take place. Even the idea of visiting such a place creates the fear of being exposed, detained and deported."

**AkiDwA
Ireland**

By looking at different high risk factors women face when crisis hits, this paper highlights the importance of making services available to women and girls with no legal documents. This can be done through channelling increased resources to specialist women- and migrant-women-led organisations so as to enable them to meet the needs of the women accessing these organisations, as well as by ensuring an effective legal system where undocumented migrant women can access services, housing and support - and are able to report violence and discrimination - without fear or risk of legal repercussions, in particular, of detention and deportation.

Compared to many other regions of the world, the fundamental rights system of the European Union provides a strong degree of protection to its residents, including those in precarious and irregular situations. However, in the case of undocumented women, these protections in most instances remain unimplemented and unenforced, with a high degree of divergence in access to basic rights among EU states. The EU Charter of Fundamental Rights (CFR) is one such example that requires urgent rekindling of member states' commitment at national level. Additionally, it is crucial that international instruments such as CEDAW (ratified by all EU states) and the Istanbul Convention (ratified by 21 EU states including Malta, Ireland and Poland) are integrated in national laws and policies in the EU. Both conventions apply to women in undocumented situations without discrimination. Furthermore, EU states must take into consideration and implement the recommendations of the relevant treaty bodies, that is GREVIO and CEDAW Committees respectively. (including the CEDAW general recommendations No. 26, 35, 38). It is also crucial that the EU states implement the most recent recommendations of the Council of Europe on Protecting the Rights of Migrant, Refugee and Asylum-seeking Women and Girls**. Those recommendations constitute a comprehensive guiding framework for EU members to uphold the rights of undocumented women, and, together with the EU CFR and international conventions mentioned above, they provide a solid protection to undocumented women - a group in Europe who are facing a grave risk of violation of their fundamental rights.

* CEDAW General recommendation No. 26 on women migrant workers, General recommendation No. 35 on Violence against Women; General Recommendation No. 38 on trafficking in women and girls in the context of global migration: <https://bit.ly/3gq3L3c>

** Protecting the rights of migrant, refugee and asylum-seeking women and girls, CoE Recommendation CM/Rec(2022): <https://rm.coe.int/prems-092222-gbr-2573-recommendation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a>



ABOUT HUMMINGBIRD (2019-2023)

Enhanced migration measures from a multidimensional perspective Migration has become a matter of significant social, political and broader public concern. It has therefore shifted very high on the agenda of national and EU authorities. Well-informed, evidence-based migration policies should be based on reliable evidence, beginning with a thorough understanding of existing data as well as the demographic, economic, environmental and political drivers of migration. There is a need for tools to forecast migration flows in order to minimise shocks and tensions and to foster good governance. HumMingBird's objectives can be summarised as follows:

- to assess the quality and comparability of existing statistical concepts and data (stocks as well as flows) relating to migration in the EU;
- to explore and validate the use of alternative data sources – including various types of big data (such as social media or telecommunication);
- to understand the changing nature of migration flows and the drivers of migration; to analyse patterns, motivations and new geographies; to hear the voices of migrants in various 'hubs' around Europe;
- to nowcast short-term flows and forecast longer-term patterns of migration, while identifying uncertainties;
- to examine the interactions between migration flows and policies, and
- to estimate the potential impact of alternative policy scenarios.

In order to fulfil these objectives, the HumMingBird consortium (consisting of 16 partners from 10 countries) brings together research centres, private companies, NGOs and a European Research Infrastructure Consortium (ERIC). The consortium combines a wide range of scientific disciplines (from anthropology and political sciences to statistics, telecom engineering and computer sciences). Partnerships between academic researchers and civil society organisations working with migrants will carry out qualitative research to enrich, interpret and supplement the statistical analyses. Sixteen partners from 10 countries (including European expert centres) are involved, and many of the participating researchers have a migration background.

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