

# Corporate Sustainability Due Diligence Directive (CSDDD)





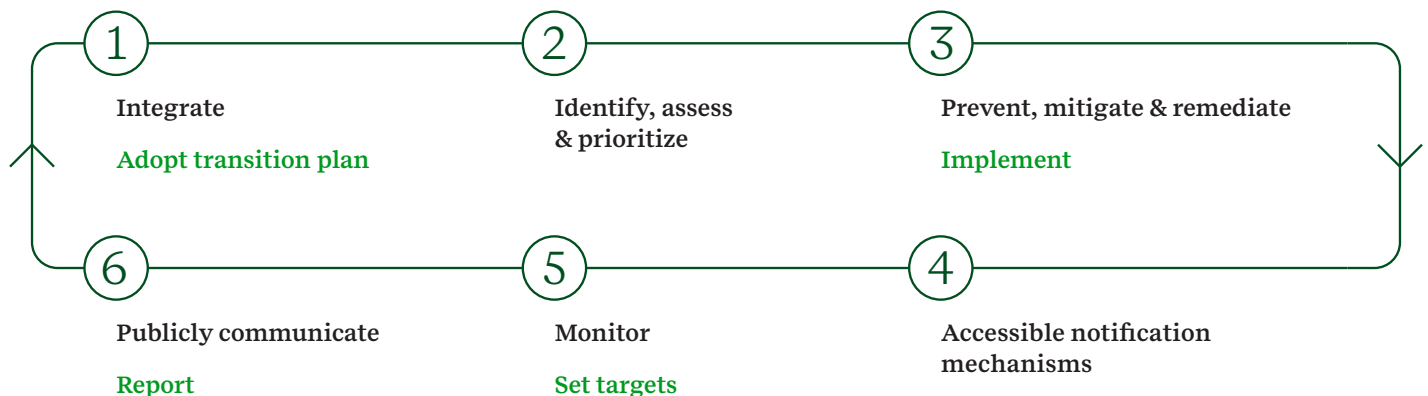
**Background:** On April 24th, 2024, the European Parliament formally adopted the Corporate Sustainability Due Diligence Directive (CSDDD), setting into law obligations for large companies with significant activities in the EU to conduct human rights and environmental due diligence in their own operations and across their chains of activities.

The adoption of the CSDDD is a significant step in mandating companies to embed responsible business conduct into due diligence policies and procedures. After several years of legislative developments on due diligence regulation at national-level (e.g., Duty of Vigilance Act in France, Supply Chain Due Diligence Act in Germany) and at EU-level, such as for commodity or product-specific supply chains (e.g., EU Battery Regulation, EU Conflict Minerals Regulation), the CSDDD seeks to harmonize due diligence requirements across EU Member States and to level the playing field for companies active in the EU market.

**Minimum due diligence standards across the EU:** The CSDDD sets minimum requirements for what EU Member States are required to transpose into national law. At a minimum, Member States need to develop or update existing national laws to meet the CSDDD's objectives and scope but are allowed to go further by setting stricter due diligence requirements or by including into scope activities currently excluded from the Directive.

## Requirements of the CSDDD

The CSDDD sets minimum requirements on companies to develop and implement appropriate measures to conduct due diligence, such that companies can effectively identify and address adverse human rights and environmental impacts. These steps include:



Carrying out meaningful engagement with stakeholders is recommended throughout the entire journey

● Overarching due diligence ● Combatting climate change

| Company obligations  | Key provisions   |
|--|--|
| <b>1. Integrate due diligence into policies and risk management systems</b><br><br><i>(Article 5)</i>  | <ul style="list-style-type: none"> <li>• Implement a policy to ensure risk-based human rights and environmental due diligence by the company</li> <li>• Integrate due diligence policy and processes across the company and risk management systems</li> </ul>   |
| <b>2. Identify and assess actual or potential adverse impacts, and, where necessary, prioritize potential and actual adverse impacts</b><br><br><i>(Article 6)</i> | <ul style="list-style-type: none"> <li>• Map the company's own operations, upstream and downstream chains of activities</li> <li>• Conduct periodic in-depth assessments to identify adverse impacts, using relevant internal and external information sources</li> <li>• Prioritize adverse impacts based on severity and likelihood, as needed</li> </ul>  |
| <b>3. Prevent and mitigate potential adverse impacts, and bring actual adverse impacts to an end and minimize their extent</b><br><br><i>(Articles 7 &amp; 8)</i>  | <ul style="list-style-type: none"> <li>• Take appropriate measures to prevent and mitigate impacts, and to bring actual adverse impacts to an end, minimize their extent and provide remediation</li> <li>• Develop corrective action plans, get involved in or step up participation in multi-stakeholder initiatives, and seek contractual assurances from business partners</li> <li>• Where impacts involve business partners who are SMEs, provide targeted and proportionate support, and implement fair, reasonable and non-discriminatory contractual assurances</li> <li>• Conduct meaningful and effective stakeholder engagement throughout the process of due diligence</li> </ul>   |
| <b>4. Establish and maintain a notification mechanism and complaints procedure</b><br><br><i>(Article 9)</i>   | <ul style="list-style-type: none"> <li>• Establish a company-level notification mechanism which is accessible to potentially affected stakeholders or their legitimate representatives, including trade unions, civil society organizations and human rights or environmental defenders and which does not prevent complainants from making use of other judicial or non-judicial mechanisms</li> <li>• Institute a procedure to respond to and address complaints raised through the notification mechanism, which is fair, accessible, transparent and publicly available and which includes reasonable steps to prevent all forms of retaliation</li> <li>• Provide adequate information on the procedure to workers and their representatives, as well as complainants, and keep them informed throughout the process</li> </ul> |

### 5. Monitor the effectiveness of due diligence policy and measures

(Article 10)

- Carry out periodic assessments to monitor the effectiveness of due diligence policies and processes, as well as the measures taken to address identified potential and actual adverse impacts

### 6. Publicly communicate on due diligence

(Article 11)

- For companies that also need to comply with the Corporate Sustainability Reporting Directive (CSRD): report on due diligence through CSRD-compliant reports
- For other companies: issue an annual statement describing how they implement due diligence

### 7. Combatting climate change

(Article 15)

- Adopt and implement a climate transition plan in line with the Paris Agreement, including time-bound targets supported by key actions, decarbonization levers and resourcing



#### Focus on company means to apply effective due diligence

The Directive focuses on measures in place and actions taken by companies to identify and address adverse impacts, rather than the results of these measures. Although companies are not expected to show how their value chains are free of impacts, they are required to demonstrate that they have taken all appropriate measures to effectively identify risks and prevent, cease, mitigate, address or remediate actual and potential adverse impacts.



#### Taking a risk-based approach

The Directive specifies that companies should embed a risk-based approach into their due diligence activities. This entails widely screening their chain of activities to identify areas where ‘hot spots’ are most likely, to prioritize actions in line with the level of severity and likelihood of potential and actual impacts and to develop measures that are appropriate, considering the level of impact and the extent to which the company can influence an outcome related to minimizing or preventing the impact.

## ERM'S POINT OF VIEW

ERM welcomes the adoption of the CSDDD. It is an important milestone for establishing a level playing field for large EU and non-EU companies on human rights and environmental due diligence. It is also a stepping stone to raise the bar on responsible business conduct across many thousands of businesses, including companies outside the EU, who will have a market incentive to start adjusting their practices on human rights and environment in order to maintain commercial relationships with the EU.

**Effective reduction and mitigation of human rights and environmental impacts:** While CSDDD requirements focus on policy and procedures to have in place, it is important to remember that the key objective of the Directive is to protect people and the environment from harm. In the process of designing and implementing your company's approach to due diligence, consider the minimum standards set by CSDDD (e.g. measures proportionate to the level of potential harm that may occur, while also taking into account your company's power of influence and link to the harm incurred). At the same time, measures should be developed and implemented with the specific consideration of how they can most effectively ensure the protection of people and the environment from harm – following not only the letter of the law, but also the spirit of the law. At the heart of this is carrying out meaningful stakeholder engagement.

## Scope of the CSDDD



### Group 1: EU companies

> 1000 employees  
*Employee threshold*

EUR 450 million turnover globally  
*Financial threshold*



### Group 2: Third country companies

N/A  
*Employee threshold*

EUR 450 million turnover in the EU  
*Financial threshold*



### Group 3: Franchised companies (EU and non-EU)

| EU  | Non - EU                         |
|---|----------------------------------|
| > 1000 employees<br><i>Employee threshold</i> | N/A<br><i>Employee threshold</i> |

EUR 80 million turnover  
EUR 22.5 million in royalties  
*Financial threshold*

Source: CSDDD compromise 15 March 2024 (<https://data.consilium.europa.eu/doc/document/ST-6145-2024-INIT/en/pdf>)

**Companies:** The above thresholds apply if they are met by companies each year for two consecutive financial years. Obligations should be met by the ultimate parent company, or by a designated subsidiary in case the ultimate parent is a holding company which does not engage in management, financial or operational decisions for the group or individual companies within the group.

**Activities:** All EU and non-EU companies that fall under respective thresholds are required to conduct due diligence within their chains of activities, with a focus on own operations and upstream activities. A specific set of downstream activities are included, such as distribution, transportation and storage of a product.

|              | Upstream  | Own Operations  | Downstream <sup>1</sup>   |
|--------------|---|---|---|
| In scope     | Design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or part of the products and development of the product or the service | All activities directly conducted by the company or companies in a consolidated group | Distribution, transport and storage of the product  |
| Not in scope | N/A   | N/A   | <p>Disposal of the product, incl. dismantling, recycling, composing or landfilling<sup>2</sup></p> <p>Disposal of the product by consumers and distribution, transport, storage and disposal of the product being subject to the export control<sup>2</sup></p> <p>Downstream service activities for the financial sector</p> |

<sup>1</sup> Relating to downstream activities, companies are only required to conduct due diligence with direct business relations.

<sup>2</sup> In scope of other EU regulations

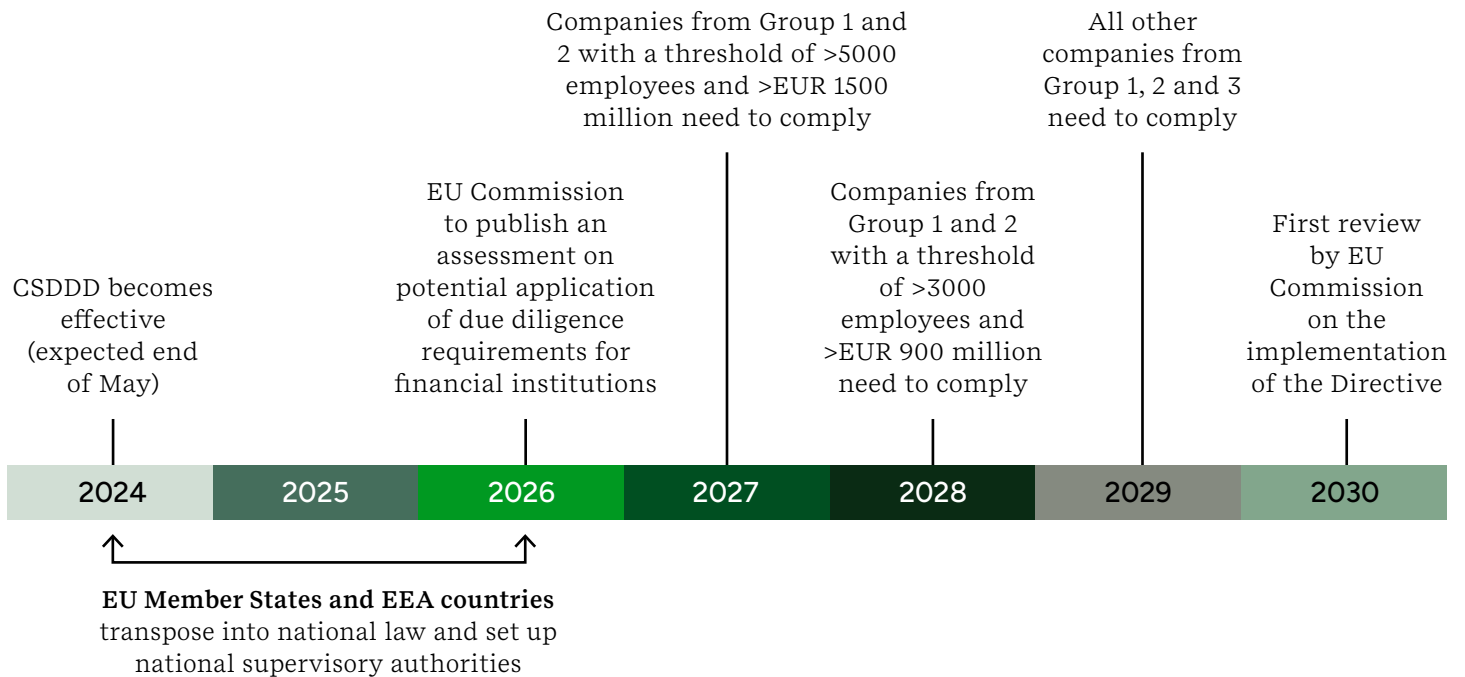
Source: CSDDD compromise 15 March 2024 (<https://data.consilium.europa.eu/doc/document/ST-6145-2024-INIT/en/pdf>)





## Implementation timeline

The Directive will come into force from the 20th day after it has been published in the Official Journal of the European Union (expected end of May 2024). Following this, the Directive will be implemented in phases, starting with a two-year transposition of the CSDDD into national law by Member States. Member States such as Germany, France, as well as Norway, that already have laws which include due diligence obligations will likely review and augment existing laws in light of CSDDD rather than institute new legislation.



**Phased-in application:** The CSDDD will be enforced with a phased-in approach based on company size and turnover, starting three years from entry into force, and grouped as follows:

- 3-year period for companies with over 5000 employees and EUR 1500 million turnover (from 2027)
- 4-year period for those with over 3000 employees EUR 900 million turnover (from 2028)
- 5-year period for companies with over 1000 employees and EUR 450 million turnover, and for companies having entered into franchising or licensing agreements with over EUR 80 million turnover in the EU and EUR 22.5 million in royalties (from 2029).

**Transposing to national law:** EU Members States have two years from the date of enforcement to transpose the Directive into national law. EU Member States are also required to set up supervisory authorities and take appropriate measures to implement the requirements of the CSDDD.

**Financial institutions:** The Directive requires the EU Commission to assess the needs for tailored due diligence requirements to be developed for companies that provide financial services and investment activities, considering existing legislative acts that apply to regulated financial undertakings. Results of this assessment will need to be reported by May 2026.

## Enforcement and monitoring

National supervisory authorities will be expected to enforce the Directive through the following measures:

- Substantiated concerns can be submitted on companies' failure to comply with this Directive through accessible channels set up by the supervisory authorities. Supervisory authorities will be required to investigate and respond to concerns within a reasonable timeframe.
- Supervisory authorities can initiate investigations and conduct inspections upon sufficient indication of company breaches related to this Directive.
- Administrative sanctions could be applied to companies who fail to comply, with penalties to be set at minimum 5% of the company's net worldwide turnover in the previous financial year.

**Monitoring:** EU Commission will regularly review the implementation of the Directive, including related to:

- The impact on small and medium enterprises (SMEs), including effectiveness of support tools and measures
- Scoping and threshold elements, such as legal forms, business relationships with third companies, and turnover and employee thresholds, chain of activities, adverse impacts and international instruments
- Specific requirements relating to combatting climate change, including the design, adoption and implementation of a climate transition plan by companies
- The effectiveness of enforcement mechanisms implemented by Member States
- The level of harmonization resulting from national law transposition



### Civil liability

Individuals, trade unions and civil society organizations will be able to submit civil liability claims for at least 5 years. Under these claims, they will have the right to full compensation where they have been adversely impacted by companies' failure to meet specific requirements of this Directive.



### Support to companies and stakeholders

The EU Commission will establish a helpdesk to provide information and guidance to companies on the implementation of the Directive, including tailored to national contexts. Dedicated websites, tools and platforms will also be developed by Member States, which should be available to companies as well as stakeholders and their representatives.



## Interactions with other due diligence and sustainability legislation

The CSDDD is one of several legislative acts proposed or adopted by the European Union presented under the umbrella Green Deal to “transform the EU’s economy for a sustainable (and just) future”. With the Green Deal, the EU seeks to meet significant ambitions with regards to sustainability.

The CSDDD has clear synergies and connects deeply with several EU Directives and Regulations, including the Corporate Sustainability Reporting Directive (CSRD), EU Taxonomy Regulation, Sustainable Finance Disclosure Regulation (SFDR), specific regulations such as the EU Batteries Regulation, EU Deforestation Regulation (EUDR), EU Conflict Minerals Regulation, as well as upcoming legislation such as the EU Forced Labour Regulation and EU Packaging and Packaging Waste Regulation (EU PPWR).

The table below summarizes how the CSDDD compares to other sustainability and due diligence regulations currently or soon to be in effect in the European Union.

|  | CSDDD          | CSRD | EU Taxonomy | SFDR | EUDR | EU Batteries Regulation | EU Conflict Minerals Regulations | EU Forced Labour <sup>3</sup> | EU PPWR        |
|--|----------------|------|-------------|------|------|-------------------------|----------------------------------|-------------------------------|----------------|
| Based on UNGPs / OECD MNE                | ✓              | ✓    | ✓           |      | ✓    | ✓                       | ✓                                | ✓                             |                |
| Due diligence requirements               | ✓              |      | ✓           |      | ✓    | ✓                       | ✓                                | ✓ <sup>2</sup>                |                |
| Disclosure requirements                  | ✓              | ✓    | ✓           | ✓    |      |                         | ✓                                |                               |                |
| Import / trade requirements              |                |      |             |      | ✓    |                         |                                  | ✓                             | ✓              |
| Own operations requirements              | ✓              | ✓    | ✓           |      |      |                         |                                  |                               | ✓              |
| Upstream supply chain requirements       | ✓              | ✓    |             |      | ✓    | ✓                       | ✓                                | ✓                             | ✓              |
| Downstream supply chain requirements     | ✓              | ✓    |             | ✓    |      |                         |                                  |                               | ✓              |
| Human rights topics in scope             | ✓              | ✓    | ✓           | ✓    | ✓    | ✓                       | ✓                                | ✓                             |                |
| Paris-aligned disclosures or commitments | ✓              | ✓    | ✓           | ✓    |      | ✓                       |                                  |                               |                |
| Other environmental topics in scope      | ✓              | ✓    | ✓           | ✓    | ✓    | ✓                       | ✓                                | ✓                             | ✓              |
| In effect                                | ✓ <sup>1</sup> | ✓    | ✓           | ✓    | ✓    | ✓                       | ✓                                | ✓ <sup>1</sup>                | ✓ <sup>1</sup> |

Source: ERM analysis.

[References on next page](#)

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<sup>1</sup> Upcoming in 2024.

<sup>2</sup> Although the provisional EU Forced Labor Regulation refers to conducting due diligence to identify whether products have been made with forced labor, it does not include additional due diligence obligations than those already existing in other EU or national legislation.

<sup>3</sup> Several countries outside the EU have enacted legislation as a form of implementation of the UNGPs' concept of due diligence, focused on eliminating modern slavery / forced labor in supply chains. This includes the Australian and UK Modern Slavery Acts, Uyghur Forced Labor Prevention Act in the US, and the Fighting Against Forced Labour and Child Labour in Supply Chains Act in Canada (effective since 2024). They vary in form, with the UK and Australian laws requiring company due diligence and disclosure, and the US and EU banning the import and circulation of products made with forced labor in their markets. In Canada, the legislation is a blend, setting out disclosure of due diligence obligations for both government institutions and companies, as well as an import ban on products made with forced labor or child labor in the Customs Tariff.



## Next steps for companies

Although companies will only need to comply starting in 2027, designing and carrying out due diligence is a complex process that takes time – even for companies that have already started with their implementation. Here are several key steps businesses should consider taking in preparation:

### **1. Current state assessment**

Assess internal capabilities, accountability / governance frameworks, and maturity of existing due diligence and risk management framework in own operations and in contracting

### **2. Engage internal stakeholders and define roles and responsibilities**

Understand existing environmental and human rights due diligence roles, set up cross-functional collaboration, assign key roles and responsibilities in the development and implementation of human rights and environmental due diligence (HREDD)

### **3. Engage stakeholders in a meaningful way**

Develop an approach to engage with both internal and external stakeholders who may be impacted by corporate decisions and practices, and to shape your strategy and due diligence architecture, including grievance mechanisms

### **4. Value chain mapping and risk prioritization**

Map your company's chain of activities to understand where and how potential impacts may materialize across own operations, as well as upstream and downstream activities

### **5. Implementation roadmap**

Develop a roadmap to implement due diligence, to be able to report by the minimum enforcement date, and update strategies, processes and systems to align with the requirements



# How ERM can help you:

At ERM, sustainability is our business. We are the world's largest advisory firm focused solely on sustainability. ERM brings unique expertise in every step of due diligence implementation, from our 'boots on the ground' approach to discussing human and environmental rights in the boardroom. We have been helping our clients for over 50 years navigating the ever-evolving landscape of sustainability. Our teams include environmental as well as human rights specialists that can support your company in its journey towards implementation of human rights and environmental due diligence, including the CSDDD. We set this out in four phases:

## Discover

- Unpack and understand due diligence related regulations through capacity building and training
- Assess maturity of existing HREDD management systems, including alignment with regulations and international frameworks
- Conduct industry benchmarks on state of implementation of due diligence
- Map and assess company chains of activities and human rights and environmental risks

## Design

- Create and enhance policies, standards and procedures
- Create HREDD governance framework
- Design HREDD management system, including business relations assessment and screening frameworks
- Develop and conduct stakeholder engagement
- Establish digital tools and solutions tailored to company needs
- Review grievance mechanisms

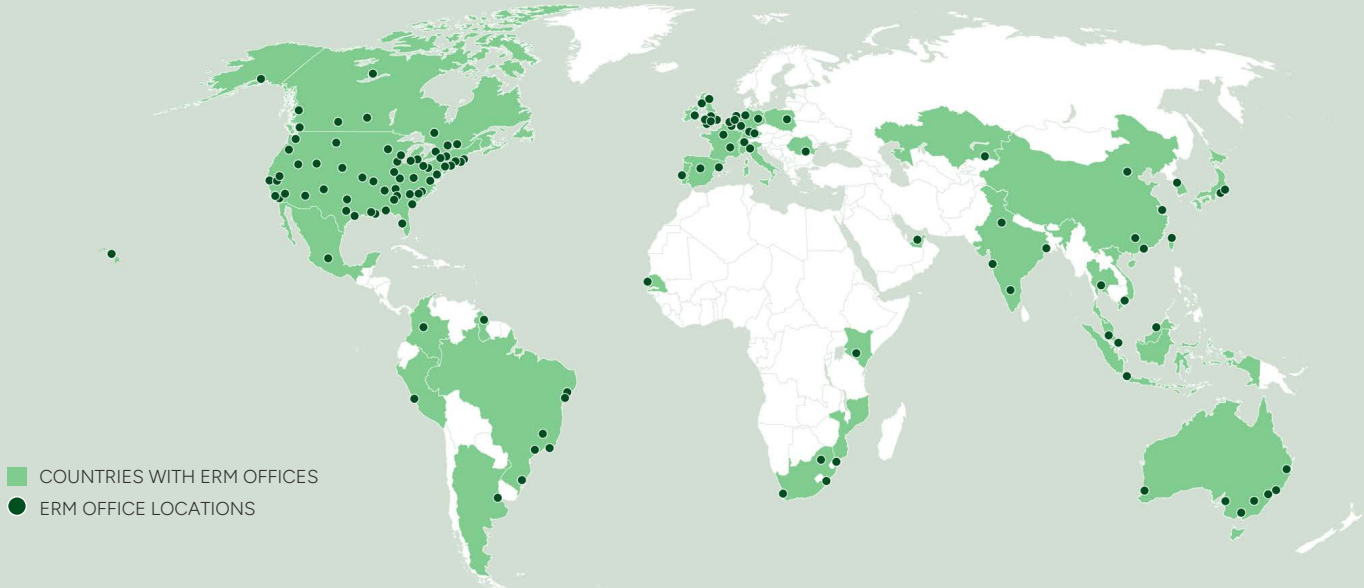
## Implement

- Map and assess potential and actual adverse human rights and environmental impacts
- Develop and implement due diligence roadmap
- Upskill capacity across the organization
- Conduct site-and asset-specific human rights and environmental risk or impact assessments
- Support in change management

## Monitor & Report

- Establish performance measurement frameworks
- Develop reporting framework aligned with CSDDD, CSRD and other reporting requirements
- Review HREDD management system according to performance and changing standards

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