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THE SYSTEMIC POSITION OF THE LOCAL GOVERNMENT TREASURER IN THE TERMS OF LABOR LAW, PUBLIC FINANCE LAW AND THE ACT ON LOCAL GOVERNMENT EMPLOYEES

USTROJOWA POZYCJA SKARBNIKA SAMORZĄDOWEGO W UJĘCIU PRAWA PRACY, PRAWA FINANSÓW PUBLICZNYCH I USTAWY O PRACOWNIKACH SAMORZĄDOWYCH

Abstract

Pursuant to the provisions of the Act of August 27, 2009 on public finances, the chief accountant of a public finance sector entity is an employee to whom the manager of the entity entrusts duties and responsibilities in the scope of keeping the entity's accounting, executing cash orders, and performing preliminary control of the compliance of economic operations. and financial with the financial plan, completeness and reliability of documents regarding economic and financial operations. Therefore, entrusting the function of an accountant consists of two elements: entrusting duties and, consequently, responsibility in this respect. The chief accountant is therefore an employee of the entity. The provisions of both the Act on Public Finance, Local Government Employees and the Labor Code apply to it. Recognizing the relevant legal regulations is important when answering questions and problems related to the performance of the function of treasurer (chief accountant). The treasurer's actions are a consequence of the statutory tasks assigned to him and the function entrusted by the unit manager. The function of treasurer of a commune, district or voivodeship is an obligatory function. The head of the unit cannot entrust the tasks specified in the Public Finance Act to a functional employee other than the treasurer. Exceptions in this respect cannot lead to the transfer of financial matters to another organizational unit within the office structure.

Streszczenie

Zgodnie z przepisami ustawy z dnia 27 sierpnia 2009 r. o finansach publicznych, głównym księgowym jednostki sektora finansów publicznych, jest pracownik, któremu kierownik jednostki powierza obowiązki i odpowiedzialność w zakresie prowadzenia rachunkowości jednostki, wykonywania dyspozycji środkami pieniężnymi, oraz dokonywania wstępnej kontroli zgodności operacji gospodarczych i finansowych z planem finansowym, kompletności i rzetelności dokumentów dotyczących operacji gospodarczych i finansowych. Powierzenie więc pełnienia funkcji księgowego składa się z dwóch elementów powierzenia obowiązków i co za tym idzie odpowiedzialności w tym zakresie. Główny księgowy jest więc pracownikiem jednostki. Zastosowanie mają do niego przepisy zarówno ustawy o finansach publicznych, pracownikach samorządowy jak i kodeksu pracy. Rozpoznanie właściwych regulacji prawnych jest istotne przy odpowiedzi na pytania i problemy związane z wykonywaniem funkcji skarbnika (głównego księgowego). Działania skarbnika są konsekwencją przypisanych mu ustawowo zadań i powierzonej przez kierownika jednostki funkcji. Funkcja skarbnika gminy, powiatu czy województwa jest funkcją obligatoryjną. Kierownik jednostki nie może powierzyć zadań określonych w ustawie o finansach publicznych innemu funkcyjnie pracownikowi niż skarbnikowi. Wyjątki w tym zakresie nie mogą prowadzić do przeniesienia prowadzenia spraw finansowych do innej komórki organizacyjnej w strukturze urzędu.

Keywords: *Public Finance Act, Public Finance Law, Administrative Law, Local Government Employees Act, Territorial Self-Government, Treasurer, Budget Accounting*

Słowa kluczowe: *ustawa o finansach publicznych, prawo finansów publicznych, prawo administracyjne, ustawa o pracownikach samorządowych, samorząd terytorilany, skarbnik, rachunkowość budżetowa*

Introduction

Article 54(8) of the Public Finance Act of 27 August 2009 (Journal of Laws of 2022, item 1634) positions local government treasurers as chief accountants of the budgets of local government units. Thus, treasurers in local self-governments are entrusted with duties and responsibilities (Article 54(1)) with regard to keeping the accounts of the local self-government units, making dispositions of funds and performing preliminary control of the compliance of economic and financial operations with the financial plan, as well as the completeness and reliability of the documents pertaining to them. In turn, Article 4(1)(2) of the Act of 21 November 2008 on local government employees (Journal of Laws of 2022, item 530) stipulates that treasurers are local government employees employed on the basis of appointment, just like deputy heads of villages, mayors and presidents.

Local government statutes, on the other hand, specify the procedure for the appointment and dismissal of the treasurer. For example, Article 18(2)(3) of the Act of 8 March 1990 on municipal self-government (Journal of Laws of 2022, item 559) states that the dismissal and appointment of the treasurer falls within the exclusive jurisdiction of the municipal council and is carried out on the proposal of the head of the municipality. It is also worth noting the provisions of Article 46 of Act on Municipal Self-Government and Articles 54 and 262 of Public finance act, which give treasurers the right to refuse to countersign documents with financial implications when the treasurer has doubts. The countersignature is then performed on the written order of the mayor, of which the decision-making body and the regional chamber of auditors are notified. There can still be no countersignature

if the treasurer considers that the execution of the order leads to a crime or misdemeanour (Cilak, 2021).

Article 54 of the Public Finance Act describes the status and requirements for the chief accountant of a public finance sector unit. The commented provision defines qualifications, duties and competences of the chief accountant of a public finance sector unit. The chief accountant of an entity may be a person to whom the manager has entrusted the duties of keeping the entity's accounts, making dispositions of funds, performing preliminary control of compliance of economic and financial operations with the financial plan and controlling the completeness and reliability of documents relating to economic and financial operations. In the provision of Article 54(2) of the Public Finance Act, the legislator defined a number of conditions, the cumulative fulfilment of which entitles a candidate to apply for the position of chief accountant in an SFP unit. These relate to citizenship, capacity to perform legal acts and exercise of public rights, no criminal record, knowledge of the Polish language and possession of relevant education or professional title. As regards the conditions concerning education and professional experience, the position of chief accountant of a public finance sector unit may be entrusted to a person who fulfils at least one of the prerequisites listed in Article 54(2)(5) of the Public Finance Act, even if he or she does not hold an accountant's certificate issued pursuant to the provisions in force until 2014 (Ostrowska, 2024).

Furthermore, the regulations provide that the chief accountant of an entity may only be an employee of that entity to whom the head of the entity entrusts duties and responsibilities to the extent set out in the Act. An employee is a person with whom an employment relationship has been established within the meaning of Article 22 § 1 of the Labour Code. There are no legal grounds for the chief accountant of a public finance sector unit to be a natural or legal person with whom a civil law (e.g. contract of mandate) agreement has been concluded. As stated by the Supreme Court, the provision of Article 54 of the Public Finance Act is indicative in nature. Its purpose is to entrust public finances to a person employed as an employee. A contrario, the performance of the chief accountant's duties on any other basis or even without a legal basis within public law and basic employee guarantees is excluded (Kleszczewski, 2014). The requirement imposed by the legislator that the chief

accountant must be an employee of a given unit of the public finance sector was quite problematic, especially for small organisational units where the scope of activities did not require the maintenance of extensive accounting facilities and the employment of a person in the position of chief accountant was often not economically justified. This problem remained unresolved until the end of 2015. As of 1.01.2016, the legislator added paragraph 2a to the commented article, according to which, if in the framework of joint service referred to in Article 10a of the Act on Municipal Self-Government, Article 6a of the Act on County Self-Government and Article 8c of the Act on Provincial Self-Government, the servicing unit included in the SFP ensures the performance of the tasks of the chief accountant by a person meeting the requirements referred to in Article 54(2) of the Act on Public Finance, a chief accountant shall not be employed in the serviced unit (Lipiec-Warzecha, 2011).

Research methodology

The research methods used in the legal sciences are related to their problematics and the functions performed. In the literature of legal theory, it is indicated that within the legal sciences we distinguish dogmatic, socio-technical and theoretical problematics. Dogmatic problematic concerns the identification of legal norms belonging to a given system of law. Sociotechnical problematics in the legal sciences is related to the impact of law making and the corresponding application of the law on certain social effects. The theoretical problematics of legal science concerns the formulation of claims about the applicable law. From this scope arises the methodological problematics of legal science, dealing with the description of methods, ways of solving particular problems or formulating directives on how to solve these problems. In special areas of law – which management control undoubtedly is – it is necessary to recognize the need to undertake multidisciplinary and interdisciplinary research. Thus, in the work – analysing the issues of the functioning of management control in legal and management aspects – traditional research methods used in the scientific study of law (generally in the social sciences) were applied:

1. linguistic analysis (formal-dogmatic and linguistic-logical analysis of the regulation of public finance law on the organization and functioning of management control in the public sector, taking into account the judgments of administrative courts and guidelines of tax authorities);
2. economic analysis of the law of public finance (including the analysis of the economic effects of implementing management control procedures from the perspective of efficiency and rationality of management processes in the public sector),
3. comparative method (showing the issues of legal and organizational regulations in the field of general public finance law in Poland and the EU, taking into account court decisions).

Responsibilities and powers of the chief accountant of a public finance unit

The catalogue of duties and responsibilities of the chief accountant of a public finance sector unit, as defined in Article 54(1) of the Public Finance Act, significantly exceeds the matters related to bookkeeping. The duties of the chief accountant, apart from bookkeeping, include execution of cash dispositions, preliminary control of compliance of economic and financial operations with the financial plan, preliminary control of completeness and reliability of documents relating to economic and financial operations. The above indicates that the position of the chief accountant, and at the same time his responsibility, is much greater than in other organisational units. It should be noted that the chief accountant is liable only for the commission of acts directly related to his duties. Delegation of the duties and responsibilities listed in the commented provision to the chief accountant does not abolish the responsibility of the head of the unit of the public finance sector for exercising supervisory powers in this respect and for the entire financial management of this unit (Czesyk, 2023).

As regards the duty of the chief accountant, it should be pointed out that the execution of the disposition of funds should be understood only as their technical activation and not as substantive decision-making whether a given

operation can be carried out or not. In the light of the principles of sound management of the entity, the accounting officer should not, in principle, be assigned responsibilities concerning the substantive validation of operations for payment. The entity's chief accountant always has the authority to execute the disposal of funds. However, the delegation of cash management responsibilities cannot be assimilated to the commitment of expenditure in the financial plan. The Chief Accountant's exercise of cash disposal is a subsequent activity to the decision to spend and consists of making the payment of funds (transfer, cash payment) due to the creditor. The execution of the disposition is in fact a cash (technical) activity, performed by the chief accountant on the basis of an accounting receipt approved for payment by the manager (or other authorised person). In one of its rulings, the GKO points out that disposing of funds amounts to making a decision on the use of public funds – making an expenditure. The formal expression of the decision is the approval by an authorised person of an accounting receipt (expenditure) for payment (Błaszko, 2024) .

One of the tasks of chief accountants of public entities is to carry out preliminary control of the compliance of economic and financial operations with the financial plan, as well as to carry out preliminary control of the completeness and reliability of the documents relating to these operations. With regard to the activity related to the preliminary control carried out by the chief accountant, the legislator indicated that the signature of the chief accountant on the documents relating to the operation in question is proof of the preliminary control carried out by the chief accountant. The signature of the chief accountant on a document, in addition to the signature of the staff member responsible for the subject matter, means that (Wierzbica, 2008):

1. he/she does not object to the assessment by the staff responsible for the subject matter of the correctness of the operation and its legality;
2. raises no objections to the completeness and formal and accounting accuracy and correctness of the documents relating to the operation;
3. commitments resulting from the operation are within the entity's financial plan.

If irregularities are detected, the accounting officer shall return the document to the staff member responsible for the matter and, if the irregularity

is not remedied, refuse to sign it. This means that the verification by the accounting officer does not allow him to change the document at the same time. Indeed, he or she is obliged to return the document to the materially competent employee (Wołowiec, 2021). The chief accountant shall notify the head of the unit in writing of the refusal to sign the document and the reasons for it. The head of the unit may either suspend the implementation of the disputed operation or issue a written order for its implementation. When the head of unit has given orders for the implementation of the contested operation, he/she shall immediately inform in writing the authorising officer responsible for the budgetary part. The notification should indicate the reasons justifying the implementation of the contested operation. The institution of refusal to sign a document as refusal of countersignature in relation to the treasurer is detailed in Article 262 of the Public Finance Act (Kosikowski, 2011).

The chief accountant of an SFP unit, in order to perform his/her duties, may use certain powers granted to him/her by the legislator. Pursuant to Article 54(7) of the Public Finance Act, he may request the managers of other organisational units of the unit to provide necessary information and explanations orally or in writing, as well as to make available for inspection the documents and calculations which are the source of such information and explanations. It may also request the head of the entity to determine the procedure in accordance with which the other organisational units of the entity are to perform the work necessary to ensure the correctness of financial management and accounting records, costing and financial reporting (Koczurak-Kozak, 2010).

Liability of the chief accountant for breach of public finance discipline

The subjective scope of responsibility for a public finance discipline infringement primarily covers the head of a public finance sector unit. Thus, despite the fact that the majority of acts of violation of public finance discipline are connected with actions performed by the chief accountant, he or she is not directly liable for them. Taking into account the jurisprudence of the adjudicating commissions and the position of the heads of the public finance sector held

responsible for the violation of the public finance discipline, e.g. in 2021, the legislator introduced a new act into the Act on responsibility for the violation of the public finance discipline, which can be directly attributed to the entity's chief accountant. It is an infringement of public finance discipline to fail to carry out or inadequately carry out control of the compliance of an economic or financial operation with the financial plan or the completeness and reliability of documents relating to such an operation, if it influenced (Płażek, 2014):

1. making an expenditure resulting in exceeding the amount of expenditure established in the financial plan of the unit of the public finance sector;
2. incurring a liability that does not fit into the financial plan of the unit of the public finance sector.

The punishability of the chief accountant of a unit of the SFP thus depends on the cumulative fulfilment of three conditions:

1. the chief accountant (treasurer) has failed to carry out or has improperly carried out preliminary control,
2. there was an expenditure exceeding the amount of expenditure set out in the financial plan or an obligation not included in the entity's financial plan,
3. a faulty preliminary control influenced the making of an expenditure or incurring of a liability (Bogacki, Wołowiec, 2021).

Only the occurrence and proof of fulfilment of the three above-mentioned prerequisites will lead to the responsibility of the entity's chief accountant for the breach of the public finance discipline. Thus, in practice, since 2012, in almost every case where the head of a unit has been charged with an act of infringement of financial discipline, the chief accountant of that unit should also be held liable for infringement of public finance discipline, as it is his/her irregular action or omission in performing duties in respect of performing preliminary control of compliance of an economic or financial operation with the financial plan that may have contributed to irregularities in this respect (Wołowiec, Bogacki, 2020).

Employment status of the local authority treasurer

According to the Public Finance Act, a treasurer is disqualified by final convictions only for certain categories of offences (against property, documents, economic turnover, activity of public institutions and fiscal offences). The employment status of the treasurer of a local government unit is currently governed by the provisions of the Public Finance Act of 27.08.2009, the Local Government Employees Act of 21.11.2008, the Local Government System Acts and the Regulation of the Council of Ministers of 18.03.2009 on the remuneration of local government employees (Wierzbica, 2008).

The 2009 Public Finance Act also left in place the previous, rather liberal, qualification requirements for candidates applying for the position of treasurer. Treasurers (even of the largest local government units in the country) can, for example, be people with only a high school diploma in economics and six years of experience in (any) accounting. It is theoretically possible for a municipality's remuneration regulations to raise the threshold of qualification requirements above their minimum ceiling set by the remuneration ordinance. Few changes in the status of the treasurer himself have also been brought about by the amendments to the local government statutes made since 2008 (Wojciechowski, Wołowiec, 2021). They continue to apply the model of cooperation between the decision-making and executive bodies when filling and dismissing this position. However, it is worth pausing on this issue in order to develop some of the insights of the literature to date (Wołowiec, Wolak, 2009).

The employment relationship by appointment is intended to make it easy to make changes to a position. This is because it is (at least in its basic, code-based model) devoid of the inconveniences for the employer that arise from an employment contract for an indefinite period: dismissal from a position does not have to be justified or consulted with trade unions, and the employee is not entitled to a court claim for restitution of the employment relationship when that employee belongs to the group of persons so-called particularly protected against termination of the employment relationship. It is worth noting that the model adopted in local government for the appointment

and (especially) the dismissal of the treasurer very much nullifies these advantages of the employment relationship by appointment. On the one hand, it is formally easy to establish and terminate, but on the other hand, before these events take place, the positions of both local government bodies must be agreed. This is not easy to achieve, even in the case of county or provincial governments, where, although both bodies usually represent the same political orientation, they naturally compete for decision-making powers. And what about in municipal government, where, since the direct election of the executive body was introduced in 2002, it is often not from the same political option as the council. This often results in several months or even more of wrangling over the filling or dismissal of the treasurer's post, for reasons often having nothing to do with merit. This is precisely the result of the inclusion in the legal status of the treasurer of two contradictory instruments: on the one hand, of an appointment to facilitate changes to the post, and on the other, of a requirement for two bodies to have a joint decision on the matter (a very rare situation in local government and in labour law in general), which often paralyses such changes (Wołowiec, Reśko, 2012).

The introduction of the new Act on Local Government Employees in 2008 revealed two facts. Firstly, that the determination of the legal basis for the employment of individual local government employees is of a most haphazard nature and unrelated to the specifics of their positions or other substantive considerations. Secondly, that it has been possible to make radical changes to the employment bases of a great many local government employment relations and absolutely nothing bad has happened as a result. During the discussion of the initial draft of the Local Government Employees Act in 2008, it was announced that the optimal model would be – as in the civil service – to employ local government employees on the basis of employment contracts and appointments. Subsequently, this view was changed, with the existing employment relationships based on appointments being completely eliminated from local government. Eventually, a number of appointment-based employment relationships (secretaries, etc.) were also eliminated. Both were simply transformed into open-ended employment contracts, the former within three years and the latter immediately (we now know that this temporal distinction had no substantive justification, but was the result of effective lobbying to

prolong the existence of appointment-based employment relationships as long as possible). All these changes, resulting in a significant simplification of employment mechanisms in local governments, have not disrupted the functioning of any local government unit in the slightest.

It is also worth realising that throughout the rest of the public sector, treasurers and chief accountants successfully perform their functions on the basis of employment contracts (possibly, in the civil service, also on the basis of appointments). The natural question then arises – what would happen if the treasurer's employment relationship was also converted into a contractual one. In my view, absolutely nothing. Only that, firstly, it would have to be a contract of indefinite duration (as it is not a position linked to the local government's term of office) and, secondly, situations would have to be defined in which the employer would be obliged to terminate the treasurer's employment relationship (ideally, at the same time, sanctions would have to be listed for failure to do so). These situations would also have to include, inter alia, the case of a prohibition to perform functions related to the disposal of public funds pursuant to Article 31(1)(4) of the Act of 17.12.2004 on liability for violation of public finance discipline. This would avoid the situation of *covering* persons who should not perform this function.

Of course, the competence of the constituent bodies of the entity to appoint and dismiss the treasurer would then cease. But they should realise that, even now, this competence is purely formal and the possibility of taking an autonomous position on the mayor's proposal is limited to a small number of strictly defined situations. Of course, the treasurer would also then gain the legal protection of his status as a contractual employee. But at the same time his legal position would become more transparent. He or she would be able to focus his or her activities more on doing his or her job diligently (which is always the best policy for the permanence of an indefinite employment contract) rather than on building informal links to prevent his or her services from being dropped by political decision-making bodies. In addition, the treasurer would be selected in a fair manner, through a public call for applications. This would also make the high qualifications of the candidates more important, which would be in the public interest. Above all, however, the employment model in local government

would be greatly simplified: it would only involve an employment contract and an election. Indeed, it should be noted that also the position of deputy mayor. Indeed, a fixed-term employment contract has exactly the same advantages as an appointment in terms of ease of termination. Of course, in the case of the deputy mayor, it could be considered – unlike in the case of the treasurer – to exclude his/her contract from the general recruitment procedure, due to the specific nature of the position. This would at last avoid the difficult and intricate disputes (for example, the not-so-distant discussion concerning the status of the head of the civil registry office or the commander of the municipal fire brigade) around whether the word *appointment* used in a given provision means the establishment of an employment relationship or the conferral of a function. This would leave only the latter meaning.

Conclusions

In the annual report on the activities of regional audit chambers and budget implementation by local government units in 2021, the National Council of Regional Audit Chambers presented a number of de lege ferenda proposals. One of them is the proposal to introduce the requirement of a 3/5 majority of votes of the statutory composition of the decision-making body when dismissing the treasurer. The National Council points out that this is the majority currently required, among others, for resolutions on holding a referendum on the dismissal of a commune head or decisions of bodies deciding on the dismissal of a poviat starosta and a voivodeship marshal.

Justifying its proposal, the National Council points out that the treasurer is the only local government employee appointed and dismissed by the decision-making body. A trace number of cases of the treasurer's refusal to countersignature was indicated, while the chambers regularly found violations involving the conclusion of contracts by local government management boards resulting in monetary liabilities without the treasurer's countersignature. The National Council assumes that the executive bodies intentionally bypass treasurers in potentially controversial matters, while suggesting that treasurers avoid publicizing such issues out of fear of conflict with their superior and the risk

of dismissal at his request. The low penalty for omitting a countersignature was also pointed out, concluding that the countersignature mechanism may not play its role. The importance of the treasurer's function for the continuity of operation of the local government unit and the risk associated with too frequent changes in this position were also emphasized.

In order to consider possible changes to the rules for dismissing a treasurer, it is necessary to determine what they are currently like. Using the example of municipal self-government, we see that the sine qua non condition for both the dismissal and the appointment of a treasurer is an initiative – a request from the commune head, mayor or president. Then the decision is the exclusive competence of the decision-making body. The constitutional act is silent about the special majority required to adopt such a resolution. Hence, Art. 14 section 1 of the act on municipal self-government, which states that resolutions of the municipal council are adopted by a simple majority of votes in the presence of at least half of the statutory composition of the council – in an open vote. Therefore, the required majority is the lowest possible, and the only additional safeguard is the exclusive initiative of the mayor. Particularly in municipal self-government, this can be considered a type of security enforcing compliance of will – until the dismissal or appointment of the treasurer – on the part of both bodies, each of which is separately elected in direct elections. The proposal of the National Council is to raise the majority threshold required to dismiss the treasurer to 3/5 of the statutory composition of the council, i.e. in the same way as for the initiative of a referendum on the dismissal of a commune head or the dismissal of a starosta/marshal by the decision-making body. This is intended to be an element that strengthens the sense of stability of treasurers, so that they can actually guard local government finances without fear of losing their jobs.

There may be a reason here, because the situation of an independent majority of the mayor's election committee at the level of 3/5 of the statutory composition of the council is not so common, so changes in the position of treasurer would have to be approved by at least some opposition councilors. On the other hand, however, we run the risk of securing the treasurer's position too far, which may make it irrevocable even in clear situations. Moreover, a 3/5 majority was reserved for the dismissal (or a referendum initiative aimed at the

dismissal) of local government bodies, and not for one person – an employee who is not democratically elected. The election and dismissal of the chairman and vice-chairmen of the council are subject to an absolute majority in the presence of at least half of the statutory composition of the council. However, the decision to grant a vote of confidence and discharge requires an absolute majority of votes of the statutory composition of the council.

To conclude, it seems reasonable for both bodies to have an influence on decisions regarding the treasurer. At the same time, it is necessary to ensure that the treasurer feels that he has a real opportunity to perform his statutory duties. The direction outlined by the National Council can therefore be considered correct. However, taking into account the considerations carried out, one may be tempted to present a different proposal. It assumes two possible ways of dismissing and appointing the treasurer, trying to consume the participation of local government units, securing the treasurer's ability to act, and more. The first one would assume the initiative of the entity's management board regarding changes in the position of treasurer, and the decision would be made by a body constituting an absolute majority of the statutory composition of the council. Both bodies would participate in this path, but the majority threshold would be raised to the same as for decisions on discharge and votes of confidence, while excluding the risk of decisions being made by temporary majorities in the decision-making body (the current provision makes councilors more susceptible to absences during sessions). The second option assumed that the decision could be made by the decision-making body itself, but by a 3/5 majority of the votes of the statutory composition of the council. This is a response to a possible deadlock between bodies, especially in municipal government, and transfers responsibility to the decision-making body, i.e. to the body that ultimately adopts the budget and makes key financial decisions. After all, the management board appoints the secretary without the participation of the council/assembly, and in the case of a commune – also the mayor's deputies. Shifting the emphasis to the council in the case of the treasurer would also be an expression of rebuilding balance, especially between municipal government bodies. Currently, although formally the council can do a lot, in practice the mayor has a much stronger position, even if there is no majority in the council. A raised majority threshold would be a fuse here, forcing a decision across divisions.

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