OLIVER MICHAELIS

1ST EDITION

ENGLISH-LANGUAGE EDITION

AI COMPLIANCE

in Employment Relationships

GERMAN AND EU LAW

A Practical Handbook for Employers and Employees

With Cases, Solutions and Practical Tools

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PRACTICE.
FUTURE.

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Oliver Michaelis

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Preface



The use of AI in employment relationships connects technological possibilities with decisions about people, information and responsibility.

An employer wants to improve working processes. An employee needs clear instructions and must be able to identify his own rights and obligations. A works council faces questions of information, consultation and co-determination. These perspectives often concern the same process but different legal issues.

This book examines legal requirements through specific workplace situations. The chapters move from the foundations of AI regulation through the use of data, personnel decisions and everyday work to intellectual property rights, contracts and disputes. Detailed cases are considered from the relevant perspectives. Common foundations are brought together first; the different positions and courses of action are then explained.

The aim is to provide an accessible account whose legal reasoning can also be followed. A system output does not replace a legal assessment. Nor is a general formula such as ‘A human makes the decision’ sufficient if the actual workflow produces a different effect. The cases therefore identify the decisive facts, vary individual features and show how those changes affect the outcome.

The cases and companies are fictional. They serve to examine legal questions on specified assumptions. A solution can be applied to another situation only if its legally material features are the same. Where questions remain open, the uncertainty and the considerations relevant to a decision are explained. The practical tools at the end of the book help readers apply what they have learned to everyday working life.

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This account reflects the legal position as at 15 November 2026. Particularly in AI regulation, it is necessary to distinguish between provisions in force, the dates from which they apply and ongoing proposals for amendment. The chapters use official sources checked for the propositions they support and traceable references to court decisions. Online sources are collected in the sources section.

Düsseldorf, 15 November 2026

Oliver Michaelis

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How to Use This Book

This book follows the use of AI in employment relationships from initial planning through to the resolution of a dispute. Start with your specific question. The chapter overview shows where you are in the book; the focus table explains what each chapter offers.

One Case – Several Perspectives

Employers and employees view the same facts from different legal positions. The cases therefore explain, for each side, what information is missing, what assessment is required and what next steps may be considered. The involvement of the works council is addressed wherever the specific function of the application requires it.

Working with Cases and Guidance

First read the facts and answer the case question yourself. Then compare your reasoning with the solutions. The variations show which changes to the facts require a different assessment. Practical guidance provides recommendations for organisational arrangements or individual action; whether it is binding depends on the legal basis explained in each instance.

The notes lead to the relevant provisions, court decisions and literature. Diagrams clarify relationships; they do not replace the conditions explained in the text. The glossary, list of cases and index allow you to return directly to a particular topic.

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The book distinguishes statutory requirements, workplace rules and recommendations. A statutory requirement applies subject to the conditions explained. A workplace rule describes a rule selected for the particular use; its legal basis and limits must be examined separately. A recommendation identifies a suitable course of action without asserting an additional statutory obligation.

The completed letters and contractual clauses are based on the specified teaching cases. Comments explain which facts may be carried over and which details must be checked afresh before use. The case file of Hansewerk Komponenten GmbH connects procurement, loss, investigation and renewed approval across several chapters.

The perspective boxes expressly identify the relevant standpoint. In these boxes and the corresponding diagrams, blue represents the employer, green the employee and purple the works council. Other participants are identified in the box. Single-colour diagrams show general relationships; their labels identify the roles involved. The full headings and the labels Employer, Employee and Works Council preserve this distinction in black-and-white print. In the diagrams, employer fields have a solid border, employee fields a dashed border and works council fields a dotted border.

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Part I · Foundations and AI Regulation

1. Understanding AI in the Workplace

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3. Employee Data and AI Services	4. Performance and Monitoring
5. Job Ads and Applicant Selection	6. Working with AI and Training
7. Work Products and IP Rights	8. Trade Secrets
9. Procurement and Contracts	10. Responsibility and Liability
11. Breaches of Duty and Disputes	12. Works Council and Agreements
13. Launch and Ongoing Operation	

Table 1: Key Topics in Chapter 1

In this chapter	Focus
From a tool to a workplace decision	Describing workplace uses in factual terms
The legal characteristics of an AI system	Examining the statutory characteristics of an AI system
The model, the application and the data incorporated	Distinguishing the model from the workplace application

Source: Michaelis, illustration by the author.

1.1 From a Tool to a Workplace Decision

AI appears in the workplace in many different forms. A case officer has a customer enquiry summarised. An HR officer receives a ranked list of applicants. A staff scheduling system proposes staffing for the next shift. A program assesses anomalies in travel expense claims. Technically, all four applications may be based on similar methods. Their legal significance nevertheless differs considerably. What matters is the task the system performs, the information it processes and the influence its output acquires over other people.

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The assessment therefore begins with a comprehensible picture of the actual workflow. [1]

The AI Act supplements the existing legal framework with requirements relating to the development, placing on the market, putting into service and use of AI. It pursues internal market, protection and innovation objectives at the same time. In doing so, the legislature has not created a general legal authorisation for workplace use. Data protection and employee rights retain their independent significance. Recitals 9 and 10 already explain this relationship; Article 2(11) of the AI Act is also relevant to provisions protecting employees. [2]

This gives rise to two requirements in practice. First, the proposed application must be described in a way that someone else can understand without a product demonstration. The relevant legal questions are then applied to that workflow. A statement that the company intends to work with AI in future is of little help for this purpose. By contrast, it is informative to describe how a particular service receives customer messages from the ticketing system, generates draft replies and has them sent after review by a case officer. Merely adding that the program also assesses the performance of each case officer changes the legal assessment.

This chapter provides the terminology needed for that purpose. It addresses the relationship between software, an AI system and a model, explains the significance of the purpose of use and identifies the roles of the people involved. A continuing case study shows why the employer, the employee and the works council each ask different questions about the same technical process. Chapter 2 provides a detailed examination of risk classification under the AI Act. The application dates discussed there must be distinguished from the question of whether data protection, employment law and workplace participation rights already apply.

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1 Law as at 15 November 2026. Online sources last checked on 15 November 2026. On separating the technical description of work from legal classification, *Michaelis*, Einführung in die KI, 2nd edn 2026, p. 2.

2 Regulation (EU) 2024/1689, Article 1(1) and (2), Article 2(7) and (11), and Recitals 9 and 10; current version.

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1.2 The Legal Characteristics of an AI System

Article 3(1) of the AI Act describes an AI system by reference to several characteristics: it is machine-based, designed to operate with varying levels of autonomy and infers from inputs how to generate particular outputs. The provision lists predictions, content, recommendations and decisions as outputs. The system may exhibit adaptiveness after deployment. This possibility does not mean that every specific application must continue learning during operation. A model used without modification can form part of an AI system. Nor does the definition require the machine to operate without any human involvement. [3]

The capacity to infer distinguishes an AI system from the mere automatic execution of fully predetermined rules. Recital 12 includes both machine learning and logic- and knowledge-based approaches. It follows that the terms AI and self-learning software must not be equated. A program may qualify as an AI system even though it undergoes no further training after its introduction. Conversely, a conventional calculation does not become AI merely because of its economic value or complexity. [4]

A simple spreadsheet that multiplies a fixed hourly rate by a specified number of working hours illustrates this distinction. Every calculation step is predetermined by a human; there is no inference in the sense explained above. The starting point is different where a model identifies relationships from historical cases and uses them to predict the likely processing time for a new case. A definitive classification does, however, require knowledge of the actual functions. An apparently simple spreadsheet program may access a language model through an additional function. The name of the interface then provides no answer to the legal question.

Nor is marketing a product as an intelligent solution decisive. A provider may promote a conventional search function with such language or conceal an AI function within a general office product. The

3 Regulation (EU) 2024/1689, Article 3(1) and Recital 12.

4 Regulation (EU) 2024/1689, Article 3(1) and Recital 12, sentences 2–5 and 12.

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assessment therefore requires information about how the product works: what inputs are used, what outputs are generated, which processing steps are fully predetermined and which are based on inference? The conclusion should relate to the function examined and the product version assessed. A legal assessment of an older version does not automatically cover new functions.

The definition also contains no requirement that the system itself take a legally binding decision. Recommendations alone may be covered. An employer cannot therefore place itself outside the AI Act merely by having a manager give final approval. Conversely, classification as an AI system does not in itself mean classification as high-risk. This second question is governed by the specific provisions of the Regulation. The system definition, risk category and lawfulness of the particular use are distinct stages of the assessment. [5]

1.2.1 Case Study: Two Programs Examine the Same Travel Expense Claim

Case Study – Facts and Question	
1.1	Rheinwerk GmbH is testing two programs. Program A rejects an expense claim as soon as a hotel price exceeds the fixed limit of EUR 140. Every calculation step is predetermined. Program B, by contrast, has inferred relationships from previous expense claims and estimates an anomaly risk for each new claim. Both interfaces display a red flag to the case officer. The project manager considers both programs legally equivalent because, in each case, a human approves reimbursement.

Solution – The Employer's Perspective
The employer first needs a description of the functions. On the stated facts, no capacity to infer is apparent in Program A; the mere execution of rules predetermined by a human is not sufficient in itself. For Program B, however, the description of the learning method and the prediction generated point towards an AI system. A definitive assessment concerns the specific system. The red display and subsequent signature do

5 Regulation (EU) 2024/1689, Article 3(1), Article 6(1)–(3) and Annex III.

not answer this definitional question. A recommendation can also be an output covered by the definition. [6]

Solution – The Employee's Perspective

For the employee, the technical distinction has a practical benefit: with A, he can directly check the limit applied. With B, the employer must obtain an explanation of what information was included in the particular assessment. A risk assessment must not be treated as established expense fraud. Personal expense claim data remain subject to data protection principles even where no AI is involved. Inaccurate information must be rectified; the lawfulness of the processing must be assessed separately. [7]

Solution – The Works Council's Perspective

The company should record the inputs, processing, output and subsequent decision for each program. A technical device intended to monitor compliance with rules by reference to personal expense claims raises the question of co-determination irrespective of whether it qualifies as AI. Plans for changes to working procedures must be discussed with the works council in good time. The solution therefore comprises two separate findings: technical and regulatory classification on the one hand, and assessment of workplace use on the other. [8]

✓

Practical Guidance

Do not settle for a product demonstration alone. For the selected work process, request an example showing the input, the rule or model function applied, the output and the subsequent human decision. Employees should retain the disputed expense claim and the factual explanation, rather than argue about the colour of the display.

6 Regulation (EU) 2024/1689, Article 3(1) and Recital 12, in particular on the capacity to infer and the distinction from systems based solely on rules defined by natural persons.

7 Article 4(1) and (2), Article 5(1)(a), (b) and (d), Article 6(1) and Article 16 GDPR; on the technological neutrality of data protection law, Recital 15.

8 Section 87(1), opening wording and point 6, section 90(1)(3) and (2) BetrVG; Regulation (EU) 2024/1689, Article 2(7) and (11).

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1.3 The Model, the Application and the Data Incorporated

The model must be distinguished from the application with which the employee actually works. The AI Act defines general-purpose AI models by reference to their broad usability and their capacity to competently perform a wide range of distinct tasks. A system based on such a model combines it with other components, such as a user interface, company documents, search functions or access rights. Recital 97 explains the distinction required. What matters for the company is therefore the specific combination. Assessment of the underlying model does not replace assessment of the workplace system. [9]

A language model may initially generate a general draft text. If it is connected to a collection of documents, the application may additionally draw on information from that collection. This changes the factual basis of its answers and the scope of its access. If it is also permitted to send messages or alter a data record, the application acquires the ability to act directly. The different configurations must not be treated as interchangeable when approval is granted. Access to a folder containing product descriptions differs from access to personnel files, even where the same underlying technology is used.

The question of training must be considered separately. For an individual query, data may be used solely to process that transaction; depending on its actual settings or terms, however, a service may also use data for further purposes. Whether such use takes place cannot be ascertained merely from entering data in a text field. The BSI describes the possible further use of inputs and outputs by external services as a confidentiality risk. Specific information about storage, access and further use is therefore required. A blanket assertion that every input automatically trains the model would be just as inaccurate as an assurance to the contrary without examination. [10]

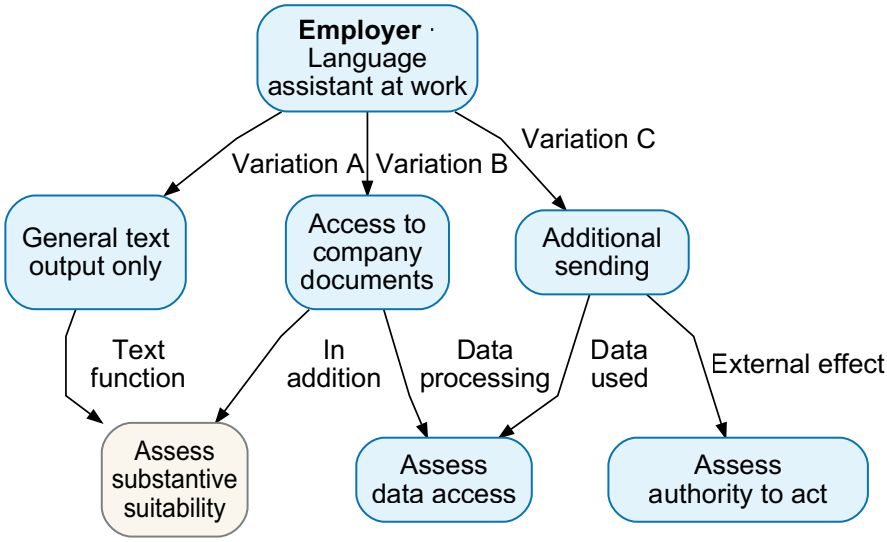
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9 Regulation (EU) 2024/1689, Article 3(63), (66) and (68), and Recital 97. On the technical distinction between the model and the overall system, Michaelis, Einführung in die KI, 2nd edn 2026, p. 6.

10 BSI, Generative KI-Modelle: Chancen und Risiken für Industrie und Behörden, Chapter 4.1, Risk R2, p. 14.

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Fig. 1: One Assistant, Three Configurations with Different Scopes



Source: Michaelis, illustration by the author. [11]

A system run locally also requires this examination. Local operation may avoid certain transfers to external parties. It does not, however, answer which employee may access which documents, what logs are created or whether outputs are used for personnel decisions. Location is one element of the assessment. It describes neither all data processing activities nor all employment-related effects.

1.4 Intended Purpose and Actual Use

Intended purpose is a distinct legal concept. Under Article 3(12) of the AI Act, it derives from the use intended by the provider, including the specific circumstances and conditions. Relevant sources include instructions for use, promotional and sales material, statements and technical documentation. For workplace purposes, it is also neces-

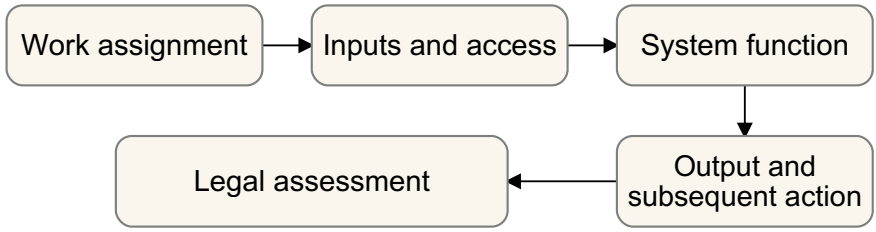
11 Regulation (EU) 2024/1689, Article 3(63), (66) and (68), and Recital 97. On the technical distinction between the model and the overall system, Michaelis, Einführung in die KI, 2nd edn 2026, p. 6. Technical relationships in the example described; a model assessment does not replace assessment of the specific application and its interfaces. Section 106, sentences 1–3, GewO; Article 5(1)(a), (b), (c) and (f), and Article 6(1) GDPR.

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sary to establish what the system is actually to be used for. These two levels may coincide, but they may also diverge. [12]

For example, an assistant offered for general use may be used to improve the wording of a job advertisement. At the HR department's request, the same service may generate suitability scores from CVs. The change concerns more than the type of text. The output acquires a different decision-making function. An assessment therefore requires the inputs, output criteria and use by the HR officer to be established. The company should not describe the task so generally that its legally significant characteristics become invisible.

Fig. 2: From the Work Assignment to the Legal Assessment



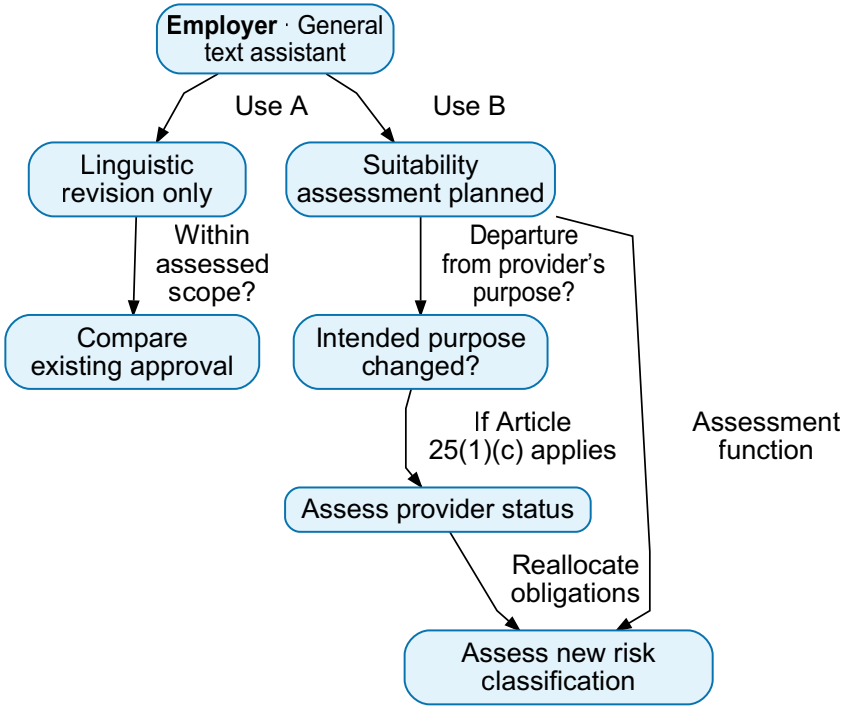
Source: Michaelis, illustration by the author. [13]

12 Regulation (EU) 2024/1689, Article 3(12).

13 Regulation (EU) 2024/1689, Article 3(1), (4) and (12); Article 4(1) and (2) GDPR.

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Fig. 3: Text Revision and Suitability Assessment Have Different Implications for Review



Source: Michaelis, illustration by the author. [14]

The question of what happens after the output is particularly informative. Is a suggestion merely read, entered in a file or used to trigger an action directly? Can the case officer correct it in a way that can be understood? Are decisions departing from it actually permitted? A supposedly non-binding indication may significantly shape the workflow if only the people suggested are considered more closely or every departure from the result requires a time-consuming justification. Describing it as assistance is therefore merely the starting point for establishing the facts.

If the company changes the envisaged purpose of use, its regulatory obligations may also change. Article 25(1)(c) of the AI Act covers, in particular, a change to the intended purpose of a system previously

14 Regulation (EU) 2024/1689, Article 3(12). Regulation (EU) 2024/1689, Article 25(1)(c), temporal application under Article 113, third subparagraph, point (c), as amended by Regulation (EU) 2026/1744.

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not classified as high-risk that results in a high-risk AI system. Chapter 2 discusses the details and the date from which the provision applies. For organisational purposes, the conclusion here is sufficient: approval for drafting text does not constitute approval for every later application that is technically possible. [15]

1.5 Who Acts: Companies, Service Providers and Employees

Roles under the AI Act are not determined by the job title of the individual acting. Under Article 3(3) of the AI Act, a provider is, in particular, a person who develops a system or has it developed and places it on the market or puts it into service under its own name. Under Article 3(4), a deployer is a person using an AI system under its authority, except for personal, non-professional use. A company using a third-party service for its business tasks will generally be a potential deployer. The specific arrangements must be established in each case. [16]

An employee who logs in using a work account and performs a task assigned by the employer does not thereby automatically become an additional, independent deployer. Organisational responsibility may rest with the employer. This also shows why the terms user and deployer are not synonymous. Several employees may operate a workplace system without thereby creating an equal number of independent areas of regulatory responsibility. Actual responsibility and the arrangements for use determine the roles. [17]

Unauthorised use of a private account for business tasks is more difficult. The statutory exception for personal, non-professional activities does not apply merely because the account was paid for privately. Nevertheless, a professional connection alone does not establish a definitive allocation of the role to the employee. Matters to be examined include the assignment, knowledge, toleration, in-

15 Regulation (EU) 2024/1689, Article 25(1)(c), temporal application under Article 113, third subparagraph, point (c), as amended by Regulation (EU) 2026/1744.

16 Regulation (EU) 2024/1689, Article 3(3) and (4), and Article 2(10). On the original definition of provider and subsequent acquisition of provider status, *H üger* / *Radtke*, MMR 2026, 21 (21–22).

17 Regulation (EU) 2024/1689, Article 3(4) and Recital 13.

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structions and actual ability to exert influence. Breaches of employment contract duties and regulatory roles must be assessed separately. A breach of a workplace usage rule does not automatically determine who is to be classified as the deployer vis-à-vis the market surveillance authority. [18]

The employer may combine several roles. If it has its own system developed and puts it into service for itself under its own name, the definition of provider must be examined. If it then uses the system within its organisation, questions concerning deployer status may also arise. However, merely configuring a third-party service or writing an individual instruction for a chatbot does not establish provider status in every case. The distinction requires consideration of the specific system, the way it is made available and its intended purpose. [19]

The external service provider must also be identified precisely. The company's contractual partner may supply an application while another party supplies the underlying model. A further service may provide storage or document search. A clear overview of these relationships helps direct enquiries to the right party. It should distinguish technical services from legal roles. The fact that someone issues the invoice does not in itself mean that the party possesses all the necessary information about the model, the application and the company's data.

1.5.1 Case Study: The Privately Funded Assistant Used on the Employer's Instructions

Case Study – Facts and Question	
1.2	Case officer Berger pays for a text assistant himself. His manager knows this and asks him to use it in future to improve the wording of the monthly internal activity reports. Berger is to read the results before passing them on. There are no rules on permissible data. The manager believes responsibility rests entirely

18 Regulation (EU) 2024/1689, Article 2(10) and Article 3(4); on distinguishing responsibility under one's own authority, Recital 13.

19 Regulation (EU) 2024/1689, Article 3(3), (4) and (11), supplemented by Article 25(1).

with Berger because the contract and credit card are in his name.

Solution – The Employer's Perspective

The private contract does not determine the regulatory role on its own. The company has specified a business purpose of use and initiated that use. It must therefore examine whether it is using the system under its authority. The exception for purely personal and non-professional activities does not fit this use. Berger does not automatically become a provider by paying for the service himself. Nor can deployer status be determined conclusively solely by reference to the account holder. [20]

20 Regulation (EU) 2024/1689, Article 2(10), Article 3(3) and (4), and Recital 13.

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