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*Nives Mazur Kumrić*⁴⁵
*Ivan Zeko-Pivač*⁴⁶

LANGUAGE AND POWER – AN INSIGHT INTO THE REGULATORY FRAMEWORK AND PRACTICE OF LANGUAGE ARRANGEMENTS OF THE COUNCIL OF THE EUROPEAN UNION

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Abstract

The intrinsic nature of language-power relationships has long attracted wide scholarly attention, particularly from the 1980s onwards. In addition to being assigned a classic communication function, language is also seen as a vital tool for demonstrating and exercising political power, that is, a collective power of ethnopolitical communities. This paper looks into the specificities of the language policies of the Council of the European Union both codified and customary, which demonstrate power relations between the Member States of the European Union. The research is based on the legal-dogmatic method as it assesses current positive law, doctrine, concepts, practice, and scholarly literature addressing elements of language arrangements pertinent to the Council. Special emphasis is put on discrepancies between codified rules calling for equality of all EU languages and nurturing linguistic diversity, on the one hand, and daily practices endorsing linguistic imperialism, on the other hand. The paper examines the evolution of language narratives in the founding treaties of the European Union, Council Regulation No. 1/58 determining the languages to be used by the European Union, the Council's Rules of Procedure, and other relevant documents, and compares them with European realities on the ground. Although the regulatory framework governing the work of the Council is more or less clear regarding the equality of the Member States and their official languages, the power gap and language disbalance remain an ever-present element of the EU environment.

⁴⁵ Permanent Representation of the Republic of Croatia to the European Union, Brussels, Belgium / Faculty of Law and Faculty of Social Sciences, University of Liège, Belgium, Nives.Mazur-Kumric@mvp.hr / Nives.MazurKumric@uliege.be.

⁴⁶ Permanent Representation of the Republic of Croatia to the European Union, Brussels, Belgium, Ivan.Zeko-Pivac@mvp.hr.

Key words: Council of the European Union, European Law, International Law, language and power

Introduction

For decades, an abundance of scholarly literature has looked into the intrinsic nature of language-power relations. In his address of 1950 on the power of language, Trueman went back in time as far as the Bible to exemplify the earliest traces of the power of the word. By referring to the first verses of the Gospel According to John – “In the beginning was the Word [...]”, Trueman aspired to demonstrate that language was a decisive element in creating humanity since “order [was] created out of chaos by the power of speech” (Trueman, 1950, 566). Hereby, language is portrayed as “discourse” harbouring and reflecting power, and not just an “autonomous construct” referring simply to the system of sentences (Candlin, 1996, vi).

The aim of this paper is to add to fresh theoretical and practical research on specificities of language-power relations by focusing on language arrangements of the Council of the European Union (EU), a core EU body responsible for the co-codification of EU law, alongside the European Commission and the European Parliament. The originality of the research stems from a dual analysis of vast academic knowledge and legislative framework, on the one hand, and personal experience of active engagement in the Council’s work, on the other hand.

The scientific analysis is composed of eight chapters (introductory and concluding remarks included) outlining a wide array of topics, from questioning the language-power interrelatedness to examining the up-to-date Council’s language realities. In the first chapter following the introduction, the paper offers some theoretical considerations of selected academic doctrine reflecting on the symbiosis of language and power. To illustrate the powerfulness a language may entail, a special emphasis is put on the dominating influence of the English language as a *lingua franca*. Since language-power relations are closely intertwined with a question of legal and factual equality of languages, the third chapter outlines the most widely accepted universal and regional norms on non-discrimination with a ground of language in its focus. Thus, the seminal human rights and founding treaties of the United Nations, the Council of Europe, and the

Organisation for Security and Co-operation in Europe are considered in order to put the Council's approach to the equality of languages, addressed in further chapters, in a broader context. Drawing upon the idea behind the EU's motto "*In varietate concordia*" (i.e. "United in diversity"), the fourth chapter examines the overall language policy of the EU based on the principle of linguistic diversity, which calls for developing a sense of equality through effective intercultural dialogue and more inclusive EU institutions and EU society on the whole. Consequently, the original motto is symbolically rephrased as "United in linguistic diversity". Giving considerations to the general linguistic standards of the EU, the fifth chapter provides a detailed assessment of the Council's legislative framework and practice in the area of language arrangements, which aim to strike a balance between equality and efficiency. That is particularly apparent during the six-month rotating presidency of the Council, presented in the sixth chapter. Finally, the closing chapter antecedent to the conclusion sheds light on future prospects of English as a dominant language in the Council, perceived in the light of multi-layered post-Brexit circumstances. The paper's final remarks offer an overarching synthesis of the language-power intersections pertinent to formal and informal aspects of the Council's quotidian work.

Language and Power – Some Theoretical Considerations

Language is a multifaceted notion, which may denote both a content and a medium for conveying the substance. In other words, "it's a whole process" (Cross, 2006, 347), or, as Jeziński vividly argues, "the most complex symbolic construction used by men" (Jeziński, 2003, 181). When juxtaposed with power, language is manifested dually – "as a mechanism through which the power to define" is exercised and "as a device that generates power through the ability to define" (Frug, 1984, 1892). Another example of duality is the connection opened up by Hobbes – "the language of power and the power of language" (Boyle, 1987, 425).

The symbiosis of language and power is most apparent in the political arena, where ideological narratives are repeatedly (mis)used to impose or maintain power (Hristov Anastassov, 2018; Müller, 2008). One way to illustrate the respective language–power conjunction is through the prism

of two mutually interrelated aspects: “power *in* discourse” and “power *behind* discourse” (Fairclough, 1996, 43). “Power *in* discourse” is a power exercised as an expressed word either through direct face-to-face contact or alternate channels, such as literature and media. “Power *behind* discourse” is reflected in a social construct possessing substantial power, be it an official language status or a nation/institution/political party/etc. behind the narrative. The latter facet determining the background of the power of a specific language is at the core of the paper’s analysis.

Language imbalances are a number of times a simulacrum of the imbalances in society, legalised through the force of law (SpearIt, 2012). In fact, language realizes and manifests itself only in the context of society, and as such, reflects the societal hierarchy. According to Curtis, “in a society marked by hierarchy – race-based, gender-based, class-based, and otherwise – language, too, is marked by hierarchy” (Curtis, 2015, 439).

Any comparative study on the political dimension and influence of world languages in transnational communication and international environments, such as international organisations or institutions, inevitably makes a point about the dominance of the English language and its privileged status as a *lingua franca*. Depending on the milieu, the same perception is ever-present with respect to a number of other powerful languages, such as French and Spanish. Such linguistic imperialism upholds the sentiment that in international political fora “language choice matters” and that a language can never be perceived “as a neutral medium of communication” (Berglind Finsen, 2016, 10). The essence of linguistic hegemony in today’s globalised world could be explained by the lingering pressure for as quick, comprehensible, and articulate information as possible. The respective logic is especially important for the pattern-like nature of legal texts or “the fabric of law” (Vogel *et al.*, 2017, 91), where coherence is seen as “a fundamental legal value in its own right” (Solán, 2017, 51). Adhering to one language as the original version of the document may, without doubt, diminish or eliminate interpretative uncertainty, esp. in cases of “ambiguous legal texts that present two or more potential interpretations or vague language with a range of possible meanings” (Mouritsen, 2017, 68). According to Sosoni and Biel, this is particularly apparent in the hybrid EU context, where the complex interplay of supranational and national elements within language and legal cultures may generate “a breeding ground of paradoxes, compromises and tensions” (Sosoni and Biel, 2018,

2). Turning to English as a *lingua franca* in such demanding circumstances comes as a legitimate alternative, which is adept at transcending the challenges of EU multilingualism. After all, English is the most widely used language both by EU institutions and regular EU citizens (Kuzelewska, 2020), with bright prospects for future standing because well over 80% of EU pupils/students study English as a second language (Eurostat, 2018). The dominance of English is deep-rooted in European reality, be it in science, research, diplomacy, technology, international organisations, media, entertainment etc., to the extent that the EU motto “United in Diversity” may be well rephrased into “United in English” (Bajčić, 2018, 13). When examined through the lens of the aspect “power *behind* discourse”, English owes its influence to UK’s and USA’s superior historical roles in financial, capital and trade markets (Bajčić, 2018).

Equality of Languages in International and European Legislation

Language policies of actors in international relations – States, international organisations, multinational enterprises etc. (Wijninga, 2014) vary greatly across Europe and the world alike. However, by and large, as a common denominator, they share an endeavour to strike a balance between equality and efficiency of languages (Berglind Finsen, 2016, 38, 68).

A non-discrimination clause, pertinent to international human rights treaties, always includes language as a ground on which no one should be discriminated against. For example, a milestone treaty in the history of human rights – the 1948 Universal Declaration of Human Rights, stipulates that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status.” (A/RES/217(III), Art. 2 para. 1). Drafted by representatives of remarkably diverse cultural and legal circles, the respective provision reflects the universally accepted principle of equality, applied on language to the same degree as on any other ground of discrimination listed therein. The same non-discrimination clause was later on incorporated in all the other core universal human rights treaties, such as the 1966 International Covenant on Civil and Political Rights

(A/RES/2200(XXI), Art. 2 para. 1), the 1966 International Covenant on Economic, Social and Cultural Rights (A/RES/2200(XXI), Art. 2 para. 2), and the 1989 Convention on the Rights of the Child (A/RES/44/25, Art. 2 para 1).

Analogously to realities at the universal level endorsed by the United Nations, language as a protected element has been traditionally embedded in the seminal European human rights treaties too. In view of the fact that the EU legal framework is examined in detail in the following chapters, the emphasis in this one is put on the Council of Europe and the Organisation for Security and Co-operation in Europe (OSCE) only. The 1950 Convention for the Protection of Human Rights and Fundamental Freedoms encompasses language by its provision on the prohibition of discrimination, which reads as follows:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, *language*, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” (ECHR, Art. 14).

Half a century later, a general prohibition of discrimination comprising language, extended to any right set forth by law in general, was introduced by 2000 Protocol No. 12 to the respective Convention (Protocol No. 12, Art. 1 para. 1). A similar non-discrimination clause indicating language as a possible ground of discrimination was introduced in the founding treaty of the OSCE – the 1975 Helsinki Final Act, in its constituent Declaration on Principles Guiding Relations between Participating States. In other words, the two most prominent European organisations in the domain of promotion and protection of human rights – the Council of Europe and the OSCE are entirely devoted to and vigorously guarantee the equality of all persons with respect to language. Under the auspices of the Council of Europe, the value of multilingualism is particularly protected by the 1992 European Charter for Regional or Minority Languages as “an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity.” (ECRML, Preamble). Although adopted specifically for the protection and promotion of languages used by traditional minorities, it does not conceive a competitive or antagonistic relationship

with official languages but rather linguistic diversity and multilingual values as “one of the most precious elements of the European cultural heritage” (Explanatory Report, Points 14 and 26).

Given the large membership of the UN (193), the Council of Europe (46), and the OSCE (57), it comes as no surprise that they had to evade the literal application of the principle of non-discrimination of languages in the name of efficiency of their daily affairs. For the UN, the prime example of its language policy remains the provision of its founding document, which specifies that the equally authentic languages of the Charter of the UN deposited in the archives of the Government of the USA are Chinese, French, Russian, English, and Spanish (Charter of the UN, Art. 111). Nowadays, Arabic is also added to the list as one of the six official languages of the UN, as stipulated by the Rules of Procedure of the UN General Assembly, the Security Council, and the Economic and Social Council (GA Rules of Procedure, Rule 51; SC Rules of Procedure, Rule 41; ECOSOC, Rule 31). The Council of Europe limited the number of its official languages to two – English and French, with the derogation allowing its principal bodies – the Committee of Ministers and the Consultative Assembly to “determine in what circumstances and under what conditions other languages may be used” (Statute of the Council of Europe, Art. 12). Owing to its diverse and large membership, the approach of the OSCE to official languages is as broad as the UN’s, *i.e.* there are six of them: English, French, German, Italian, Russian, and Spanish, as noted in the closing lines of the 1975 Helsinki Final Act.

Language Policy of the European Union – United in (Linguistic) Diversity

Linguistic diversity is deeply rooted in the rich European heritage as its indivisible element. As a consequence, respect for linguistic diversity is imposed on its institutions and the Member States *expressis verbis* in some of the key EU documents. Namely, the Treaty on the European Union regulates that the EU “shall respect its rich cultural and *linguistic diversity*, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced.” (TEU, Art. 3), while the Charter of Fundamental Rights of the

European Union lays down that the EU “shall respect cultural, religious and *linguistic diversity*.” (Charter of Fundamental Rights, Art. 22).

At the very base of the legal and thus factual protection of linguistic diversity in the EU institutions is Council Regulation No. 1 determining the languages to be used by the European Economic Community (EEC), adopted in 1958 (OJ L17, 1958). The curiosity is that at the time, Council Regulation No. 1 inaugurated just four official and working EU languages – Dutch, French, German, and Italian (Art. 1), with no English in sight as the most widely used language in the EU. The reason behind such a choice is simple and logical – those were the official languages of the six founding Member States of the EEC: Belgium, France, Germany, Italy, Luxembourg, and the Netherlands. A short document of only eight articles governs a vast area of EU intercommunication encompassing EU institutions, the Member States, and individual persons subject to the jurisdiction of a Member State. The respective rules on the use of official languages prescribe that the documents submitted to the institutions of the EEC could be drafted in any official language selected by the sender, and, expectedly, the answer should be drafted in the same language (Art. 2). Similarly, documents submitted by an EU institution to the Member State or a person under the jurisdiction of a Member State should be submitted in the language of that particular State (Art. 3). Regulations and documents of general application are drafted and published in the Official Journal in all the four official languages (Arts. 4 and 5). These rules were applied *mutatis mutandis* every time the number of official EU languages increased, up to the present 24.

The enlargement of the EEC and, later on, the EU led to seven successive modifications of Council Regulation No. 1, which flexibly adjusted to the changing times of increased EU membership. The amendments were generated by the accession of Denmark, Ireland, and the UK (OJ L72, 1972 and OJ L2, 1973), Greece (OJ L291, 1979), Spain and Portugal (OJ L302, 1985), Austria, Sweden, and Finland (OJ C241, 1994 and OJ L1, 1995), Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia (OJ L236, 2003 and OJ L156, 2005), Bulgaria and Romania (OJ L363, 2006), and Croatia (OJ L158, 2013). So, following the accession of Croatia to the EU on 1 July 2013, the official and working languages of the EU institutions became Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French,

German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish (OJ L17, Art. 1).

It is widely understood that the employment of all 24 official EU languages helps develop a sense of equality, productive intercultural dialogue, and more inclusive EU institutions and EU society on the whole (Berglind Finsen, 2016). Nevertheless, a number of internal administrative and regular business activities would be long delayed if every single document or official public announcement should be translated into all the official EU languages. As elaborated in the following chapters on the Council's language policy, a prompt, unambiguous, and efficient response at the level of EU institutions is crucial. In consequence, it is often necessary to simplify the fair EU language policy at the expense of the absolute equality of 24 official languages by opting for a limited number of procedural or working languages to save time, human resources, and smooth intercultural communication.

Legislative Framework and Practice of the Council of the European Union – Equality vs. Efficiency

In general, the language policy of the Council is as inclusive as possible. The online default language policy determines that all content available to the public should be published in all official EU languages. However, there are two other variations, *i.e.* exceptions to the respective rule, which include publishing the content only in English or in English and French, and publishing the content in English, French, and any other relevant languages. A particularly important content includes details regarding the Council and the European Council meetings as it outlines the topics and dynamics of the codification process of the European law. More concise details about meetings, *e.g.* the main points for discussion and a summary of the main decisions taken at each meeting are available in all official EU languages. On the contrary, more lengthy documents with elaborate information are published either in English and French or in English only (Consilium I, 2022).

The translation services of the Council's General Secretariat work continuously to prepare necessary documents for the Council's meetings in all

the required languages (Consilium II, 2022). An act can be adopted if it is revised by legal and linguistic experts in all 24 languages (until recently, 23 as the derogation for Irish was applied⁴⁷) (Euractiv, 2015). The item cannot be included in the final meeting agenda if a Commission’s proposal is not provided in all the Council’s official languages. However, the Council can use its discretion to include it nonetheless if the related Member States’ decision is reached unanimously. According to the Council’s Rules of Procedure on deliberations and decisions based on documents and drafts drawn up in the languages provided for by the language rules in force, “except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages.” (Council’s Rules of Procedure, 2009, Art. 14 para. 1). In addition, “any member of the Council may oppose discussion if the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he or she may specify.” (Council’s Rules of Procedure, 2009, Art. 14 para. 2). As noted above, the Council may deviate from its standard language policy within the ordinary legislative procedure only on the grounds of urgency. A prime example of such an urgent procedure is the adoption of two 2020 Coronavirus Response Investment Initiatives (CRIIs) during the Croatian Presidency of the Council of the European Union, which were adopted in one of the fastest legal procedures in the history of the EU (Mazur Kumrić and Zeko-Pivač, 2021).

Due to an all-encompassing and open linguistic approach of the Council, its linguistic workload is immense and impressive. On a day-to-day basis, around 30% of the Council’s staff helps Member States’ representatives work in their respective languages smoothly and continuously. Around 13 000 translation requests are handled every year, with around one million pages of translated text being delivered monthly (Consilium II, 2022).

47 The Irish language gained full status as an official EU language on 1 January 2022. By that date, it was first considered as a Treaty language from 1973 to 2007 (*i.e.* the EU treaties only were translated into Irish), and afterwards, from 2007 to 2022, as an official and working EU language limited by the Council’s special derogation because of constraints of Irish translation staff and language technological resources. (Department of Foreign Affairs of the Republic of Ireland, 2021).

An Insight into Linguistic Peculiarities of the Rotating Presidency of the Council of the European Union

The Council has a rotating presidency, *i.e.* the Member State holding the presidency changes every six months. Each new presidency takes a different approach to its language arrangements – for the most part, the presidency opts for English as a working language at the Council’s (formal and informal) meetings and of written procedures and documents for ease of reference. However, certain Member States resort to the exclusive use of their official language, symbolically demonstrating their power, influence, and importance in the EU through – language (Consilium II, 2022).

The French presidency of the first half of 2022 is one of the prime examples of the latter attitude, which strategically promotes the preferential use of its own official language. At the basis of such an approach is France’s historically dominant position within the EU stemming from its unique status as a founding member of the EU, size, and economic wealth as well as its overall power in international relations. In practice, that meant the French presidency imposed the exclusive use of the French language in all the meetings, notes, and debates (Politico, 2021). However, on a number of occasions, it provided simultaneous translations in English to facilitate the Council’s uninterrupted and coordinated work. In general, all the principal meetings were conducted in French, with translations available in other official EU languages. Even documents issued as a follow-up were first provided in French, and the same principle was also applied to the preparatory meetings preceding the main events (Politico, 2021).

What is particularly worthy of note was France’s approach to those who wanted to learn French shortly before or during the French presidency, knowing that a significant number of diplomats participating in the Council’s work did not master the French language. The French Government secured extra funds to offer premium free-of-charge French courses to civil servants ranging from group to head-to-head classes.

The language policy of the French presidency was closely related to French-English power relations. However, France was not the only Member State to insist on using its official language in the Council. For example, Germany did the same during its presidency in the second half of 2020. The difference between their respective approach is that France

made additional efforts to culturally increase the importance of its language, which has always been considered a key language of diplomacy. Although such language policy considerably augmented the visibility and potentiality of the French language in the Council, it did not devalue the employment of English. As it is argued in the following chapter, in times when it is critical to send a quick and accurate message on a number of highly relevant issues, opting for English saves time, eliminates language gaps, and ensures precision.

Some Reflections on Future Prospects of the English language in the Council – How Bright They are?

Considering the central role of English within the language policies of the Council and the EU alike, a question arises as to whether the Brexit after-effects would diminish its overall influence and usage. Currently, only two relatively small Member States in the Council use English as their official language – Ireland and Malta. However, even for them, English is only an alternative, used in parallel with Irish and Maltese. For everyone else, English can be interpreted as the second-best choice. Nevertheless, English is the most widely spoken foreign language comprising 40% of overall EU speakers compared to approximately 12% of speakers of French and German (Debating Europe, 2021). As such, it is often characterised as a *lingua franca*, *i.e.* a language transcending the boundaries of its country of origin, because many people learn it to communicate with others who are not necessarily native speakers (Stanojević and Josipović Smojver, 2011).

English is actively spoken at the EU institutions by a large number of people whose level of knowledge varies significantly. Hence, over time, it evolved into a peculiar version or versions of its standard form. Broder Carstensen explains that English, as the most important language of wider communication, found its way to all corners of the world and developed a number of new varieties that were not native. He argues that English used in this manner is a kind of a Euro-English variant, which differs from the original English language model (Carstensen, 1986). Consequently, Euro-English is regarded as English of all the EU Member States, except for the UK and Ireland. That kind of language is not homogeneous and it changes, when being used, from north to south (McArthur, 2002).

Some authors consider Euro-English as a potential independent variety of English in Europe that evolves as a result of nativization and institutionalization (Mollin, 2006), whereat nativization is defined as a linguistic readjustment that language undergoes when being used by speakers with different backgrounds (Kachru, 1992). According to Forche, Euro-English does not currently exist as an independent variant but taking into account its generally high acceptability rates, “the acceptance of an International English and thus the appreciation of English as a decontextualized lingua franca – future institutionalization may be possible under the influence of young mobile Europeans” (Forche, 2012, 473).

As a widely represented language in the Council and other EU institutions, it is beyond a shadow of a doubt that English will continue to be extremely important for the functioning of the EU in the post-Brexit era. After Brexit, there is no large EU Member State where English is the official language; however, its future prospects do not seem to be in question bearing in mind that today 27 Member States accept it as the most common tool for communication within EU institutions. As demonstrated earlier, the Council’s English is a living entity, which adapted to changing circumstances and morphed into so-called Eurospeak (Iosif, 2010) as a close metaphor for Orwell’s Newspeak (Orwell, 1949). Is there an alternative for (Euro-) English in the Council and EU institutions at large? There certainly are some other powerful EU languages, which are competitive with English, such as French, German, or Spanish; however, European realities do not impose them as eventual successors.

Conclusion

The example of the Council’s language setup confirms the multifaceted character and complexity of language-power intersections. Although embedded in the common EU language policy, the Council’s linguistic framework developed specific *sui generis* contours flexibly adjusted to its unique membership, roles, and procedures. In general terms, respective authenticities can be summarised in three points.

First, the Council accommodates representatives of 27 linguistically diverse Member States, balancing between the obligation to safeguard their equality, on the one hand, and the need to differentiate on language

grounds when requests for efficiency require so, on the other hand. The large membership in which each entity is recognised the right to use its official language is an authentic feature, uncommon to other comparable bodies both at the European and universal levels.

Second, the Council is a dynamic and flexible institution that adapts its language scheme to actual needs on the ground, allowing a considerable leeway to use the official language of each Member State whenever possible. Such adaptability is manifested at all types of meetings, from those of the working party to ministerial and heads of state or government ones. On those occasions, language-power relations become particularly evident as the frequency of use of certain “more powerful” languages prevails over the “weaker” ones.

Third, the Council’s multilingual environment may serve as a determinant of the future prospects of (Euro-) English as a current *lingua franca* within the EU institutions and the possible evolvement of other languages into that privileged category.

Despite the efforts of the regulatory framework governing the work of the Council to promote the equality of the Member States and their official languages, the power gap and language disbalance remain an ever-present element of the EU environment.

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