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Factsheet **Ukraine**



1. HIV EPIDEMIOLOGY AND RESPONSE

1.1 HIV epidemic in Ukraine in brief

Ukraine has a concentrated HIV epidemic, with 137,390 officially registered people living with HIV¹, which is 62% of the estimated number of people living with HIV in the country. In 2014, 66,409 people living with HIV were receiving antiretroviral therapy (coverage of 30% of the estimated number of people living with HIV and 48% of the registered people living with HIV). More than 60% of HIV infections in recent years occurred through sexual transmission. HIV prevalence among all key populations remains very high (Table 1)². There are significant gender (in 2013, 40% of men living with HIV and 10% of women living with HIV were people who inject drugs) and sub-regional differences (HIV prevalence among men having sex with men in Donetsk was about 15% while Chernihiv and Rivne reported below 1%, and it was 35% among people who inject drugs in Mykolaiv compared to less than 2% in Uzhgorod).

1.2 Legal and institutional aspects of the national HIV response and the role of NGOs

In 1991, Ukraine adopted the **Law on Response to the Transmission of Diseases Caused by Human Immunodeficiency Virus (HIV) and Legal and Social Security of People Living with HIV**³. The Law allows different forms of organizations, including NGOs, to be involved in awareness raising, provision of medical and social services related to HIV prevention and treatment, social protection of the population and other aspects of HIV response.

1 Ukraine, *Harmonized AIDS Response Progress Report for 2012-2014* (2015).

2 Ibid.

3 Ukraine, Закон про протидію поширенню хвороб, зумовлених вірусом імунодефіциту людини (ВІЛ), та правовий і соціальний захист людей, які живуть з ВІЛ (1998).

Table 1: Indicators for key populations

| | PWID | MSM | SW |
|---|---------|---------|--------|
| Estimated population size | 310,000 | 176,000 | 80,000 |
| HIV prevalence (%) | 19.7 | 5.9 | 7.3 |
| Coverage of HIV testing in the past 12 months (%) | 42.8 | 38.3 | 63.9 |
| Prevention programme coverage (%) | N/A | 43.8 | 70.1 |

Sources: *Summary of the Analytical Report 'Monitoring the Behaviour and HIV-Infection Prevalence Among People Who Inject Drugs as a Component of HIV Second Generation Surveillance* (Kyiv, ICF International HIV/AIDS Alliance in Ukraine, 2014); *Summary of the Analytical Report 'Monitoring the Behaviour and HIV-Infection Prevalence Among Men Who Have Sex with Men as a Component of HIV Second Generation Surveillance* (Kyiv, ICF International HIV/AIDS Alliance in Ukraine, 2014); *Summary of the Analytical Report 'Monitoring the Behaviour and HIV-Infection Prevalence Among Female Sex Workers as a Component of HIV Second Generation Surveillance* (Kyiv, ICF International HIV/AIDS Alliance in Ukraine, 2014); *Analytical Report Estimation of the Size of Populations Most-at-Risk for HIV Infection in Ukraine as of 2012* (Ganna Berleva et al, 2012).

The key policy document on HIV response is the **Nation-Wide Targeted Social Programme of Counteraction to HIV Infection/AIDS** (2014-2018, hereinafter: "National HIV Programme")⁴. The overall goal of the National HIV Programme is to decrease HIV-related incidence and mortality through ensuring sustainable and accessible service delivery in the field of prevention, diagnostics, treatment, care and support for people living with HIV. One of the strategies to address the increasing number of HIV infections is to involve NGOs in providing prevention, treatment, care and support to key populations at higher risk of HIV and to people living with HIV. The National HIV Programme anticipates a transition to state funding once the Global Fund support is phasing out.

4 Ukraine, Закон про затвердження Загальнодержавної цільової соціальної програми протидії ВІЛ-інфекції/СНІДу на 2014-2018 роки (2014).

There are also other sector specific strategies that facilitate cooperation with NGOs. For instance, the **National Strategy for Tripartite Cooperation on Prevention of HIV/AIDS in the World of Work** (2012-2017) proposes a mechanism for involvement of NGOs in activities aimed at provision of social services to people belonging to populations at a higher risk of HIV⁵.

NGOs have access to state policy development and the decision making process at the national level as members of the National Council to Fight Tuberculosis and HIV/AIDS⁶, an advisory body under the Cabinet of Ministers, and at sub-national level as members of sub-national tuberculosis and HIV councils. The main objectives of the National Council include the preparation of proposals for prioritization and implementation of national HIV and TB policies; promotion of coordinated efforts in implementation of projects; monitoring and oversight of programmes and activities; participation in the development of legal acts, programmes and activities on combating TB and HIV, etc. In addition to public officials, the National Council includes about 60% of members representing NGOs. At the sub-national level the representation of NGOs in the regional councils is lower⁷. In 2014 the National Council adopted a plan for improving its activities, which included an objective on strengthening NGO participation.

5 Ukraine, Національна стратегія тристороннього співробітництва з протидії ВІЛ/СНІДу у сфері праці на 2012-2017 роки (2012).

6 Created according to: Ukraine, Resolution on Some Issues of Tuberculosis and HIV-Infection/AIDS (Постанова Деякі питання протидії туберкульозу та ВІЛ-інфекції/СНІДу (2007).)

7 ICF International HIV/AIDS Alliance in Ukraine, *How to Make HIV-Prevention Services Sustainable – Guidelines for Members of HIV-Service NGOs and Government Agencies* (2015).

2. SOCIAL CONTRACTING OF NGOS IN THE NATIONAL HIV RESPONSE

2.1 NGO landscape in Ukraine

The main documents that describe the legal status of NGOs in Ukraine are the **Civil Code** and the **Economic Code**. NGOs are further regulated by the **Law on Public Associations**⁸, and the **Law on Charity and Charitable Organizations**⁹, both came into effect in 2013. According to the Unified National Register of Companies and Organizations of Ukraine, as of January 2015, there were 75,828 registered public associations, 277 registered creative associations and other professional unions, 15,934 registered charitable organizations, and 1,372 self-organized bodies¹⁰.

Registration of a public association requires only two persons or legal entities. The process is free of charge and can be completed in seven working days. Since 2013, charitable organizations register through the same procedures as businesses and other legal entities, a much simpler process than what they previously experienced. They can now be registered within three working days by state registrars, instead of the Ministry of Justice.

Most NGOs rely on several sources of funding, and NGOs' dependence on international donors is gradually decreasing. According to the Charity Fund CCC Creative Centre survey, 53% of NGOs received funding from international donors in 2014 reflecting 36% of NGOs' budgets, a decrease from 45% in 2012¹¹.

Tax incentives are envisaged, but only provided for organizations that received a not-for-profit status and are included in the Register of not-for-profit organizations by tax authorities¹².

2.2 Social contracting of NGOs under Global Fund grants

In 2015, 190 NGOs were financed by the Global Fund. Excluding the two Principle Recipients, 188 NGOs received an annual average of US\$ 63,203 per NGO (range US\$ 500 – US\$ 750,895), predominantly for prevention programmes among key populations and services on sub-national level (Table 2).

2.3 Government social contracting to NGOs: Legal and regulatory frameworks

The framework of social service provision and contracting to NGOs underwent a comprehensive reform in the past few years in Ukraine, and is composed of several policy and legal documents.

In 2012, the **Strategy of Reforming the Social Services System** was adopted¹³, which included an analysis of the status of social service provision and main

8 Ukraine, Закон про громадські об'єднання (2012).

9 Ukraine, Закон про благодійну діяльність та благодійні організації (2012).

10 These figures do not include the Autonomous Republic of Crimea and the city of Sevastopol due to a lack of data (USAID, *The 2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia* (2015)).

11 Ibid.

12 Obtaining a not-for-profit status remains problematic even after the successful registration of an organization. The tax legislation does not define clear criteria or procedures for the granting of the status. Legal entities can deduct donations to civil society organizations up to 4% of their taxable incomes from the previous year. However, ambiguities in the regulations and burdensome procedures make it difficult to use these opportunities in practice.

13 Ukraine, Розпорядження про схвалення Стратегії реформування системи надання соціальних послуг (2012).

Table 2: Global Fund annual budget for NGOs in 2015

| Programme | Budget allocated to NGOs (US\$) | % of line budget | National/sub-national/local level (%) |
|--|---------------------------------|------------------|---------------------------------------|
| Prevention PWID | 9,549,000 | 100.0 | 0/0/100 |
| MSM | 585,300 | 100.0 | 0/0/100 |
| SW | 951,700 | 100.0 | 0/0/100 |
| Prison inmates | 464,162 | 80.0 | 100/0/0 |
| Other | 70,000 | 73.4 | 0/0/100 |
| Prevention subtotal | 11,620,162 | 98.8 | 4/0/96 |
| Treatment, care, support subtotal | 16,606,690 | 99.4 | 0/100/0 |
| Tuberculosis care and prevention | 24,285,968 | 99.9 | 95/5/0 |
| Health information system, monitoring and evaluation subtotal | 273,091 | 28.1 | 100/0/0 |
| Removing legal barriers | 373,557 | 100.0 | 100/0/0 |
| Community systems strengthening | 160,558 | 21.4 | 100/0/0 |
| Programme management | 3,617,610 | 89.0 | 100/0/0 |
| TOTAL | 56,937,636 | 96.6 | 49/31/20 |

Sources: All Ukrainian PLHIV Network; International HIV/AIDS Alliance in Ukraine; Ukrainian Center for Socially Dangerous Disease Control.

principles and aims of reforming this system. In 2014, the Ministry of Social Policy adopted the **Procedure of Defining Needs of the Population of Administrative-Territorial Units in Social Services**¹⁴, which regulates the principles of data collection, analysis and planning of social services provision and lists existing social services and potential beneficiaries. The majority of services are provided for such groups as elderly, people with disabilities and homeless persons. There are two types of services provided for people living with HIV (counselling and social prevention), and four services for people with substance abuse problems. Even though the list includes some HIV-related services, the Coalition of HIV-Service Organizations considers it incomplete as it lacks some important services, such as nursing and palliative care¹⁵.

14 Ukraine, Наказ про затвердження Порядку визначення потреб населення адміністративно-територіальної одиниці у соціальних послугах (2014).

15 The Coalition of HIV-Service Organizations, *Alternative Analysis of the Results of the Assessment of Needs in Social Services in 2014: Key Findings and Proposals* (2014).

In 2012, the **Law on Amending Certain Laws of Ukraine on Social Services**¹⁶ amended three laws, the Law on Public Associations, the Law on State Social Standards and Social Guarantees and the Law on Social Services. The amendments aimed to introduce modern approaches to social service management and allowed social service provision for any enterprise, institution or organization, regardless of their ownership and management form. The Law prescribed for the development and implementation of state standards that define requirements for the content, scope, rules and regulations, conditions and procedures for social service provision. It also established indicators to determine whether a service was provided in a quality manner.

16 Ukraine, Закон про внесення змін до деяких законів України щодо надання соціальних послуг (2012).

The participation of NGOs in social service provision is envisaged by the amendment introduced in 2012 to the **Law on Social Services** (2003)¹⁷. The Law envisages provision of social services by non-state actors, including NGOs, charities, religious organizations and individuals whose activities are related to social services.

Social contracting is further regulated by the **Resolution on the Procedure of Social Contracting from Budget Funds** (2013)¹⁸, (hereinafter: “Social Contracting Resolution”). It defines the mechanism of formation, implementation and financing of social contracting for social services provided by non-state actors as well as rules of organizing and holding competitions to use such funds. According to the Resolution, if the cost of the services is equal to or exceeds the threshold of 200,000 UAH (app. US\$ 9,300) determined by the **Law on Public Procurements** (2014)¹⁹, social contracting shall be carried out according to the latter Law and not the Law on Social Services. However, the Social Contracting Resolution does not clearly define whether the threshold should apply to the estimated cost of each service or the sum of all social contracting conducted by the authority in the subject year. According to some research, this requirement may be the reason why local governments allocate budget for social contracting cost below the threshold, which is not enough for effective implementation of services. Also, some local authorities refrain from using the public procurement mechanism as it is more expensive for both the local authorities and NGOs²⁰.

According to the Social Contracting Resolution, the parties of the social contracting are: contractor of the social services, the beneficiaries and the contractee, such as non-state actors and other service providers. The Resolution defines the stages of social contracting:

1. *Initiating the social contracting*: analysing the needs of population of different regions in social services, then defining the priorities for social contracting – the list of social services, the list of potential beneficiaries and the estimated amount of annual funding from local budgets.
2. *Implementation of social contracting*: developing the task for implementation of social contracting, organizing and holding the competition, contract drafting and its implementation.
3. *Monitoring the implementation*: assessing the quality of services and reporting.

The contractor of social services (i.e., a local authority) approves the annual plan for organizing the competitions, publishes it and sends it to the Ministry of Social Policy. Before each competition, the contractor adopts regulations that define the rules and conditions, including the list of documents to be submitted, and publishes the announcement about the competition no later than 30 days before the deadline. According to the Social Contracting Resolution, the applicant legal entities shall also provide a copy of their founding documents, the balance for the previous year and a certificate from the State Fiscal Service, proving that they have no tax debts. NGOs are required to submit the same documents every time they participate in social contracting, even if they were contracted in the past²¹. Submitted proposals are reviewed by a commission of at least five persons, including the representatives of executive bodies, organizations that represent interests of potential beneficiaries, academic institutions and a social services expert. The compensation for the services is provided after the actual implementation of the contract.

The rules on state funding of programmes developed by NGOs are regulated by the **Procedure for Organization of Contests for Programmes (Projects, Activities), Developed by Civil Society Institutions, for Implementation for Which Funding is Provided** (2011)²². It regulates tender documentation and procedure, the composition of the decision-making

17 Ukraine, Закон про внесення змін до деяких законів України щодо надання соціальних послуг (2013).

18 Ukraine, Постанова про затвердження Порядку здійснення соціального замовлення за рахунок бюджетних коштів (2013).

19 Ukraine, Закон про здійснення державних закупівель (2014).

20 Natalia Gusak, Olena Ivanova, and Nadiia Kabachenko, “Social services commissioning as a financial mechanism for HIV prevention services” (Kyiv, Labor and Health Social Initiatives, 2015).

21 Ibid.

22 Ukraine, Постанова про затвердження Порядку проведення конкурсу з визначення програм (проектів, заходів), розроблених інститутами громадянського суспільства, для виконання (реалізації) яких надається фінансова підтримка (2011).

body (tender commission), the evaluation criteria and other requirements. All authorities at central and local levels had to submit proposals to bring legal regulations in consistency with the Procedure.

Development of social contracting is a recognised priority in context of HIV response: equitable access to public resources through social contracting is part of the National HIV Programme, which aims to launch social contracting of NGOs in all regions by 2018²³.

2.4 Quality control and assurance

Several legal documents regulate the quality standards for social services. The **Law on State Social Standards and State Social Guarantees** (2000)²⁴ regulates the development and implementation of state social standards and norms for service provision in the social sphere. Compliance with the standards is supervised by central and local government with engagement of NGOs and independent experts.

Further, the Law on Social Services defines the scope of state standards for social services, conditions and general principles of providing social services. Social service providers shall operate according to their statutory documents (which have to include a list of social services and service beneficiaries), the state social service standards, ethical and legal standards, and principles of social services and shall have qualified staff.

In 2015, the Ministry of Social Policy adopted a decree approving the state standard on social adaptation for vulnerable groups²⁵, which envisages main principles and steps of providing social adaptation services and regulates monitoring of the quality of service provision and the cost of the service (if it is provided for remuneration). Service quality is assessed through internal evaluation by surveying service recipients and through external control (carried out by state bodies,

23 Ukraine, Закон про затвердження Загальнодержавної цільової соціальної програми протидії ВІЛ-інфекції/СНІДу на 2014-2018 роки (2014).

24 Ukraine, Закон про державні соціальні стандарти та державні соціальні гарантії (2000).

25 Ukraine, Наказ про затвердження Державного стандарту соціальної адаптації (2015).

local governments, etc.) vis-à-vis a list of indicators. People living with HIV are not explicitly mentioned as potential beneficiaries, but people who use drugs are on this list.

In addition, there are quality standards applicable specifically to services provided to persons living with HIV and to representatives of key populations. Currently there are five such standards developed jointly by public authorities and NGOs with the participation of target groups, and regulated by the **Joint Decree of the Ministry of Family Affairs, Youth and Sport, the Ministry of Labour and Social Policy and the Ministry of Health** (2010)²⁶. Due to the recognised need to improve the current standards in order to increase the effectiveness of HIV-related services provision²⁷, in 2013, HIV organizations started to formulate common standards for their services and prepared descriptions and other information materials to qualify for social service contracts²⁸.

According to **Methodical Recommendations on Monitoring and Quality Assurance of Social Services** (2013)²⁹, social protection departments, as well as all social services agencies, are recommended to conduct monitoring and assessment of social services to ensure their quality.

2.5 Other prerequisites for service provision (licenses, special permissions, etc.)

In 2015 a new **Law on Licensing of Economic Activities**³⁰ was adopted which lists the economic activities subject to licensing, including medical practice. Licensing of medical practice is further

26 Ukraine, Наказ про затвердження стандартів надання соціальних послуг представникам груп ризику (2010).

27 ICF International HIV/AIDS Alliance in Ukraine, *How to Make HIV Prevention Services Sustainable- Methodological Recommendations for HIV Servicing NGOs and State Structures* (2015).

28 USAID, *The 2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia* (2015).

29 Ukraine, Наказ про затвердження методичних рекомендацій з проведення моніторингу та оцінки якості соціальних послуг (2013).

30 Ukraine, Закон про ліцензування видів господарської діяльності (2015).

regulated by the **Ordinance of the Ministry of Health on Adoption of Licensing Conditions for Carrying out Economic Activity in Medical Practice** (2011)³¹. There is nothing in these documents prohibiting NGOs from obtaining the license; as long as an NGO complies with requirements in terms of premises, equipment and staffing, specified in the Ordinance, it is eligible to apply for a license.

For the provision of social services no licensing is required. There were earlier attempts to introduce such licensing, but these were discontinued, as neither NGOs nor authorities were ready to adopt and apply licensing regulations³².

2.6 Government social contracting of NGOs: The practice

According to the USAID Civil Society Organization Sustainability Index social service provision improved in 2014. Due to the on-going armed conflict in the East of the country and lack of resources, financial aid and in-kind contributions from public authorities and local self-government bodies has declined. Only 20% of NGOs received state support, which amounted to 7% of their budgets in 2014, a decrease from 8% in 2013. Some local public authorities continued to launch calls for proposals for NGOs. In these cases, funds were allocated, but not provided in 2014, due to political developments in the country³³. Nevertheless, this did not prevent public authorities from delegating certain services to NGOs. For example, NGO social workers started working in hospitals, where they were previously not allowed to work³⁴.

Organizations working on different diseases and risk behaviour prevention may participate only in certain activities, such as healthy lifestyle, prevention of HIV,

alcohol or substance abuse, for which only minor amounts are allocated. Moreover, only part of these funds is distributed by competition³⁵.

Still, at the local level, the practice of social contracting is relatively widespread. The city of Odessa introduced this model by adopting a regulation on social contracting in 2000³⁶. In the first 12 years 230 projects were successfully completed. The municipal budget paid around 3 million UAH (app. US\$134,924) and four times as much was raised from other sources³⁷. Several cities followed the example of Odessa. In 2015, the total amount of social contracts in Poltava, Odessa, Khmelnytsky and Mykolaiv provinces was approximately 400,000 UAH (US\$ 17,375)³⁸. However, the amount of funding is not significant for NGOs, therefore many of them choose not to participate in the procedure of social contracting³⁹. At the same time there are positive examples of using social contracting to meet the needs of at-risk groups. In Poltava local NGO Svitlo Nadii (The Light of Hope) has received more than 3,000,000 UAH (US\$ 132,161) in social contracting from provincial authorities for opening a crisis centre for women from vulnerable groups in 2016. Poltava authorities also supported a social centre for homeless people, opened by Svitlo Nadii in 2012⁴⁰.

In some parts of Ukraine, NGOs have been actively involved in drafting legal provisions for the social contracting at the local level, took part in the discussions on priority social issues, participated in the meetings of deputies' commissions, etc. However, according to some research, local authorities still do not consider NGOs as equal partners and qualified social services providers. This is due to the fact that, on the one hand, local authorities have limited information on the scope of NGOs and their capacity in social service provision, and on the other, some NGOs lack resources

31 Ukraine, Наказ про затвердження Ліцензійних умов провадження господарської діяльності з медичної практики (2011).

32 United Nations Development Programme and The International Center for Not-for-Profit Law, *A Handbook on Non-State Social Service Delivery Models – A Guide for Policy Makers and Practitioners in the CIS Region* (2012).

33 USAID, *The 2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia* (2015).

34 Ibid.

35 Ibid.

36 The International Center for Not-for-Profit Law, *Regulation on the Social Contracting in the City of Odessa* (2000).

37 Odessa Public Institute of Social Technologies, *Social Order in the Post-Soviet Countries* (2013).

38 Ibid.

39 Ibid.

40 Information provided by the Executive Director of NGO Svitlo Nadii.

and professional staff to be able to provide quality social services⁴¹.

People living with HIV are generally not considered as a priority group for financing social services provision. In 2015 social contracting was implemented to meet the needs of the following groups: homeless people, persons released from prison, elderly, pregnant women living with HIV, youth, demobilized antiterrorist operation soldiers⁴². There are still few examples of using social contracting for the HIV-related services. One of the successful examples of social contracting in the HIV related area is a programme of care and support for people living with HIV, implemented by the Khmelnytskyi Province Branch of All-Ukrainian Network of People Living with HIV⁴³.

41 Natalia Gusak, Olena Ivanova, and Nadiia Kabachenko, "Social service commissioning as a financial mechanism for HIV prevention services" (Kyiv, Labor and Health Social Initiatives, 2015).

42 Ibid.

43 Information provided by Andrii Chernyshev, Head of External Communication and Advocacy and Medical Direction of Gay Alliance Ukraine.

3. RECOMMENDATIONS

Legal and Institutional aspect of the national HIV response:

It is important to ensure that key populations and people living with HIV can benefit from state support and social services provided by state and non-state service providers. Towards this end, the following steps could be considered:

- ▶ Policies on state and local funding should consider the needs of key populations and people living with HIV and include them in the areas for funding through social contracting.
- ▶ The commitments of the National HIV Programme should be fully implemented, including the transition to state funding after Global Fund support ends and the launch of social contracting at sub-national level by 2018.
- ▶ It is recommended to continue and further scale-up the involvement of NGOs in providing prevention, treatment, care and support to people living with HIV and key populations.

NGO landscape in Ukraine:

- ▶ There is a need to ensure sufficient, appropriate and predictable state funding opportunities for NGOs at national, sub-national and local levels.
- ▶ It is recommended to review current legislation and define clear criteria and procedures for granting NGOs not-for-profit status, which is a precondition for NGOs to be entitled to tax benefits.
- ▶ It is recommended to promote cooperation between the public authorities and NGOs in the sphere of social service provision. Raising awareness of the capacity and resources of NGOs is important to facilitate the partnership.
- ▶ It is necessary to allocate funds to increase the capacity of potential service provider NGOs and professionalization of their staff.

Social contracting of NGOs for the national HIV response:

- ▶ It is recommended to add more services for key populations and people living with HIV to the

list of social services regulated in the Procedure of Defining the Needs of the Population of Administrative-Territorial Units in Social Services, such as nursing, palliative help and others.

- ▶ The Resolution on the Procedure of Social Contracting from Budget Funds should be revised to allow advance payment for services carried out in the course of social contracting in order to ensure that NGOs have sufficient means to serve the beneficiaries.
- ▶ The analysis of the population's needs in specific social services at sub-national level could be carried out more thoroughly and efficiently.
- ▶ NGOs could more actively cooperate with the local self-government bodies to ensure allocation of budget funds for social services according to need.
- ▶ The community of people living with HIV and key populations should be more involved in the planning and assessment of social contracting.
- ▶ The mechanism of social contracting could be simplified in order to reduce the administrative burden on NGOs (for example, the same documents should not be required every time an NGO participates in social contracting).
- ▶ The service cost threshold determined by legislation, above which the Law on Public Procurements shall apply, could be increased in order to ensure that social contracting is carried out under the Law on Social Services and not under the general public procurements process; also, it is necessary to clarify that the threshold applies to each service separately so that local authorities do not apply the narrow interpretation.
- ▶ There is a need to improve the current quality standards of HIV-related services provision with involvement of civil society.

NGO Social Contracting: Factsheet Ukraine
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