



Anti-Money Laundering Newsletter

GARRIGUES

January 2021

1. Renewal of the Sepblac's Management: nature and functions

On October 30, the change within the management of the Sepblac was formalized. The previous head, who held said office since 2013, Juan Manuel Vega, has been replaced by the former deputy director of the Bank of Spain's General Directorate of Supervision, Pedro Comín. On the occasion of this management change within the Servicio Ejecutivo de la Comisión de Prevención de Blanqueo de Capitales (the Executive Service of the Commission for the Prevention of Money Laundering - Sepblac), we hereby review the nature and functions of Sepblac.

In 1993, 27 years ago, the first law on the prevention of money laundering was enacted ([Law 19/1993, of December 28](#)). It provided for the establishment of the **Commission for the Prevention of Money Laundering** and its supporting bodies: the Secretariat and Executive Service, i.e., the Sepblac. The latter would assume in Spain, the functions of a Financial Intelligence Unit (FIU), and of supervision of the obligations imposed by referred law to the obliged entities. This body took advantage, in its early days, of the '*Servicio Ejecutivo de Vigilancia de las Infracciones al Control de Cambios*' (Executive Service for Surveillance of Exchange Control Infringements) (SVICC) structure, a unit ascribed to the Bank of Spain, in charge of the function of detecting transactions which breached exchange control rules. Members of the National Police Force, Treasury officials and staff of the Bank of Spain, formed part of this body.

Thus, the FIU came into existence in this country, very closely linked to the Bank of Spain. Since its inception, only for the period, 2013-2020, did the Bank of Spain, not assume the management of this body.

Functions of the FIU

The function of the Financial Intelligence Unit is the reception and analysis of transactions suspicious of being related to money laundering or terrorist financing sent by the obliged entities. The most recent legislative amendments have also assigned the FIU, the function of strategic analysis, which aim is to identify trends and threats related to money laundering and terrorist financing. The Sepblac uses the experience and the information available within this body, to determine whether those notified risk factors, constitute reasonable signs for the reported transactions, to be related to these offenses. The intelligence reports that are issued, are then sent to the relevant judiciary, police or administrative authorities in charge of combatting the money laundering and terrorist financing offences, which, for the appropriate cases, will lead to the relevant investigations or the appropriate judiciary proceedings. In other words, Sepblac, as an FIU, carries out the function of supporting the judiciary and police authorities in the investigation and prosecution of offenders.

As a part of the supervising function, the Sepblac assesses whether the obliged entities have effective internal control procedures to prevent their activity being used as means of concealment of illegally obtained funds or to finance terrorist activities.

At European level, the Financial Intelligence Unit usually carries out the analysis function, and the function of evaluating whether the procedures to be implemented by obliged entities for anti-money laundering and terrorist financing purposes, are performed through the activity of sectoral supervising bodies and even professional associations: central banks, securities markets and insurance authorities, etc.

In Spain, assumes FIU and supervisión functions

Our legislation assigns both functions, those of a Financial Intelligence Unit and the relevant supervising functions, to the same body: the Sepblac. This overlap, which is not common, but not unique within Europe –also occurring in the case of Malta-, has been subject of debate.

Should there be a separation of functions?

There is no unanimous view regarding the appropriateness of sharing the information received between two departments of the Sepblac, which activity is not governed by the same objectives. In carrying out the analysis function (FIU), it involves detecting when the received suspicious transactions are confirmed and intelligence reports must be issued to be sent out, whereas, in the case of the supervising function, it is a question of raising the appropriate control standards implemented by the obliged entities and thereby improving the effectiveness of the prevention system as a whole. In other words, in one case information is sought to prosecute the offense and the offender and in the other, it involves improving the control systems of the obliged entities. Two different objectives but ultimately aimed at combatting offenses which, by attacking the foundations of society, provide substantial gains.

Those in favor of the separation of functions also question to what extent the interests of both functions could be confused, leading to punitive consequences due to the breach of certain obligations in the communication of suspicious transactions, in the course of which the entity may have failed to apply some of the mandatory procedural measures.

On the other hand, others consider that the supervising function is enriched by the assessment of content and timeliness in the analyses of suspicious transactions performed by the analysis department of the Sepblac.

The specific function of analysis and management of particularly valuable and sensitive financial information, leads to the requirement of this body to be subject to extreme protection, both, of its own activity, and of the information handled by its professionals, thus ensuring the essential independence with which it must conduct its function of analysis and transmission of information to the State Security Forces. Neither in Spain, nor in any other neighboring country, is there an administrative body independent from the financial intelligence units, with authority to receive, access and manage such abundant and sensitive information, nor do these include professional groups from such diverse bodies as: national police, Guardia Civil, officials of the tax authority, customs, Bank of Spain, Directorate of Insurance or National Securities Market Commission. Having that level of experience is decisive in the proper performance of the functions entrusted by legislation to Sepblac.

Change in the management

In this context, on October 30, the change in the management of the Sepblac was formalized, having the previous manager since 2013, Juan Manuel Vega, replaced by the former Deputy Director of the General Directorate of Supervision of the Bank of Spain, Pedro Comínⁱ, a body which, citing the basic legislation on prevention ([Law 10/2010, of April 28, on prevention of money laundering and the financing of terrorism](#)):

ⁱ Inspector of the Bank of Spain since 1991, Executive Director of FROB (Fund for Orderly Bank Restructuring) from 2012 to 2014 and assistant director general of Supervision of the Bank of Spain from 2014 to 2017. Director of the AIReF (Independent Authority for Fiscal Responsibility) from 2017 to 2019.

“... is a body under the control, institutionally and functionally, of the Commission for the Prevention of Money Laundering and Monetary Infringements, which, through its Permanent Committee, will guide its activity on a permanent basis and shall approve its operating guidelines.

The powers relating to the economic, budgetary and contractual rules of the Executive Service of the Commission shall be exercised by the Bank of Spain in accordance with its specific legislation, the appropriate agreement being signed, for these purposes, with the Commission for the Prevention of Money Laundering and Monetary Infringements.

The employees of the Bank of Spain posted to the Executive Service of the Commission shall maintain their employment relationship with the Bank of Spain, shall report to the Executive Service, and shall be subject to the staff regulations of the Bank of Spain.

The budget of the Executive Department, after its approval by the Commission for the Prevention of Money Laundering and Monetary Infringements, shall be included, duly separated, in the proposed budget of operating expenses and investments referred to in Article 4.2 of Law 13/1994, of June 1, on the Autonomy of the Bank of Spain. Any expenses which must be incurred from the above-mentioned budget shall be paid by the Bank of Spain which shall be compensated for them in the manner indicated in section 5 of this articleⁱⁱ.”

2. Legislation and publications of official bodies

2.1 The EBA publishes an opinion on how to strengthen the connection between the EU legal frameworks for the prevention of money laundering and terrorist financing and deposit protection

The European Banking Authority (**EBA**) has identified how to mitigate the risks of money laundering and terrorist financing during bank failures. In this respect, it has used the results of its evaluations to establish how the EU legal framework should be strengthened so as to permit and improve the effective cooperation between the relevant authorities in relation to Anti-Money Laundering and the Counter Terrorist Financing (**AML/CTF**) and the Deposit Guarantee Schemes (**DGS**), in the period before and during bank failures, where there are concerns about money laundering. The opinion also establishes what the relevant authorities must do to minimize the risk of reimbursing money launderers in the course of DGS payments, including the requirement to guarantee the traceability of funds in such payments. For the moment, until the EU legal framework is changed, the opinion also indicates the kind of information which national authorities must receive from failing credit institutions, and how such authorities must communicate with depositors in such cases.

In its opinion, the EBA assessed how the information regarding the possible risks of money laundering or terrorist financing of depositors is identified and transmitted to DGSs before the latter reimburse depositors. In particular, the EBA assessed how the authorities have cooperated in such cases and how effective such information exchange and cooperation mechanisms have been in real life cases. The EBA also analyzed how depositors, whose

ⁱⁱ The Bank of Spain will send to the Directorate General of the Treasury and Financial Policy. The above-mentioned Directorate, once it has checked that account, will pay it to the Bank of Spain from the nonbudgetary item which is created for these purposes by the Central Public Accounts Office.

payment has been suspended or deferred, or who have been excluded from payment, have been informed of their situation.

More information, [here](#).

2.2 The Presidency of the European Union Council and the European Parliament reach a provisional agreement regarding online terrorist contents

On December 10, the Presidency of the EU Council and the European Parliament reached a provisional agreement on a draft regulation on the dissemination of terrorist content online. In this regard, the EU is working to prevent terrorists from using the Internet to radicalize, recruit and incite violence.

The objective of the legislation is to rapidly eliminate online terrorist content and establish a common instrument for all Member States for such purpose. The proposed rules will apply to hosting service providers that offer services in the EU, whether or not they have their principal establishment in the Member States.

Hosting service providers exposed to terrorist content will be required to adopt specific measures to address the misuse of their services and protect their services from the dissemination of terrorist content. Service providers will have to eliminate or deactivate access to the content within one hour.

The draft legislation establishes a clear uniform definition of 'terrorist content' for the purpose of fully respecting the fundamental rights protected in the EU legal order and, in particular, those guaranteed in the EU Charter of Fundamental Rights.

The competent authorities of the Member States will have the power to issue expulsion orders against service providers, eliminate terrorist content or bar access to it in all the Member States.

The Member States will be responsible for establishing the rules on penalties in the event of infringement of the legislation.

More information, [here](#).

2.3 The European Union Council adopts new rules to improve the fight against fraud

In an effort to protect its financial interests, the EU is strengthening the Community legal framework for such purposes. In this respect, the Council adopted on December 4 last, its position regarding the amendments to the regulation relating to investigations conducted by the European Anti-Fraud Office (OLAF). The objective of the new rules is to ensure fluid cooperation between the OLAF and the European Public Prosecutor's Office, which is expected to come into operation at the beginning of 2021. The agreement reached in the negotiations must be approved by the Parliament.

More information, [here](#).

2.4 The EU interior ministers issue a joint declaration on the recent terrorist attacks in Europe

The EU interior ministers issued a joint declaration on the recent terrorist attacks in Europe (Paris, Dresden, Conflans-Saint-Honorine, Nice, Vienna and elsewhere), reaffirming unwavering unity and solidarity in the fight against all forms of terrorism and conveying messages of condolence to the victims' relatives and friends. They also declared that they will continue to make determined joint efforts against terrorism and their shared belief in human dignity, tolerance, democracy, justice and freedom, including freedom of expression, will not be jeopardized in any way.

More information, [here](#).

2.5 The Spanish Council of Ministers approves the Draft Law to combat Tax Fraud, which must continue its course through Parliament

The Council of Ministers approved, on October 13 last, the Draft Law on Measures to Prevent and Combat Tax Fraud, seeking to combat the new means and formulas of tax fraud, mainly related to new technologies. It will allow the pursuit of misconduct of large multinational companies and the prevention of abusive tax planning.

The draft law also includes new developments which have an impact on the area of prevention of money laundering.

Among the main new developments introduced by said draft, we highlight the following:

- The limit on cash payments for certain business transactions is reduced from 2,500 to 1,000 euros, in relation to transactions in which one of the parties is a business. The 2,500 euro limit is maintained for payments made by private individuals. The cash payment limit is also reduced from 15,000 to 10,000 euros for private individuals that have their tax residence outside Spain.
- A provision is made for the prohibition by law of tax amnesties, which will affect large fortunes and estates. Reference is thereby made to the possible prohibition of any extraordinary tax regularization mechanism involving the reduction of the amount of the tax debt.
- The concept of tax haven is enlarged and updated, which is now known as non cooperative jurisdictions. The draft provides for the inclusion in the list of tax havens those territories which facilitate the existence of overseas companies to attract profits without any real economic activity, those where there is opaqueness and lack of transparency, or territories with which there is no effective exchange of information regarding the beneficial owner of the property or rights, or where there is low or no taxation.
- It aims at greater tax control over cryptocurrencies, the obligation being included to inform of the holding of and operation with virtual currencies, both situated in Spain and abroad if it affects Spanish taxpayers. For this purpose, information will be required regarding balances and holders of currencies in custody. The obligation is also established to supply information regarding transactions of acquisition, transmission, exchange, transfer, collections and payments, with cryptocurrencies. The obligation is also introduced to report on form 720 declaring property and rights abroad, the holding of virtual currencies abroad.

- Council Directive (EU) 2016/1164, of July 12, 2016, laying down rules against tax avoidance practices that directly affect the functioning of the internal market, is transposed. The objective of this legislation is to ensure that companies that move to another country do not cease to pay tax on the tax bases which must be legally taxed in Spain.

After its approval in the Council of Ministers, the Draft Law must follow the usual parliamentary procedure in the Congress and the Senate, where the draft could undergo changes. Therefore, if approved by the majority of both chambers, it will take several months to come into force.

More information, [here](#).

2.6 The EBA publishes the report on risk assessment and the 2020 EU-wide transparency exercise

The European Banking Authority (**EBA**) published its 2020 Risk Assessment Report of the European banking system on Friday, December 11, 2020.

The report is accompanied by the publication of the 2020 EU-wide transparency exercise, which provides detailed information, in a comparable and accessible format, for 129 banks in 26 countries in the European Economic Area and the EU and for six UK banks.

By way of summary and despite the shock of COVID-19, the banks have maintained solid capital and liquidity indexes and have increased their loans to the real economy. However, economic uncertainty persists, profitability is at record low levels and there are several early signs of deterioration in asset quality.

More information, [here](#).

2.7 The EBA publishes an opinion on how prudential supervisors should consider the risks of money laundering and terrorist financing

In the context of the supervisory review and evaluation process (), the banking authority has published an opinion, which forms part of the work in progress **SREP** of the EBA to strengthen the fight against money laundering and the financing of terrorism in Europe.

The EBA expects prudential supervisors to cooperate in an effective and appropriate manner with supervisors engaged in prevention of money laundering and terrorist financing (**PML/TF**) to exchange information regarding the risks arising from this area and to evaluate their effects on the security and solidity of the institution which they supervise. This applies to prudential and PML/TF supervisors which form part of the same competent authority, in the same way as to prudential and PML/TF supervisors of different competent authorities and in cross border situations.

The EBA will include a more detailed guide regarding how prudential supervisors should consider these risks as part of their general SREP assessment in the revised version of the SREP Guidelines which is planned to be published by the end of December 2021.

This opinion is part of the broader work of the EBA to strengthen the link between prudential supervision and PML/FT, and to lead, coordinate and monitor the fight of the EU financial sector in this area.

The EBA has issued this opinion in accordance with Article 29 1 a) of Regulation (EU) no. 1093/2010, which obliges the authority to play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union.

More information, [here](#).

3. Sanctions and judgments

Council of the European Union

3.1 The European Union Council extends sanctions against Venezuela until November 14, 2021

The European Union Council has extended for one year (until November 14, 2021), the EU's sanctions regime against Venezuela.

The decision was taken in the light of the current political, economic, social and humanitarian crisis in Venezuela. These measures are aimed at helping to promote shared democratic solutions to bring political stability to the country and allow it to meet the population's pressing needs.

The measures include an embargo on weapons and equipment for internal repression, as well as a prohibition of travel and freezing of assets of 36 persons included on the list of officeholders that are responsible for human rights violations and/or for undermining democracy and the rule of law.

More information, [here](#).

3.2 The EU renews its sanctions regime against ISIL/Daesh and Al-Qaida until October 31, 2021

The European Union Council has renewed for one year, until October 31, 2021, the EU's sanctions regime against ISIL/Daesh and Al-Qaida and the related list of persons subject to restrictive measures which include the prohibition to travel to the EU and the freezing of assets for a series of individuals, groups and entities. Furthermore, EU persons and entities are forbidden to make funds and economic resources available to those listed. The decision was taken in the light of the current terrorist threat. The EU regime is independent, but complements, the regime which allows the adoption of sanctions at UN level, the EU having managed to independently adopt restrictive measures against ISIL/Daesh and Al-Qaeda, and persons, groups, companies and entities associated with them, since September 2016.

More information, [here](#).

3.3 Seven new Syrian ministers added to the EU sanctions list

The European Union Council imposed, on October 16 last, restrictive measures on the ministers recently appointed in Syria, raising the number of persons subject to sanctions since 2011 in response to the violent repression of the Syrian civilian population. The sanctions imposed by the EU in 2011, which are currently in force, cover different persons and entities, such sanctions being the imposition of travel prohibition and asset freezing measures. It is also aimed at companies and prominent businesspersons that benefit from

their links with the regime and the war economy. They also include the prohibition of the importation of petroleum, restrictions on certain investments, freezing of assets of the Syrian central bank which are kept in the EU, restrictions on the exportation of equipment and technology which could be used for internal repression and of equipment and technology for monitoring or intercepting telephonic or in Internet communications.

More information, [here](#).

3.4 EU chemical weapons sanctions regime is renewed for one year

The EU Council decided, on October 12 last, to renew for one year the sanctions regime for chemical weapons introduced in 2018. Such regime allows the EU to impose restrictive measures on persons and entities involved in the development and use of chemical weapons. The objective is to counteract the proliferation and use of chemical weapons and support their global prohibition, established by the Chemical Weapons Convention, due to the serious threat to international security which they pose, as well as the increase of chemical attacks throughout the world.

Restrictive measures are currently applied to nine persons (five linked to the Syrian regime and four involved in the Salisbury attack using the Novichok toxic nerve agent), and an organization (the Scientific Studies and Research Center (SSRC), as the Syrian regime's principal entity for development of chemical weapons).

The restrictive measures consist of the prohibition of travel to the EU and the freezing of assets for the persons and the entities. EU persons and entities are also forbidden to make funds available to those subject to the sanctions.

More information, [here](#).

3.5 New European regulation on crowdfunding service providers for business

October 7 saw the enactment of [Regulation \(EU\) 2020/1503](#) of the European Parliament and of the Council, of October 7, 2020, on European crowdfunding service providers for business, and [Directive \(EU\) 2020/1504](#) of the European Parliament and of the Council, of October 7, amending Directive 2014/65/EU on markets in financial instruments. By means of those legislative instruments, a series of amendments are introduced for crowdfunding platforms. In relation to Anti-Money Laundering and Terrorist Financing subject matter, (AML/TF), the preamble of such legislation places special emphasis on the need for the various supervising authorities to ensure the integrity of the financial system, by establishing the need to include such entities as obliged entities in relation to AML/TF; this new development was already reflected in the Preliminary Draft of the law amending the current Law 10/2010, of April 28 on prevention of money laundering and terrorist financing.

3.6 The EU adds Anguilla and Barbados to the list of non-cooperative countries and territories for tax purposes and eliminates the Cayman Islands and Oman

As a strategy of the EU to contribute to the efforts aimed at promoting an optimum tax governance worldwide, the list of non-cooperative jurisdictions for tax purposes, which lists the non-EU jurisdictions which fail to comply with a collection of criteria established by the Council in 2016, was established in December 2017 and remains in force at present. Such criteria are related to tax transparency, fair taxation and the application of international rules

against base erosion and profit shifting. The most recent review of this list was in February 2020. From 2020 onwards, it will be updated twice yearly.

Thus, on October 6, 2020 the European Union Council decided to:

- Add Anguilla and Barbados on the EU list of non-cooperative countries and territories for tax purposes.
- Eliminate the Cayman Islands and Oman from the list, having approved the necessary reforms to improve their tax policy framework.
- Eliminate Mongolia, Bosnia and Herzegovina from Annex II of the list (situation of pending commitments), after those countries deposited the instruments of ratification of the OECD Convention on Mutual Administrative Assistance in Tax Matters, as amended.

Following this update, **twelve jurisdictions remain on the list of non-cooperative jurisdictions**: American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

More information, [here](#).

3.7 The Public Treasury publishes the updated quarterly list of risk jurisdictions in relation to money laundering and terrorist financing included in the FATF and EU lists

The Spanish Public Treasury published on November 5 last the updated list of risk jurisdictions in relation to money laundering and terrorist financing included in the FATF (Financial Action Task Force) and EU lists. By that notification, the Commission for the Prevention of Money Laundering and Monetary Infringements reports on the evolution of those jurisdictions which, in accordance with the FATF declaration of October 2020, are not carrying out the necessary measures to protect the integrity of their financial systems within the international framework for the prevention of money laundering and of terrorist financing, and regarding the latest restrictive measures imposed by the European Union on financial and commercial transactions with certain countries.

More information, [here](#).

3.8 Libya: new sanctions for violations of the UN weapons embargo

The European Union Council imposed on October 15 last, a series of specific restrictive measures on a person who participates in acts which pose a threat to the peace, security or stability of Libya and that offers them support, including by violations of the UN arms embargo. The sanctions imposed on this person include the prohibition of travel and asset freezing. EU persons and entities are also forbidden to make funds available to that person. The EU sanctions complement and reinforce the penalties adopted by the UN, which include the arms embargo.

More information, [here](#).

3.9 Use of chemical weapons in the attempted assassination of Alexei Navalny: the EU imposes sanctions on six persons and one entity

On October 15, the European Union Council imposed a series of restrictive measures against six persons and one entity, involved in the attempted assassination Alexei Navalny (a Russian lawyer and politician, considered Vladimir Putin's principal opponent), who was poisoned by a toxic nerve agent of the "Novichok" group, on August 20, 2020 in Russia. The restrictive measures adopted, consist of the prohibition of travel to the EU and asset freezing for the persons and for the entity. EU persons and entities are also forbidden to make funds available to those subject to the sanctions.

The six persons and one entity related to the Navalny case were named as part of the restrictive measures against the proliferation and use of chemical weapons.

More information, [here](#).

3.10 The Spanish Supreme Court rejects the appeal filed by the General Council of Notaries against the Beneficial Ownership Registry

The Supreme Court refused to admit, in an order of last July, the cassation appeal filed by the General Council of Notaries (**CGN**) against Ministerial Order JUS/319/2018, of March 21, approving the new forms for the filling in the Commercial Registry of the financial statements of Entities Obligated to publish them. That order establishes the obligation, of both natura and legal persons, to provide –at the time of filing of their respective financial statements in the Commercial Registry- the relevant data regarding the beneficial ownership of such companies and trusts, except for persons that engage in any of the activities envisaged in section o) of Article 2.1 of the Law on the Prevention of Money Laundering and Terrorist Financing.

The CGN filed an appeal requesting a declaration of nullity of the aforementioned obligation to send to the Commercial Registry the data of the beneficial owners, as a measure for the prevention of money laundering, this appeal being rejected by the '*Audiencia Nacional*', on the grounds that the CGN does not have standing to appeal the Ministerial Order. For this reason, the Spanish Supreme Court, in its minutes of July 22, 2020, refused to admit the cassation appeal filed by the notaries due to lack of sufficient substantiation.

On the other hand, on October 1, 2020, the High Court of Justice of the Madrid region, concluded in its judgement of that same date, the measure of certified destruction of any data and documents that notary's offices have received, by digitalization of the documents identifying the parties in commercial transactions, for the purpose of being included in the base of sole owners parallel to that managed by the Commercial Registry as part of the fight against money laundering.

At present, the preliminary draft to transpose the fifth European Directive on PML/TF, provides for the complementary nature of both databases, although –in accordance with the view of the Ministry of Justice itself- it upholds the official nature of the database managed by the Commercial Registry itself.

4. News

4.1 The Ecofin supports the creation of a supervisor in the EU to combat money laundering

On November 4 last, the Economic and Financial Affairs Council of the European Union (**Ecofin**) supported the creation of a new supervisory body at Community level to strengthen the supervision and surveillance of financial markets, considering the wave of money laundering cases which have affected European credit institutions. The Ecofin is particularly concerned about the increasingly important role played by entities which offer cryptocurrency services, and by credit institutions which operate in the European Union as a whole, advocating widespread reinforcement of the supervision and monitoring of such institutions, and reaffirming the need for a unified European-wide legal framework, in order to prevent legislative differences between Member States from being used in favor of money laundering.

4.2 The Spanish Tax Authority and the '*Audiencia Nacional*' dismantle a ring of managers that evaded funds of 500 Spanish fortunes to Switzerland and Andorra

The Spanish Tax Authority and the '*Audiencia Nacional*' dismantled, on November 8 last, a ring of financial managers who, through the services of a money laundering and tax fraud network, managed to unlawfully conceal the assets of more than 500 Spanish fortunes in countries such as Switzerland and Andorra, through a corporate structure with ramifications in Luxembourg, Cyprus, Ireland and Panama, among other territories. The assets were subsequently repatriated by that organization, through correspondent accounts, cash payments within national territory and transport of shipments of banknotes by road.

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