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THE RIGHT FOCUS

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CORPORATE GOVERNANCE IN THE AGE OF AI AND BIG DATA / WHAT SHOULD COMPANIES BE AWARE OF?

KAROL POŁOSAK

AI and Big Data offer significant opportunities when it comes to supporting companies, their boards, officers and other employees. People and technology working hand in hand can deliver substantial business growth. The capabilities here are definitely broad and the tech industry is not slowing down in terms of development.

However, we should also consider the other side of the coin, namely the considerable legal risks associated with new technologies.

A real-life example of this occurred when an employee used AI to create website materials. It turned out that AI proposed text that was already available on the Internet, and the company was subsequently accused of plagiarism.

Given the above, companies must be careful about allowing the use of new technologies at different levels of the corporate ladder. Relevant internal policies should be developed in close consultation with IT specialists and lawyers. In addition, companies should be sensitive to liability issues in contracts with providers of AI-based solutions.

How do AI and Big Data affect the due diligence process for boards of directors

Due diligence involves the review and assessment of a wealth of documents from different perspectives (for instance: commercial, technical, accounting, tax, legal, etc.). Of course, to a certain extent, boards can assist themselves with the help of external advisors. Nevertheless, it is still the responsibility of the company itself to deal with what can be a considerable amount of data or documents.

Modern software allows scanning by keywords or specific parameters. In addition, AI-based software can tag and profile documents, including: contracts, reports, emails, etc.

This makes it much easier to find specific documents, and can also support and speed up the analysis of large collections, in particular those of a similar nature. For instance, AI-based tools can detect and summarise differences or changes in documents created from templates.

Finally, AI helps automate certain tasks, such as data cleaning, classification, clustering or anomaly detection, allowing for a huge increase in efficiency. This allows board members' time and skills to be used more efficiently.

How do AI and Big Data affect a board's fiduciary duties

Companies should pursue the objectives set by their owners. In the vast majority of cases, a major goal will be to grow the business, generate income and ultimately profits at expected levels, and thereby deliver value to shareholders.

Of course, businesses also have individual goals, follow different business models with different industry specifics, including pricing mechanisms and margin levels. However, every organisation has numerous processes that can be supported by AI and Big Data to achieve greater efficiency and effectiveness.

From the perspective of board members, in addition to pure business operations, it is crucial to manage companies in line with corporate governance rules, to have appropriate compliance procedures in place, and to supervise particular companies' officers subordinated to them.

There is no doubt that AI can streamline processes and automate repetitive tasks, such as keeping meticulous records and ensuring corporate governance or general legal compliance. In this way, AI enables board members to devote more time and resources to their core responsibilities, such as strategic planning and business decision-making.

We also see AI reshaping decision-making processes across industries. The potential here may be limitless. With the ability to process large amounts of data quickly and efficiently, AI can assist directors in making business-related decisions.

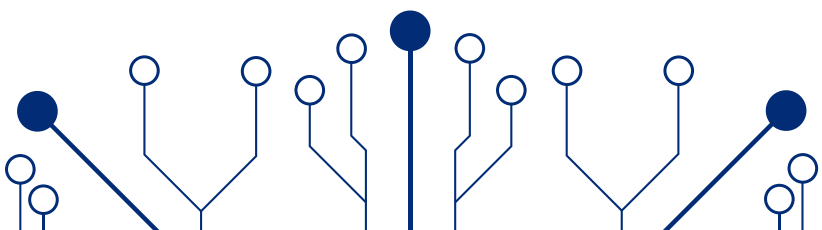
How do AI and Big Data affect communication plans involving shareholders, vendors, etc.

The use of Big Data and AI is definitely changing strategic communication in companies.
It is a truism that today, information is key. At the same time, we are inundated with data. As a result, particular stakeholders expect to be provided with precisely selected data, presented in an easy-to-understand manner, within the agreed or regulatory frequency basis.

It is clear that Big Data and AI have an impact on traditional corporate communication tools, increasing the requirements of particular stakeholders. Companies cannot ignore these demands if they do not want to jeopardise their business models. They therefore need to keep pace with developments in the world of digital technology.

AI is also helping to create interactive data visualisations that make it easier to understand the results of analytics. In addition, AI combined with automation can prepare draft reports to be presented to particular stakeholders, aggregating data from different sources and using agreed templates. Finally, AI can manage the communication process so that deadlines are met and particular stakeholders are satisfied.

In order to maintain a high level of dialogue with them, corporate communication must be based on Big Data and AI. The future of corporate communication will be even more data-driven and automated, and this is something that boards will increasingly need to consider.



LABOUR AND IMMIGRATION LAW / RECENT DEVELOPMENTS, OBLIGATIONS AND INFORMATION
THE UODO REMINDS US / SURVEILLANCE INFORMATION SHOULD BE IN WRITING AND IN A SEPARATE DOCUMENT

ANGELIKA STAŃKO

ELIASZ SAMOJŁOW

Employers who intend to introduce surveillance should, among other things, comply with the obligation on informing their employees.

In practice, this means that, irrespective of video or business email surveillance, employers must:

- Inform employees at least two weeks before introduction, and
- Provide written information on its purpose, scope and application

To date, in order to comply with the above obligations, employers were required to provide employees with work regulations or a notice containing information about the surveillance, and subsequently obtain a written declaration from employees of reading and understanding the regulations and the information about the surveillance.

However, the Personal Data Protection Office (UODO) has clarified that it is not sufficient to make employees aware of the work regulations containing the surveillance information.

Information obligation - What does the UODO say

According to the UODO, employers are obliged to draw up a written notice, separate from work regulations, which employees must sign. Only in this way can the information be considered to have been correctly provided.

The UODO also states that the surveillance information should be differentiated according to the type of surveillance. For example, if an employer uses video and business email surveillance, the information should be provided in two separate documents.

Temporary protection extended for Ukrainians fleeing war

From 22 February 2024, there is a new deadline for recognising the stay of Ukrainian citizens in Poland as legal (temporary protection).

It has been decided that Ukrainian citizens who came to Poland because of armed aggression in their homeland will be able to stay until 30 June 2024 without the need to apply for legalisation of their stay and work.

Employers should be aware, however, that in order to employ Ukrainian citizens legally, they must register them with the District Labour Office within 14 days of signing a contract.

Temporary protection for Ukrainians / What will happen after 1 July

After 1 July 2024, it is likely that there will be a further amendment to the so-called Special Act for Ukrainian Citizens, which will again extend their temporary protection. This is because the Council Implementing Decision (applicable in the EU from October 2023) required Member States to grant temporary protection to displaced persons from Ukraine until at least 4 March 2025.

The question is why, with the latest amendment to the Special Act, the Polish government has extended this deadline only until the end of June this year.

It seems that lawmakers wanted to give themselves more time to prepare a new amendment to the Special Act, both with regard to the extension of temporary protection and other rights currently granted not only to Ukrainians who fled the war, but also to those who came to Poland previously or who declared a completely different purpose for their stay.

Poland Business Harbour visa suspension

Earlier this year, the Ministry of Foreign Affairs announced the suspension of diplomatic missions' participation in the "Poland. Business Harbour" (PBH) scheme. This means that diplomatic missions will no longer issue PBH visas to citizens of the six Eastern European countries covered by the scheme.

The suspension does not mean that the scheme has been abandoned. The Ministry of Foreign Affairs says it needs time to find and implement the right solutions to ensure the proper vetting of foreign nationals applying for PBH visas and foreign businesses participating in the scheme.

It is also possible that the scheme will not be resumed at all, and that certain facilitations for foreign nationals will be introduced in the new legislation (the government is currently drafting a completely new act on the employment of foreign nationals).

So far, the PBH has been heavily criticised for, among other things, allowing a certain group of foreign nationals to obtain documents that were de facto not used for their intended purpose.

From 2020, the PBH functioned as a government scheme to support start-ups, entrepreneurs relocating their businesses to Poland and IT professionals. Participants and their family members were given preferential access to long-term Polish PBH visas, giving them the right to freely take up employment and set up businesses in Poland.

Beneficiaries of the scheme have been citizens of Belarus, Ukraine, Georgia, Moldova, Armenia and Russia.

Until the scheme is resumed or new statutory solutions are introduced for its participants, citizens of the above countries may apply for work visas under the general rules applicable to foreign nationals, i.e. after obtaining a work permit or other official document authorising them to work in Poland.

An exception is made for citizens of Ukraine, who have free access to the Polish labour market and can carry out business activities in Poland under the same conditions as EU citizens, in accordance with the Special Act on Assistance for Ukrainian Citizens.

In addition, citizens of Ukraine, Moldova and Georgia may enter Poland under the visa-free regime and then legalise their further stay, work or business at the relevant offices in our country.

Visa for Pole's Card holders now has a different code

Since the end of January, visas affixed to the passports of Pole's Card holders have displayed a different document issue code, with the '23' code replacing the previous '18'. This seemingly minor change to a provision of the Regulation on Visas for Foreigners is important to ensure the safety of Pole's Card holders in certain countries.

The Pole's Card is a document confirming that a foreigner belongs to the Polish nation. Issued to descendants of Poles and foreign Polish activists, the Pole's Card entitles its holders to obtain long-term Polish visas on preferential terms, free access to the labour market and to start a business. It is a quicker and easier way to settle in our country and obtain citizenship.

Most of these documents have been obtained by citizens of Belarus, and quite a number of Pole's Card holders also live in Russia. It is known that in these countries revealing one's affiliation to the Polish nation can be a security risk, and the use of a passport with a Polish visa with code '18' (code for Pole's Card holders) can arouse excessive interest among Belarusian or Russian service officials.

The code '23', on the other hand, is universal and, as the list of visa cases can be very broad, does not indicate the specific reason for issuing the document. The purpose of this change is to better protect those who have the courage to be Polish in circumstances which are not always favourable.

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DIVIDEND ADVANCES

ADAM CZARNOTA

Limited liability companies often exercise the option to pay dividend advances. This allows shareholders to receive funds before the current accounts have been approved and a profit distribution resolution has been passed.

However – provided, of course, that the company has sufficient funds – it is important to bear in mind the conditions that must be met for dividend advances to be paid.

When can companies pay dividend advances

The first condition for the payment of advances is the authorisation of the management board. This can only be given in the articles of association, which can be tailored to the needs of a particular company – either by using general wording or by specifying the scope of the board's discretion. For example, by limiting the amount of advances.

If no such authorisation is given in the current articles of association, these may be amended. In such a case, a shareholders' resolution is required, which should generally be recorded in the minutes drawn up in the form of a notarial deed (one exception being companies established using model articles of association in the S-24 ICT system). It should be noted that amendments to the articles of association become effective only upon registration in the National Court Register (KRS).

Another condition for payment is that the company's approved accounts for the previous financial year must show a profit.

The company must also have sufficient funds to make the payment and its projected financial results must show the prospect of making a profit for a particular financial year. If they clearly show a loss, no advance can be paid.

Maximum dividend advance

The Companies & Partnerships Code does not allow complete freedom in determining the amount of such advances, providing that an advance may not exceed half of the profits made since the end of the previous financial year, plus any reserve capital created from profits, which the management board may use to make advance payments, less any uncovered losses and treasury shares. Importantly, the articles of association may reduce the maximum advance amount provided for by law.

Before deciding to make the payment, the company's management board must carefully analyse the financial results to ensure that the amount of advances to be paid is in line with the legislation.

Need to repay the advance

Payment should be made with awareness of the risk that the funds may have to be returned to the company. This may be the case if advances have been paid to shareholders in a particular financial year and the company subsequently makes a loss or the profit made was less than the advances paid.

In such a case, shareholders are obliged to repay:

- Full advances – if the company has made a loss
- The part corresponding to the excess of the profit attributable to a shareholder for a particular financial year – if the company's profit is lower than the advances paid

Similarly, shareholders are obliged to repay the advance received if it has not been paid in accordance with the articles of association or the Act.

AMENDMENT TO THE COPYRIGHT AND RELATED RIGHTS ACT / MORE PROBLEMS WITH AI

MATEUSZ OSTROWSKI

BARTŁOMIEJ GALOS

The Government Legislation Centre has announced on its website that the latest draft Act amending the Copyright and Related Rights Act has been submitted to the Standing Committee of the Council of Ministers. The draft does include some of the changes expected by the artistic community, e.g. concerning royalties, however, largely falls short of the expectations of authors. They have therefore sent an open letter to the Prime Minister[1], expressing their concerns and highlighting the main issues for them regarding the conditions for the use of their content, including in the context of machine learning by artificial intelligence.

The signatories of the letter stress that the Act will deprive creators of cultural works of the resources to which they are entitled, thus significantly reducing cultural diversity and media pluralism, and that the proposed changes will strengthen the position of technology tycoons, thereby consolidating their position in the digital market at the expense of indigenous culture.

In addition, authors point out that the proposed Act in its current form contradicts the intentions of Directives of the European Parliament and of the Council (EU) 2019/789[2] and 2019/790[3] of 17 April 2019, the implementation of which has been delayed by three years. Why has the latest draft caused such controversy among authors?

Royalties for authors

This is the latest instalment in the fierce debate on the amendment to the Copyright and Related Rights Act. As a reminder, most of the comments on the previous draft (dated 14 February 2024) focused primarily on royalties.

Both audiovisual and music authors have argued that the current version of Article 70 of the Act is not adapted to the current market situation, as it does not take into account the streaming sector, which is now the fastest growing market.

The draft does partially solve the question of royalties, as the newly added paragraph 5 of Article 70 reads: fair remuneration for making a work available to the public in such a way that anyone can access it from a place and at a time individually chosen by them.

An analogous right is also granted via Article 86 to performers of a musical work or a work comprising text and music. However, this is only a partial solution, as there is still no adequate regulation of the so-called rebroadcasting royalties.[4]

If the proposed rule is enacted, authors will be able to seek remuneration from platforms such as Netflix, HBO Max or Disney+, either on their own or through the relevant collective management organisation.

Taking account of artificial intelligence

The flashpoint for the open letter was the new Article 26(3)(1) which states: It shall be permitted to reproduce disseminated works for the purposes of text and data mining, unless otherwise stipulated by the rightholder.

The previous version read: It shall be permitted to reproduce disseminated works for the purposes of text and data mining, except for the creation of generative models of artificial intelligence, unless otherwise stipulated by the rightholder.

Implementation of the provisions in their previous form would have resulted in incomplete transposition of EU legislation into Polish law.

Some of the concerns of artists about their future in relation to generative artificial intelligence are justified. For this reason, the legislator has introduced an opt-out mechanism that allows the author to control the use of their work in machine learning.

On the other hand, the adoption of the former wording would have led to a decrease in Poland's competitiveness on the artificial intelligence market. Start-ups as well as research centres using AI would have been forced to develop their tools in foreign jurisdictions and, as a result, could have faced difficulties in obtaining the necessary funds for development.

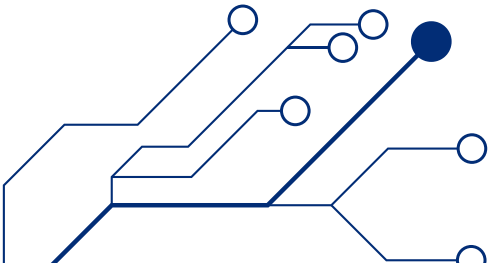
The draft is currently at the assessment stage. Changes can be followed at >>

[1] Open letter to the Prime Minister of the Republic of Poland >> here >>

[2] laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC ("Satellite and Cable Directive II", hereinafter: "SATCAB Directive II")

[3] on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC ("Digital Single Market Directive", hereinafter: the "DSM Directive")

[4] Read more >> here >>



FURTHER OBLIGATIONS FOR TRADERS OF PRODUCTS WITH AN IMPACT ON DEFORESTATION / THE NEW EU REGULATION 2023/1115

MILENA KAZANOWSKA KĘDZIERSKA

ALEKSANDRA PINKAS

From 30 December 2024, the new Regulation 2023/1115 of the European Parliament and of the Council will impose further obligations on traders who place on the market, make available on the EU market or export outside the EU, goods and products that may have an impact on deforestation and forest degradation.

The regulations are designed to address the Union's requirements and objectives for:

- Reducing global deforestation associated with production based on the use of cattle, cocoa, coffee, oil palm, rubber, soya and wood (the full list of regulated commodities and products is set out in Annex 1 to the Regulation)
- Reducing the EU's greenhouse gas emissions
- Increasing the protection of global biodiversity

The Regulation requires traders to demonstrate that the goods and products they place or make available on the EU market or export from the EU, meet all the requirements of the Regulation, including that they:

- Are deforestation-free
- Have been produced in accordance with the relevant legislation of the country of production
- Are covered by a due diligence statement

In practice, it will therefore be necessary to establish and keep up to date a due diligence system, i.e. a framework of procedures and measures that is reviewed and revised at least once a year.

In addition, the addressees of the Regulation will have to submit so-called due diligence statements. This will be done through an IT system to be implemented by the European Commission by 30 December 2024.

The Regulation imposes a number of new reporting and information obligations on companies, and in some cases requires the appointment of a compliance officer or the performance of external audits.

Regulation EU 2023/1115 – rules and penalties

The correct implementation of the new obligations is to be monitored by the competent national authorities. However, Poland has not yet notified the European Commission of the body to be responsible for this, although it should have done so by 30 December 2023.

The Regulation also requires Member States to lay down rules on penalties for infringements, such as:

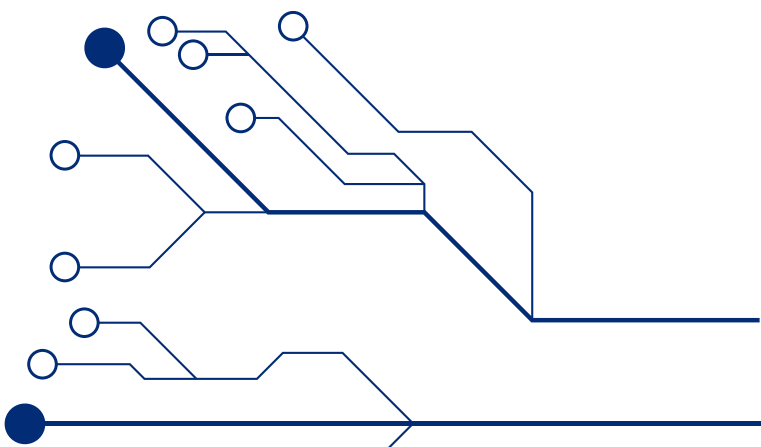
- Fines, the maximum amount of which must be at least 4 % of the company's total annual turnover in the financial year preceding the fining decision
- Confiscation of the products concerned
- Confiscation of revenues gained from transactions involving the products concerned
- Temporary exclusion, for a maximum of 12 months, from public procurement processes and from access to public funding, including tendering procedures, grants and concessions
- In the case of a serious infringement or of repeated infringements, a temporary prohibition from placing or making available on the market or exporting relevant commodities and products;
- In the event of a serious infringement or of repeated infringements, a prohibition from exercising the simplified due diligence

Regulation EU 2023/1115 - Key dates

The new regulations entered into force on 29 June 2023 with the vast majority becoming effective on 30 December 2024.

The Regulation is directly applicable and does not require transposition by Member States. However, it obliges national legislators to adopt, among other things, secondary legislation on penalties and checks. Such legislation has not yet been adopted.

Given the short deadline for compliance with the new rules, it is worth checking now who qualifies as an obligated entity, implementing a due diligence system and, finally, preparing for a possible check. We are here to help.



PODATKI A ZMIANY W KRYPTOŚWIECIE / CZY HALVING BITCOINA ZBIEGNIE SIĘ Z NOWYMI PRZEPISAMI MINISTERSTWA FINANSÓW

JAN JANUKOWICZ

JAKUB DITTMER

The dynamics of tax law are very similar to those of the cryptocurrency world. The impending Bitcoin halving, the Ministry of Finance's announcement of new regulations for crypto-assets, and the PIT settlement for virtual currency trading are just some of the changes that cryptocurrency enthusiasts can expect to see in the coming weeks.

What will the combination of these developments mean for businesses and investors? Let's find out.

30 April 2024 is the deadline for accounting for revenue from the sale of cryptocurrencies

The deadline for accounting for revenue and expenses related to cryptocurrency trading is coming up in the next few weeks. Taxpayers must remember to file their tax returns by the end of April 2024.

It is also worth remembering that if a taxpayer has not received any revenue from the paid disposal of virtual currencies, but has incurred expenses for their purchase, they should declare this in their PIT-38 return, as failure to do so will result in the inability to subsequently deduct such expenses.

It is also important to note that only the following are taxable:

- The exchange of cryptocurrencies for fiat currencies, e.g. the euro, the US dollar or the Polish zloty
- The payment with virtual currency for a service, good or property right that is not a virtual currency
- The payment of debts with cryptocurrencies

When one virtual currency is exchanged for another, the transaction remains tax neutral.

Deductible expenses are those incurred by the taxpayer for the purchase of virtual currency and expenses related to its disposal. The income tax rate on income calculated in this way is 19%.

Will Bitcoin halving coincide with new tax definitions

Bitcoin is the world's most popular cryptocurrency, which operates on a decentralised platform based on blockchain technology. It is worth noting that only 21 million Bitcoins can be mined worldwide.

The halving is a 50% reduction in the reward for Bitcoin mining every four years. Another halving happened in the second half of April 2024, with the reward dropping from 6.25 Bitcoins to 3.125 Bitcoins per 'mined' block.

Interestingly, the upcoming halving may coincide with new cryptocurrency regulations.

Indeed, in February this year, the Ministry of Finance published a draft law that focuses on the implementation of two EU regulations and the creation of a legal basis for the operation of cryptocurrencies. The main objective of the bill is to establish a framework for the effective supervision of this market and investor protection, and also expands the powers of the Polish Financial Supervision Authority (KNF) to supervise crypto.

In the area of taxation, changes to the two income tax acts (PIT and CIT) are also envisaged.

The reference to the Anti-Money Laundering and Counter-Terrorism Financing Act in the definition of 'virtual currency' in the relevant tax acts will be replaced by an autonomous definition. The new wording of Article 4a(22a) of the CIT Act and Article 5a(33a) of the PIT Act will be as follows:

"virtual currency – this means a digital representation of value that is not:

- a legal tender issued by the National Bank of Poland, foreign central banks or other public administration bodies
- an international settlement unit established by an international organisation and accepted by individual countries that are members of or cooperate with that organisation
- electronic money as defined in the Act of 19 August 2011 on payment services (Journal of Laws of 2024, item 30)
- a financial instrument as defined in the Act of 29 July 2005 on trading in financial instruments
- a promissory note or cheque

– but one that may be exchanged for legal tenders and accepted as a means of exchange in the course of commercial transactions, and may also be stored or transmitted electronically, or be the subject of electronic commerce."

As explained by the legislature, the definition has been changed because it was too broad. Importantly, the new definition will not give rise to non-tax regulations.

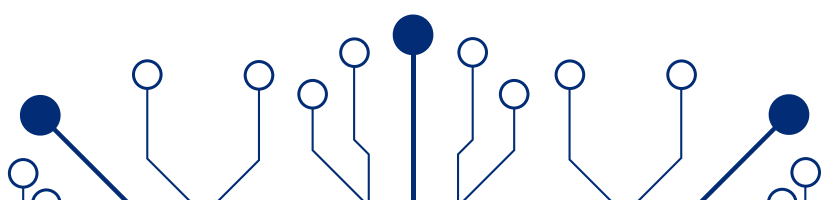
Both acts will also introduce a new definition of 'virtual currency trader'. This will include entities conducting exchanges between currencies and means of payment, or exchanges between virtual currencies.

Public consultations on this are already underway. Although lawmakers are assuring that the new Cryptocurrency Act is intended to maintain the rules of taxation of revenue from the sale of virtual currencies as regards the subject-matter scope applicable prior to the changes introduced by this Act, it remains to be seen how the tax authorities will apply the new changes.

Summary

Taxpayers need to be aware of the upcoming deadline for accounting for revenue and expenses related to cryptocurrency transactions, and the need to file tax returns by the end of April 2024.

The impending Bitcoin halving and changes to tax definitions may also affect the cryptocurrency market. Despite assurances from lawmakers that the rules of taxation will be maintained, public consultations are underway, suggesting that only the subsequent practical application of the new regulations will reveal their true impact on cryptocurrency investors and taxpayers.



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