

□ File No.: PS/00127/2022

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

Of the procedure instructed by the Spanish Agency for Data Protection and based on
to the following

BACKGROUND

FIRST: On September 26, 2022, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against ECOMM
MOVADGENCY S.L. (ecommerzpro) (hereinafter, the claimed party), through the
Agreement transcribed:

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File No.: PS/00127/2022

IMI Reference: A56ID 110924- A61VMN 191822-Case Register 191753

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following

FACTS

FIRST: A.A.A. (hereinafter, the claiming party), dated January 29, 2020,
filed a complaint with the data protection authority of Baden-Wurttemberg
(Germany). The claim is directed against ECOMM MOVADGENCY S.L. with NIF
B87936753, (hereinafter ECOMM). The reasons on which the claim is based are the following:
following:

The complaining party states that they have received commercial communications without
consent: you made a purchase from ECOMM and then objected to their processing
data for commercial purposes by sending a web form and through various

emails addressed to the support service. ECOMM confirmed the cessation of sending communications. However, one month after the last request I kept getting emails. The claiming party indicates that the mail to which they are sending commercial communications is the email of your Paypal account, with which paid for your purchase at ECOMM.

SECOND: Through the "Internal Market Information System" (hereinafter IMI system), regulated by Regulation (EU) No. 1024/2012, of the European Parliament and of the Council, of October 25, 2012 (IMI Regulation), whose objective is to favor cross-border administrative cooperation, mutual assistance between States members and the exchange of information, the aforementioned claim was transmitted on the 20th

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February 2020, and was given a registration date at the Spanish Agency for Data Protection (AEPD) on February 20, 2020. The transfer of this claim to the AEPD is made in accordance with the provisions of article 56 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Physical Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (in the hereinafter, GDPR), taking into account its cross-border nature and that this Agency is competent to act as lead supervisory authority, given that ECOMM has its registered office and unique establishment in Spain.

The data processing that is carried out affects interested parties in various Member states. According to the information incorporated into the IMI System, of

in accordance with the provisions of article 60 of the GDPR, acts as

"Concerned supervisory authority" in addition to the German data protection authority

data from Baden-Wurttemberg, the authorities of Belgium, Italy, France and the authority

German from Lower Saxony. All of them under article 4.22 of the GDPR, given that

Data subjects residing in these Member States are likely to be

substantially affected by the treatment object of this procedure.

THIRD: The AEPD requests on May 11, 2020, through the IMI system, to the

data protection authority Baden-Wurttemberg (Germany) information

information about the claim, at least the advertising email that is

received, the form to oppose receiving advertising and advertising emails

received after such request.

The data protection authority of Baden-Wurttemberg (Germany) asked the

complaining party this information and shared through IMI with the rest of

authorities, on April 7, 2021, the following documentation provided by the

complaining party:

- Copy of email dated November 25, 2019 sent from

help@ecomerzpro.net indicating that you will not receive any further communications

business at the email address from which you wrote, which is

***EMAIL.COM. This email is a reply to an exchange of emails that

occurred between November 22 and 23 in which the claimant requested not to

receive commercial communications in your email ***EMAIL.COM (hereinafter, email

of the complaining party).

- Copy of email dated December 21, 2019, sent by

contact@ecomerzpro.net to the email of the complaining party with several announcements: one

a mask, a drone, a snoring product, a smart watch, some

headphones...

- Copy of mail dated December 22, 2019, sent from the email of the party

complainant to help@ecomerzpro.net, in which the complaining party again requests that commercial communications are not sent to you.

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- Copy of mail dated January 27, 2020, sent from the email

contact@info.comerzpro.net to the email of the complaining party, with content promo about a smart voice translator.

- Copy of mail dated January 28, 2020, sent from the email of the party

complainant to help@ecomerzpro.net, in which he again requests that they not be sent commercial communications.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

2016/679 of the GDPR, and in accordance with the provisions of Title VII, Chapter I,

Second section, of the Organic Law 3/2018, of December 5, Protection of

Personal Data and guarantee of digital rights (hereinafter, LOPDGDD),

having knowledge of the following points:

In response to a request for information from this Agency, dated December 30,

September 2021, ECOMM provides, among other things, the following information:

1. Indication that the data that ECOMM has of the complaining party was obtained

as a consequence of buying a watch in your online store, in which the part

claimant filled out a web form where he provided the email

***EMAIL.COM and selected a checkbox to consent to sending

of commercial communications.

2. Transcription of the data that ECOMM has saved in relation to the email of

the complaining party, which are the name and surname and postal address, the number of

telephone number ***TELEPHONE.1 (hereinafter, telephone number of the complaining party) and a

PayPal transaction number.

3. Screenshot of ECOMM information systems reflecting the

interactions between the complaining party and ECOMM to complete the purchase

made by the complaining party, which includes the following communications:

- email sent to the email of the complaining party on November 21

2019 on his purchase order for an "eWatch".

- SMS sent to the telephone of the complaining party in which the purchase is confirmed

of the "eWatch" on November 21, 2019, later sent to the email

previous email.

- email sent to the email of the complaining party on November 25

of 2019 indicating that your order is on its way.

4. Copy of the purchase invoice for the watch dated November 21, 2019, in the

that the complaining party appears as a client.

5. Indication that they received an email from the complaining party on the 22nd of

November 2019 requesting not to receive commercial communications; That

proceeded to cancel the sending of commercial communications to the complaining party,

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that it is a process that was carried out manually; and on November 25

He replied indicating that he would no longer receive commercial communications.

6. Indication that, on January 28, 2020, they received an email from the complaining party in which he complains that he continues to receive emails despite having confirmed that he was unsubscribed from sending commercial communications. AND Provide a copy of this email. They indicate that, at that time, he returned to perform a database check to verify that the field authorization to send commercial communications was canceled and simulated a commercial shipment to verify that the email of the complaining party was not included in the shipment; which was verified.

7. Indication of the way to unsubscribe from receiving communications commercials has been modified so that it does not depend on human errors; of this Similarly, since January 2020, a website has been implemented to be able to give unsubscribes clients from receiving commercial communications in a manner automatic. Screenshots of this website are provided showing how a user can be unsubscribed in all notifications.

SIGNIFICANT EVIDENCE FOR THE GRADUATION OF THE SANCTION:

Duration of the possible infraction: there is evidence of two communications commercial after the cancellation confirmation, on December 21, 2019 and on the 27th January 2020.

Recidivism due to the commission of infractions of the same nature as the facts in issue: There is no evidence that proceedings have been resolved for violations of ECOMM.

Nature and amount of damages caused: sending two emails commercial after the deregistration has been confirmed.

Financial benefits obtained or losses avoided through the events in

question: They are not appreciated.

Total annual global business volume: According to consultation carried out in

<https://monitoriza.axesor.es/> on January 11, 2022, ECOMM sales

MOVADGENCY SL in the year 2018 were 1,600,850 euros and had 8

employees.

The entity has diligently regularized the situation: They indicate that, after receiving the

email from the complaining party reporting the incident, they resolved it.

The conduct of the affected party could have led to the facts in question: No.

ECOMM has spontaneously admitted its guilt: It has recognized that it

produced a human error.

FIFTH: On March 25, 2022, the Director of the AEPD signed a

Proposal for a draft decision to initiate disciplinary proceedings. Following

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the process established in article 60 of the GDPR, on March 30, 2022

transmitted through the IMI system this proposal for a draft decision as

informal consultation and concerned authorities were made aware that they had four

weeks from that time for comment.

SIXTH: On May 30, 2022, the Director of the AEPD adopted a project

decision to initiate disciplinary proceedings. Following the established process

in article 60 of the GDPR, on June 8, 2022 it was transmitted through the IMI system

this draft decision and the authorities concerned were informed that they had

four weeks from that time to raise pertinent objections and motivated. Within the term for this purpose, the control authorities concerned shall not presented pertinent and reasoned objections in this regard, for which reason it is considered that all authorities agree with said draft decision and are linked by it, in accordance with the provisions of section 6 of article 60 of the GDPR.

This draft decision, which was notified in accordance with the rules established in the Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (LPACAP) by means of electronic notification, it was not collected by ECOMM within the period of availability, understanding rejected in accordance with the provisions of article 43.2 of the LPACAP on the 10th of June 2022, as stated in the certificate in the file.

Although the notification was validly made by electronic means, assuming that carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under information, a copy was sent by postal mail, which was duly notified in dated July 21, 2022. In said notification, he was reminded of his obligation to interact electronically with the Administration, and were informed of the media of access to said notifications, reiterating that, in the future, you will be notified exclusively by electronic means.

FUNDAMENTALS OF LAW

Competition and applicable regulations

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In accordance with the provisions of article 58.2 and 60 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and the free circulation of these data (GDPR), and as established in articles 47,

48.1, 64.2 and 68.1 and 68.2 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD) is competent to initiate and resolve this procedure the Director of the Agency Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions

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regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

previous questions

In the present case, in accordance with the provisions of article 4.1 and 4.2 of the GDPR, consists of the processing of personal data, since ECOMM

carries out the collection of, among others, the following personal data of natural persons:

name and surname, address and email, among other treatments.

ECOMM carries out this activity in its capacity as data controller, given

who is the one who determines the purposes and means of such activity, by virtue of article 4.7 of the

GDPR. In addition, it is a cross-border processing, since ECOMM is

established in Spain, although it provides services to other countries of the European Union.

The GDPR provides, in its article 56.1, for cases of cross-border processing,

provided for in its article 4.23), in relation to the competence of the authority of

main control, that, without prejudice to the provisions of article 55, the authority of control of the main establishment or of the only establishment of the person in charge or of the

The person in charge of the treatment will be competent to act as control authority for the cross-border processing carried out by said controller or commissioned in accordance with the procedure established in article 60. In the case examined, as has been stated, ECOMM has its only establishment in Spain,

Therefore, the Spanish Agency for Data Protection is competent to act as main supervisory authority.

For its part, article 21 of the GDPR regulates the right to oppose the processing of personal data.

personal.

II

Opposition right

Article 21 "Right of opposition" of the GDPR establishes:

"(...)

2. When the processing of personal data is intended for direct marketing data, the interested party will have the right to oppose at all times the processing of the data.

personal data concerning you, including profiling to the extent that is related to said marketing.

3. When the interested party opposes the treatment for direct marketing purposes, personal data will no longer be processed for said purposes.

4. At the latest at the time of the first communication with the data subject, the right-

The fact indicated in sections 1 and 2 will be explicitly mentioned to the interested party and

It will be presented clearly and apart from any other information.

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5. In the context of the use of information society services, and not

Notwithstanding the provisions of Directive 2002/58/EC, the interested party may exercise their right

Chosen to oppose by automated means that apply technical specifications.

(...)”

In the present case, the complaining party had requested that it be stopped from sending

advertising through your email on four separate occasions, without

ECOMM would have correctly accommodated such requests up to the fourth time. on the 22nd of

November 2019 ECOMM sent a marketing mail to the complaining party and that

On the same day, the claimant requested not to receive any more publicity in his email.

electronic. On November 23, 2019, the claimant again requested not to receive

more advertising. On November 25, 2019, ECOMM communicates to the complaining party

that he was not going to receive any more publicity in his mail. However, on December 21,

2019 ECOMM again sent an advertising mail to the complaining party, who the

December 22, 2019, you asked ECOMM to stop sending you advertising. By

Last, on January 27, 2020, ECOMM sent an advertising mail to the party

claimant, who on January 28, 2020 requested ECOMM to stop sending

advertising.

Therefore, according to the evidence available at this time

agreement to initiate disciplinary proceedings, and without prejudice to what results from

the instruction, it is considered that the known facts could constitute a

infringement, attributable to ECOMM, for violation of article 21 of the GDPR.

Classification of the infringement of article 21 of the GDPR

IV.

If confirmed, the aforementioned infringement of article 21 of the GDPR could lead to the

commission of the offenses typified in article 83.5 of the GDPR that under the

The heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

total annual global business volume of the previous financial year, opting for

the highest amount:

(...)

b) the rights of the interested parties in accordance with articles 12 to 22; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law".

For the purposes of the limitation period, article 72 "Infractions considered very

serious" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679,

are considered very serious and will prescribe after three years the infractions that

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a substantial violation of the articles mentioned therein and, in particular, the

following:

(...)

k) The impediment or the obstruction or the repeated non-attention of the exercise

of the rights established in articles 15 to 22 of Regulation (EU)

2016/679 (...”).

Penalty for violation of article 21 of the GDPR

V

For the purposes of deciding on the imposition of an administrative fine and its amount,

In accordance with the evidence available at the present time of

agreement to start disciplinary proceedings, and without prejudice to what results from the

instruction, it is considered that the balance of the circumstances contemplated in the

Article 83.2 of the GDPR and 76.2 of the LOPDGDD, with respect to the offense committed

by violating the provisions of article 21 of the GDPR, it allows initially setting a

penalty of €1,000 (one thousand euros).

SAW

imposition of measures

If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of

adequate measures to adjust its performance to the regulations mentioned in this

act, without prejudice in accordance with the provisions of the aforementioned article 58.2 d) of the

GDPR, according to which each control authority may "order the person responsible or

processor that the processing operations comply with the

provisions of this Regulation, where applicable, in a certain way

and within a specified period...”. The imposition of this measure is compatible with

the sanction consisting of an administrative fine, according to the provisions of art. 83.2 of the

GDPR.

Likewise, the measures that could be adopted in the resolution that puts an end to the

procedure, in relation to the exercise of rights, will be applicable in all

the countries of the European Union in which ECOMM operates.

It is noted that not meeting the requirements of this body may be

considered as an administrative offense in accordance with the provisions of the GDPR,
classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the
opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against ECOMM MOVADGENCY

S.L., with NIF B87936753, for the alleged violation of Article 21 of the GDPR,

typified in Article 83.5 of the GDPR.

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SECOND: APPOINT as instructor R.R.R. and, as secretary, to S.S.S.,

indicating that any of them may be challenged, if applicable, in accordance with the

established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the

documentation from IMI that has given rise to the previous actions of

investigation, as well as the documents obtained and generated by the Subdirectorate

General of Data Inspection in the actions prior to the start of this

disciplinary procedure and documentation from IMI on the project

decision.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of Public Administrations, the

sanction that could correspond would be, for the alleged violation of article 21 of the GDPR, typified in article 83.5 of said regulation, administrative fine of amount 1,000.00 euros.

FIFTH: NOTIFY this agreement to ECOMM MOVADGENCY S.L., with NIF B87936753, granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations must provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

Pursuant to article 85 of the LPACAP, a proceeding disciplinary measure, if the offender acknowledges his responsibility, the problem may be resolved procedure with the imposition of the appropriate sanction.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 800.00 euros, resolving the procedure with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 800.00 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount

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in the previous paragraph may be done at any time prior to the resolution. In

In this case, if both reductions were to be applied, the amount of the penalty would remain set at 600.00 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (800.00 euros or 600.00 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency in the bank CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it receives.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the

date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

In compliance with articles 14, 41 and 43 of the LPACAP, it is noted that, as regards

successively, the notifications that are sent to you will be made exclusively in a

electronically by appearance at the electronic headquarters of the General Access Point of

the Administration or through the only Authorized Electronic Address and that, if not

access them, their rejection will be recorded in the file, considering the

processing and following the procedure. You are informed that you can identify before this

Agency an email address to receive the notice of commissioning

provision of notices and that failure to follow this notice will not prevent

that the notification is considered fully valid.

Finally, it is noted that in accordance with the provisions of article 112.1 of the

LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

935-110422

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SECOND: On October 25, 2022, the claimed party has proceeded to pay

of the sanction in the amount of 600 euros making use of the two reductions

provided for in the initiation Agreement transcribed above, which implies the

recognition of responsibility.

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THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter, LPACAP), under the heading "Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature but the inadmissibility of the second, the voluntary payment by the presumed perpetrator, in any moment prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of at least 20% of the amount of the proposed penalty, these being cumulative among themselves. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or resource against the sanction.

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The percentage reduction provided for in this section may be increased according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure PS/00127/2022, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to ECOMM MOVADGENCY S.L. (ecommercezpro).

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-Administrative Jurisdiction, within a period of two months from the

day following the notification of this act, as provided for in article 46.1 of the

referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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