



Regulatory Radar

Newsletter on regulation for the financial services industry

Regulatory highlights

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1. A vote to leave the European Union (EU)

On 23 June the UK has voted to leave the EU. Uncertainty in financial markets and among the business community is understandably very high. Today, there are many more unknowns than knowns – especially about how financial services firms operating in the UK will access and trade with the EU's Single Market in future. You can find more information on this topic in the [regulatory briefing by our EMEA Centre for Regulatory Strategy of 24 June 2016](#).

2. European Commission (EC) publishes legislative acts on MiFID II and MiFIR delay

As already announced in the Regulatory Radar of May 2016, the Council adopted on 17 June 2016 the final legislative acts on the

MiFID II and MiFIR delay. On 30 June the [Directive](#) and the [Regulation](#) enacting the one-year delay to the new rules on markets in financial instruments were published in the Official Journal (OJ). As a result, MiFID II and MiFIR will now become applicable as of 3 January 2018, with Member States having to transpose MiFID II into national legislation by 3 July 2017.

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Normative documents

European Commission (EC)

EC publishes extension of the transitional periods related to own funds requirements for exposures to central counterparties

On 8 June the [Commission Implementing Regulation \(EU\) 2016/892 of 7 June 2016 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulation \(EU\) No 575/2013 and Regulation \(EU\) No 648/2012 of the European Parliament and of the Council](#) was published in the OJ.

This implies an extension of the transitional periods by an additional 6 months until 15 December 2016.

EC publishes Implementing Technical Standards (ITS) with regard to the form and the content of the description of group financial support agreements

On 10 June the [Commission Implementing Regulation \(EU\) 2016/911 of 9 June 2016 laying down ITS with regard to the form and the content of the description of group financial support agreements in accordance with Directive 2014/59/EU of the European Parliament \(EP\) and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms](#) was published in the OJ. This Regulation contains the rules for group financial support agreements to provide financial support among a Union parent institution and its subsidiaries in other Member States or third countries that are institutions or financial institutions covered by the consolidated supervision of the parent undertaking. The Regulation will enter into force on 30 June 2016.

EC publishes ITS with regard to the uniform formats, templates and definitions for the identification and transmission of

information by competent authorities and resolution authorities to the European Banking Authority (EBA)

On 17 June the [Commission Implementing Regulation \(EU\) 2016/962 of 16 June 2016 laying down ITS with regard to the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the EBA according to Directive 2014/59/EU \(Bank Recovery and Resolution Directive, BRRD\) of the EP and of the Council establishing the framework for the recovery and resolution of credit institutions and investment firms](#) was published in the OJ. These ITS include three reporting templates which shall be used by competent authorities and resolution authorities for the purposes of reporting under Article 4 of the BRRD. This Regulation will enter into force on 7 July 2016.

EC publishes 4 Regulatory Technical Standards (RTS) and ITS supplementing Market Abuse Regulation (MAR)

In June the EC published four Delegated Regulations and one Implementing Regulation setting out technical standards supplementing MAR in the OJ. All the Regulations apply from 3 July 2016. More specifically, this regards following Regulations:

- [Commission Delegated Regulation \(EU\) 2016/909](#) of 1 March 2016 with regard to RTS on the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications, published in the OJ on 10 June 2016.
- [Commission Delegated Regulation \(EU\) 2016/1052](#) of 8 March 2016 with regard to RTS on the conditions applicable to buy-back programmes and stabilisation measures, published in the OJ on 30 June 2016.
- [Commission Delegated Regulation \(EU\) 2016/957](#) of 9 March 2016 with regard to RTS for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions, published in the OJ on 17 June 2016.
- [Commission Delegated Regulation \(EU\) 2016/958](#) of 9 March 2016 with regard to RTS for the technical arrangements for objective presentation of investment recommendations or either information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflict of interest, published in the OJ on 17 June 2016.
- [Commission Implementing Regulation \(EU\) 2016/959](#) of 17 May 2016 laying down ITS for market soundings with regard to the systems and notifications templates to be used by disclosing market participants and the format of the records in accordance with MAR, published in the OJ on 17 June 2016.

Financial Services and Markets Authority (FSMA)

Entry into force of the modified market rules of the regulated markets organized by Euronext NV/SA

On 6 June the [new market rules of Euronext Brussels](#) entered into force. These rules were approved by the FSMA on 19 January 2016.

FSMA approves the modified market rules of Alternext Brussels and of the regulated markets organized by Euronext NV/SA

On 29 June 2016 the FSMA announced that in accordance with Article 2 of the Royal Decree of 21 August 2008 on the rules for certain multilateral trading facilities, it approved [the modified market rules of Alternext Brussels](#). These market rules entered into force on 3 July 2016.

On the same day, [the modified market rules of the regulated markets organized by Euronext NV/SA](#) (namely Euronext Brussels and the Euronext Brussels Derivative Instruments Market) were approved by the FSMA in accordance with Article 5, § 3, of the Law of 2 August 2002 on the supervision of the financial sector and the financial services. These market rules were published on 1 July 2016 and entered into force on 3 July 2016.

Consultative or informative documents

Committee on Payments and Market Infrastructures (CPMI) & International Organisation of Securities Commissions (IOSCO)

CPMI-IOSCO releases guidance on cyber resilience for financial market infrastructures

On 29 June the CPMI and IOSCO jointly released the final report "[Guidance on cyber resilience for financial market infrastructures \(FMI\) Cyber Guidance](#)". This Cyber Guidance is the first internationally agreed guidance on cyber security for the financial industry. It has been developed against the backdrop of a rising number of cyber-attacks against the financial sector and in a context where attacks are becoming increasingly sophisticated. The Cyber Guidance aims at enhancing the ability of FMIs to pre-empt cyber-attacks, respond rapidly and effectively to them, and achieve faster and safer target recovery objectives if the attacks succeed.

European Banking Authority (EBA)

EBA publishes final draft RTS on assigning risk weights to specialised lending exposures

On 13 June EBA published its [RTS on assigning risk weights to specialised lending exposures](#) specifying how institutions should take into account and treat several factors when assigning risk weights to specialised lending exposures. The purpose of these RTS is to harmonise the assignment of risk weights to specialised lending exposures for institutions that apply the so called 'supervisory slotting criteria' approach. These final draft RTS will be part of the Single Rulebook aimed at enhancing regulatory harmonisation in the banking sector in Europe.

European Commission (EC)

EC proposes to incorporate European Supervisory Authorities into the Agreement on European Economic Area (EEA Agreement)

On 2 June the EC adopted a [proposal for a Council decision on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning amendments to Annex IX \(financial services\) to the EEA Agreement](#). In order to ensure the requisite legal security and homogeneity of the Internal Market, the EEA Joint Committee is set to integrate all

the relevant EU legislation into the EEA Agreement as soon as possible after its adoption.

EC consults on the evaluation of the financial conglomerate Directive

On 9 June the EC published a [public consultation on the evaluation of the financial conglomerate Directive \(FICOD\)](#). The Commission is evaluating the performance of the FICOD as implemented to date within the framework of the regulatory fitness and performance program. The purpose of the evaluation is to assess whether the current FICOD regulatory framework is proportionate and fit for purpose, and delivering as expected considering its objective of identifying and managing risks that are inherent to financial conglomerates to ensure financial stability. The purpose of the consultation is to gather evidence on the performance of FICOD. The consultation runs until 20 September 2016.

EC adopts draft Delegated Regulation on central clearing for interest rate derivatives

On 10 June the EC adopted the draft [Commission Delegated Regulation supplementing Regulation \(EU\) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation](#). The Delegated Regulation requires mandatory clearing of certain over-the-counter interest rate derivative contracts denominated in specific European currencies to be cleared through central counterparties. The clearing obligations will enter into force subject to scrutiny by the European Parliament and the Council of the EU and will be phased in over three years to allow additional time for smaller market participants to comply.

European Central Bank (ECB)

ECB publishes disclosure report on TARGET2 assessment against the principles for financial market infrastructures

On 30 June the ECB published a [disclosure report](#) on TARGET2 assessment against the principles for financial market infrastructures. This is the first time that TARGET2 has been assessed against [Regulation of the ECB \(EU\) No 795/2014 of 3 July 2014 on oversight requirements for systemically important payment systems \(ECB/2014/28\)](#), also known as the SIPS Regulation. Previously, TARGET2 had only been assessed against the "Core Principles for Systemically Important Payment Systems" and "Business Continuity Oversight Expectations". The report is an accurate reflection of the assessment of TARGET2 against the SIPS Regulation as of 1 April 2016.

European Securities and Markets Authority (ESMA)

ESMA publishes discussion paper on distributed ledger technology

On 2 June ESMA published a [discussion paper](#) on distributed ledger technology (DLT). With this paper, ESMA is seeking feedback from stakeholders on the possible use of DLT in securities markets, its potential benefits and the risks that such broader use may pose. The consultation will help ESMA to assess the opportunities and challenges posed by DLT from a regulatory standpoint and form an opinion on whether a specific regulatory response to the use of this technology in securities markets is needed. Comments can be submitted until 2 September 2016.

ESMA publishes updated Q&A on European Markets Infrastructure Regulation (EMIR)

On 6 June ESMA published an update to its [Q&A on practical questions regarding EMIR](#). The update adds questions and answers in relation to the clearing obligation, specifically about the self-categorisation that is necessary in order to establish which counterparties belong to which categories. The Q&A also provides clarifications on how counterparties should handle the situation where some of their counterparties have not provided the information on the category they belong to.

ESMA publishes its 2015 annual report

On 15 June ESMA published its [2015 annual report](#), which describes the key accomplishments by ESMA in 2015. Looking back at the first five years of existence and specifically at 2015, ESMA has made significant steps in realising its mission of enhancing investor protection and promoting stable and orderly financial markets through a variety of means, namely assessing risks to investors, markets and financial stability, creating a single rulebook, promoting supervisory convergence and supervising credit rating agencies and trade repositories. The main focus of the first five years has been the implementation of the regulatory and supervisory changes in order to ensure a more resilient financial system. By doing this, ESMA has become a widely recognized EU markets regulator and it continues to build and strengthen this position through its various work streams.

Financial Services and Markets Authority (FSMA)

FSMA publishes its 2015 annual report

On 17 June the FSMA published its 2015 annual report ([NL/FR](#)). The annual report looks back on the first five years of the FSMA's existence and provides explanations concerning the FSMA's activities within each of its fields of competence. These fields are: supervision of information disseminated by companies, product supervision, supervision of compliance with the conduct of business rules, supervision of market operators, credit providers and intermediaries, supervision of supplementary pensions, and financial education. The main focus in the presentation of the annual report are the inspections and mystery shopping campaigns carried out and the newly conducted sanction policy.

FSMA creates FinTech portal

On 17 June the FSMA published a communication ([NL/FR](#)) on its newly opened FinTech portal ([NL/FR](#)). The FSMA recognizes FinTech as one of the major themes of its activities in 2016, and aims to improve the communication with FinTech companies through this portal.

Furthermore, the FSMA also takes up a leading role on a European level by presiding the Financial Innovation Standing Committee (FISC) of ESMA. The FISC advises ESMA on the drafting of guidelines, product intervention and regulatory actions in order to prevent improper innovation from having a detrimental impact on financial stability or consumers.

Credit institutions and investment firms

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Normative documents

European Commission (EC)

EC publishes Delegated Regulation on the circumstances under which exclusion from the application of write-down or conversion of powers is necessary under the Bank Recovery and Resolution Directive (BRRD)

On 1 June the [Commission Delegated Regulation \(EU\) 2016/860 of 4 February 2016 specifying further the circumstances where exclusion from the application of write-down or conversion powers is necessary under Article 44 \(3\) BRRD](#) was published in the OJ. Article 44 (3) [BRRD](#) details in which cases the resolution authority may exclude or partially exclude certain liabilities from the application of the write-down or conversion powers. The Delegated Regulation entered into force on 21 June.

EC publishes Regulation on exemptions for commodity dealers

On 29 June the EC published [Regulation \(EU\) 2016/1014 of the European Parliament and of the Council of 8 June 2016 amending Regulation \(EU\) No 575/2013 as regards exemptions for commodity dealers](#) in the OJ. Under the existing regime commodity dealers are exempt from the requirements for large exposures and from own funds requirements imposed on investment firms until 31 December 2017. After this date, commodity dealers will become subject to those requirements which could force them to significantly increase the amount of own funds that they need to have in order to continue their activities and could therefore increase the related costs of performing such activities. The Regulation on exemptions for commodity dealers therefore establishes a new date, i.e. 31 December 2020, until which the exemptions for commodity dealers will continue to apply. This Regulation will enter into force on 19 July 2016.

National Bank of Belgium (NBB)

Publication of the Royal Decree (RD) on NBB rules concerning the recognition of macroprudential measures

On 9 June the [RD of 20 May concerning the approval of the rules of the NBB concerning the recognition of macroprudential measures](#) was published in the Belgian Official Journal. The RD implements recommendations [2015/1](#) and [2015/2](#) of the

European Systemic Risk Board (ESRB) and concerns the recognition of three types of measures taken in another Member State under the fourth [Capital Requirements Directive](#) (CRD IV) and [Regulation](#) (CRR):

- National measures taken under article 458 CRR to counteract macroprudential or systemic risks;
- Countercyclical buffer rates greater than 2,5%;
- Buffers for macroprudential or systemic risks.

Consultative or informative documents

European Central Bank (ECB)

ECB report on governance and risk appetite framework of euro area banks

On 21 June the ECB published a [report summarizing the findings of a thematic review in which the ECB evaluated the governance and risk appetite frameworks of the banks it directly supervises](#). The report identifies good practices and concludes that many euro area banks still need to improve to reach best international practices. The review, which applied a harmonized approach, led to concrete supervisory follow-up actions, defined areas for subsequent on-site inspections, and identified issues to be included in the supervisory review and evaluation process. The report also calls on banks to develop and establish a comprehensive risk appetite framework to help strengthen risk awareness and support a sustainable business model.

European Securities and Markets Authority (ESMA)

ESMA publishes updated Q&A on Contracts for Difference (CFDs) and other speculative products

On 1 June ESMA published an update to its [Q&A on CFDs and other speculative products](#). The update added a new Q&A regarding conflicts of interest arising from business models where firms offer speculative products to retail investors.

Investment products and asset management

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European Commission (EC)

EC has adopted a Delegated Act supplementing the PRIIPs Regulation

On 30 June 2016, the EC has adopted the [Commission Delegated Regulation \(EU\) of 30 June 2016 supplementing Regulation \(EU\) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products \(PRIIPs\) by laying down RTS with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents](#). The Delegated Act introduces RTS specifying the exact contents and underlying methodology of the so-called Key Information Document (KID) that will have to be provided to retail investors when they buy certain investment products as of 31 December 2016. In terms of information to be provided, the KID must outline the product's aims, how risky it is, when investors can get their money back, how much it costs and its expected returns. All of this information must be set out in a standard way, regardless of the type of investment product. The European Parliament and Council now have a two-month scrutiny period, which they can extend for a further month. The Regulation will apply from 31 December 2016.

Consultative or informative documents

European Commission (EC)

EC consults on cross-border distribution of investment funds

On 2 June the EC has launched a [consultation: Capital Markets Union Action on cross-border distribution of funds](#). The consultation aims at identifying the main barriers to the cross-border distribution of investment funds in order to increase the proportion of funds marketed and sold across the EU. Greater cross-border distribution allows funds to grow and become more efficient, allocate capital more efficiently across the EU, and compete within national markets to deliver better value and greater innovation.

EC publishes Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds

On 29 June 2016 the [Regulation \(EU\) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation \(EU\) No 596/2014](#) was published in the OJ. This Regulation introduces a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the Union. This Regulation thereby contributes to the proper functioning of the internal market while achieving a high level of consumer and investor protection. The Regulation entered into force on 30 June 2016.

European Securities and Markets Authority (ESMA)

ESMA publishes updated Q&A on the application of Alternative Investment Fund Managers Directive (AIFMD)

On 1 June ESMA published an update to its [Q&A on AIFMD](#). The Q&A adds a new question on requirements regarding the domicile of EU Alternative Investment Funds (AIFs) which are marketed in the home Member State of the AIF Manager, as well as a new question relating to the marketing of EU feeder AIFs which have a non-EU master AIF. The Q&A also contains two new questions regarding the influence that committed capital can have on the calculation of the total value of assets under management and additional own funds.

ESMA issues RTS for European Long-Term Investment Funds (ELTIF)

On 8 June ESMA published its [final report and draft RTS for ELTIF](#). These RTS have been submitted to the European Commission for endorsement. Within three months from the date of submission, the European Commission should take a decision on final endorsement of the RTS.

Financial Services and Markets Authority (FSMA)

FSMA publishes a procedure on the electronic transmission of documents

On 22 June 2016 FSMA published a procedure ([NL/FR](#)) on the electronic transmission of documents to the FSMA by undertakings for collective investment such as:

- Final documents requested in the enforcement letters of the executive committee;
- Final documents requested in the letters regarding the updates of prospectuses and KIIDs; and
- Yearly and half-yearly reports.

International Capital Markets Association (ICMA)

ICMA updates Green Bond Principles (GBP)

On 16 June ICMA published the [2016 edition of the GBP](#). Green Bonds enable capital-raising and investment for new and existing projects with environmental benefits. While the 2016 update of the GBP continues to be framed by the same four core components (use of proceeds, process for project evaluation and selection, management of proceeds and reporting), a particular effort has been made to recommend best practice on reporting and external reviews, including the use of templates designed to be made available publicly to the market.

Insurance, reinsurance and pensions

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Belgian Government

Belgian Government publishes Royal Decree (RD) modifying RD of 22 February 1991 laying down general rules on control of insurance undertakings

On 8 June the RD ([NL/FR](#)) of 20 May 2016 modifying RD of 22 February 1991 laying down general rules on control of insurance undertakings was published in the Belgian Official Journal.

The RD determines a new regime regarding the funding of the Insurances Ombudsman Service (*Ombudsdienst Verzekeringen/ Services Ombudsman Assurances*) by insurance intermediaries that are subject to FSMA supervision. It sets out the principles and parameters for calculating the global contribution of insurance intermediaries. The FSMA is charged with the calculation and collection of the individual contributions.

Belgian Government publishes Royal Decree on annual accounts of insurance and reinsurance undertakings

On 17 June the Royal Decree ([NL/FR](#)) of 1 June 2016 amending the Royal Decree of 17 November 1994 on the annual accounts of insurance and reinsurance undertakings was published in the Belgian Official Journal.

The major amendments include the calculation of the flashing light reserves with respect to interest rate risk in technical provisions and the link with Solvency II coverage. These technical provisions should not only be maintained EOY15 but should be replenished in case of insufficient Solvency II ratio or under specific financial or entity circumstances as identified by the supervisor.

Consultative or informative documents

European Council

Council confirms agreement with European Parliament on occupational pension funds

On 30 June 2016 the Permanent Representatives Committee approved, on behalf of the Council, an agreement with the European Parliament on a proposal for a Directive on the activities and supervision of institutions for occupational retirement provision (IORPs).

The [draft Directive](#) aims at facilitating the development of IORPs and better protecting pension scheme members and beneficiaries and will improve the governance and transparency of IORPs and facilitate their cross-border activity. It revises Directive 2003/41/EC on the activities and supervision of IORPs. It will reinforce their role as institutional investors and help channel long-term savings to growth-enhancing investments.

The draft Directive has four objectives:

- Clarifying cross-border activities of IORPs;
- Ensuring good governance and risk management;
- Providing clear and relevant information to members and beneficiaries; and

- Ensuring that supervisors have the necessary tools to effectively supervise IORPs.

Member States will have two years to transpose the draft Directive into their national laws. The Directive is expected to be approved by the Parliament at first reading. It will then be submitted to the Council for adoption.

Financial Stability Board (FSB)

FSB publishes guidance on developing effective resolution strategies and plans for systemically important insurers

On 6 June the FSB released a [guidance document on developing effective resolution strategies and plans for systemically important insurers](#). The document provides guidance on developing effective resolution strategies and plans for systemically important insurers. It should assist authorities in meeting the resolution planning requirement under the [key attributes of effective resolution regimes for financial institutions](#) and support crisis management groups of global systemically important insurers in their resolution planning work.

International Association of Insurance Supervisors (IAIS)

IAIS updated Global Systemically Important Insurers (G-SII) assessment methodology

On 16 June IAIS has released an updated [G-SII assessment methodology](#). The 2016 methodology introduces a five-phase approach to the G-SII assessment process that includes fact-based qualitative (phases I and II) and quantitative elements (phases III and IV). Phase V combines the previous phases to produce an overall assessment that concludes with the IAIS recommendation to the FSB. The IAIS has modified certain indicators used in the initial assessment methodology to address issues related to indicator responsiveness, connection with systemic risk and data quality, including reliability (across both insurers and jurisdictions).

National Bank of Belgium (NBB)

NBB informs that Circulars transposing into Belgian law EIOPA guidelines with respect to Solvency II have been published on its website

On 21 June 2016 the NBB has published a list ([NL/FR](#)) of 22 Circulars transposing into Belgian law EIOPA guidelines with respect to Solvency II. These Circulars relate to the following topics and guidelines: ring-fenced funds, treatment of affiliated undertakings (including the shareholdings), ancillary own funds, regular reporting, own funds classification, reporting and public disclosure, group solvency, the basis risk when applying risk mitigation techniques in the calculation of the Solvency Capital Requirement standard formula, reinsurance transfer agreements application on the non-life underwriting risk sub-module in the calculation of the Solvency Capital Requirement standard formula, treatment of exposure to the market risks and counterparty credit risk in the standard formula, the application of the life underwriting risk module in the calculation of the Solvency Capital Requirement standard formula, the application of the disaster risk sub-module in the calculation of the Solvency Capital Requirement standard formula, the

parameters specific to the undertaking, the internal assessment of the risks and solvency (ORSA), the loss-absorbing capacity of technical provisions and deferred taxes, the look through approach in the calculation of the Solvency Capital Requirement standard formula, information to be communicated for financial stability purposes, the contract limits, application of the long-maturity guarantee measures, guidelines on valuing the technical provisions, the use of internal models with respect to Solvency II, value of assets and liabilities as well as technical provisions.

Data Protection

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Deloitte Privacy Newsflash

The Deloitte Privacy Newsflash is a newsletter that is being developed on a monthly basis by the Deloitte Belgium Security and Privacy team, part of the Enterprise Risk Services business unit. In this regulatory radar, every month, we include a reference to the latest issue of this newsflash, together with a list of the topics treated in that newsflash.

Highlights of the [June issue](#):

- General Data Protection Regulation
- NIS Directive adopted by the EU Council
- International Data Transfer mechanisms in limbo
- French Data Protection Authority issues 2016 inspections program topics
- Supreme Court ruling in Spokeo v. Robins
- "IP addresses are personal data"
- Belgian court rules on right to be forgotten
- New data retention law in Belgium
- New Secretary of State for privacy appointed in Belgium
- Recent breaches and enforcement actions
- Forthcoming interesting events



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