

**Workshop on PSC**  
**29 – 30.06.2015**

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## List of Abbreviations

ATA	Actual Time of Arrival
ATD	Actual Time of Departure
DLP	Distance Learning Programme
EMSA	European Maritime Safety Agency
ETA	Estimated Time of Arrival
HRS	High Risk Ship
LRS	Low Risk Ship
PMoU	Paris Memorandum of Understanding on Port State Control
MRV	Monitoring Reporting Verification
PI	Priority I
PII	Priority II
PSC	Port State Control
PSCC	Port State Control Committee
PSCO	Port State Control Officer
RO	Recognised Organisation
ROPAX	Ro-Ro Passenger Ferry
SAFEPEC	Inspection capabilities for enhanced ship safety
SECA	SOx Emission Control Area
SRP	Ship Risk Profile
SSN	SafeSeaNet
TF	Task Force
THETIS	The Information System for PSC
THETIS-S	The Information System for Sulphur Inspections
VIMSAS	The Voluntary IMO Member State Audit Scheme
VTMIS	Vessel Traffic Monitoring and Information System
WGB	White Grey Black
WMU	World Maritime University

## 1. Opening of the workshop

The workshop was chaired by Mrs Manuela Tomassini, Head of Department B, Safety and Standards, in EMSA. The workshop was opened with a welcome presentation by the chair and an explanatory presentation by Mrs Christine Berg, Head of the Maritime Safety Unit in the Directorate-General for Mobility and Transport (DG MOVE).

Mrs Tomassini informed the participants about the revision of the EMSA methodology for visits to the Member States which is planned to be adopted during the meeting of the Administrative Board of the Agency in November 2015.

Mrs Berg highlighted that this workshop on Port State Control was the first to discuss a Horizontal Analysis following a cycle of visits to Member States by EMSA. Such workshops at the end of a visit cycle are foreseen by the new methodology expected to be adopted before the end of the year. In addition, Mrs Berg informed that the Horizontal Analysis will be the basis for the report on Directive 2009/16/EC to the Parliament and Council to be delivered in 2016. Furthermore, the participants were informed on future steps with respect to potential amendments of the PSC Directive.

## 2. Visits methodology

The first presentation was delivered by Mr D. Karabinis (EMSA) on the current methodology used for the visits. This methodology has been drafted in line with the 'Policy for visits to Member States' as adopted by the Administrative Board of EMSA in 2004, and had been agreed with the Commission. It was explained that the visits consist of 3 parts:

- Preparatory work;
- Visit;
- Reporting to the Commission.

The preparatory work consists of the planning of the visit with the Member State, the collection of information from the Commission, from THETIS and other databases and furthermore analysis of the replies to an EMSA questionnaire filled in by the Member State prior to the visit. The information collected is then analysed and issues to be followed up with the Member State based on findings identified are prepared.

The visit is 4 to 5 working days long and is carried out by 2 to 3 project officers depending on the Member State visited. The visit consists of an opening meeting, detailed discussion with PSC and other officials and a closing meeting. If possible, at least one PSC inspection is witnessed.

The scope of the visit is to examine the PSC organisation and PSC activities, and the compliance thereof with the requirements of the Directive. The visit focuses on the following processes:

- Process 1 – Flag States issues / VIMSAS status;
- Process 2 – PSC organisation;
- Process 3 – General commitments (Fair Share, PI/PII, postponements, detentions, RO responsibility, bans);
- Process 4 – Personnel / Logistics (PSCOs qualifications, DLPs);
- Process 5 – Enforcement and sanctions.

A post visit report is compiled within 20 working days after the final day of the visit and sent to the Commission and the Member State simultaneously. The report includes a detailed description of the level of implementation of the Directive by the Member State including findings where relevant. Findings are categorised as shortcomings, observations and best practices.

The participants were also informed that 5 Member States still have to be visited as part of the second cycle of visits. Completion of this second cycle is planned for the end of the first semester of 2016.

A second presentation was given by Mr D. Karabinis (EMSA) on the impact that visits have to Member States. The presentation included examples of findings identified during the visits, with respect to:

- Different approach in the performance of inspections by PSCOs;
- Lack of harmonised approach during inspections with detentions by PSCOs;
- Detention criteria of Annex X not always followed.

Furthermore findings related to the main requirements of the Directive were highlighted, e.g.:

- All ship call information in THETIS;
- Compliance with the inspection commitment / Justification of missed PI inspections;
- Use of the postponement measures;
- Inspections at anchorage;
- Qualifications of PSCOs;
- Refusal of access;
- Complaints / appeals / penalties.

A number of what could be described as quality issues found during the visits have also been brought to the attention of Member States' authorities, e.g.:

- Improper inspection types;
- Certificates incorrectly recorded;
- Operational controls during expanded inspections not carried out;
- Incorrect convention references;
- ISM instruction not followed;
- Incorrect justifications;
- Requirements for inspection suspended and accidental damage not followed;
- No conditions established for ships released from detention;
- Number of PSCOs not in line with PSC activity;
- Ports in the same Member State with significant and inexplicable differences in the deficiency or detention rate;
- PSCOs in the same Member State with big differences in the average number of deficiencies per inspection;
- PSCOs only focusing on specific deficiencies.

EMSA set out the added value of the inspection visits as follows:

- During visits the level of compliance of the implementation by Member States is evaluated. When findings are identified, Member States can take corrective actions and consequently an increase in compliance with the relevant legislation is observed;
- By highlighting the areas where the PSC procedures were not followed during inspections, corrective actions are taken leading to an increase of harmonisation with the inspection procedures between Member States;
- Through the above actions a continuous improvement in the performance of the overall PSC activity is achieved;
- The performance of the inspection visits is required by the PSC Directive (Article 30).

Some Member States questioned whether the issues identified during the pre-assessment analysis before each visit, were presented or were discussed with all Member States. It was explained by EMSA that the issues identified before each visit were highlighted and discussed during that specific visit. However, a summary report with all findings identified during all visits was submitted by the Commission in the annual PSCC meetings.

The Commission informed that, based on the reports following the visits, 10 pilot letters to Member States have been send out. Another 8 pilot letters were under preparation and would be sent out soon. Furthermore, one infringement procedure had been opened. In addition, the Commission referred to the need to highlight further harmonisation of the inspection activity during national or EMSA trainings.

### 3. Conclusion from current cycle / Horizontal analysis

Mr H. Meyer (EMSA) gave a detailed presentation on the horizontal analysis report. An overview of the number of findings per Article and number of findings per Member State was presented. For each Article of the Directive the numbers of shortcomings and observations were indicated and specified. Finally the following best practices were presented:

- Member States should perform an annual number of inspections in excess of but close to their inspection commitment;
- Validation should be performed by a person other than the inspector carried out the inspection using the validation exercise as a quality control tool;
- Where possible the inspection should be carried out by a team with PSCOs with different backgrounds allowing maximisation of the quality due to combined professional knowledge and experience, shortening the inspection time by working in parallel. Furthermore, team visits are less susceptible to integrity complaints and external pressure;
- If necessary Member States should temporarily transfer PSCOs to other offices to ensure that the accreditation is not lost and experience and knowledge on procedures and guidelines is gained;
- The use of RuleCheck during inspections;
- Participation in seminars organised by EMSA and the use of the DLPs to ensures maintaining professional qualification.

EMSA presented the following conclusions from the visits to Member States:

- Verification of the appropriate implementation of corrective actions by Member States should be considered to be included in the third cycle;
- Best practices should be promoted across the Union, either through Workshops or through awareness campaigns;
- The two main areas where Member States have difficulties in meeting their obligations are:
  - the General Commitments (in particular with regard to the inspection commitment);
  - the cycle of PSC inspections – Information system;
- A desktop analysis will reveal if Member States complied with the inspection commitment for 2015;
- There is a tendency to incorrectly use the provisions of Articles 8(2) and 8(3) in order to justify otherwise unjustified missed PI inspections;
- Some Member States have not introduced penalties and failed to include all required information in their pre arrival notifications;
- While Member States comply with the provisions on defining frequency of inspections (Article 11). However and in order to further improve Member States should consider an awareness campaign on relevant ship-related message in THEITS for:
  - cases were identified with accidents involving either national-flagged vessels or foreign-flagged vessels in national coastal waters;
  - cases with ships having being reported by pilots as having apparent anomalies;
  - cases where missing notification of the ETA is identified;
  - cases where the messages did not relate to an unexpected factor in the context of the same provision of the Directive (ex. complaints although they were VTM reports or COLREG violations);
- Member States appear to comply with the provisions of Article 12 on selection of ships for inspection. However an awareness campaign, either on a Member State or throughout the Union, for reiterating the provisions of Article 12 would be beneficial;
- Member States should strive to overcome limitations imposed by port authorities, possibly by using Article 14.2 to delay the ship if necessary, as well as continuously remind PSCOs on the minimum items required to be verified during expanded inspections. In addition a training session for PSCOs focused on expanded inspections may be considered by EMSA;
- If the inspection procedures are not implemented in a uniform and harmonised approach across the Union, less stringent implementation could be effected in some ports which may create an imbalance in the PSC system and might cause distortion of competition between ports;

- Competent authorities should pay special attention and continue their awareness policy limiting the possibility of allowing a ship to sail which could pose risk to the safety and health of passengers or crew, or risk to other ships, or threat of harm to the marine environment;
- It may be necessary to make the use of the DLPs obligatory;
- On the basis of the nature and number of findings revealed during visits in respect to Article 24, Member States have to introduce measures (administrative or technical) to further improve:
  - transfer of information to THETIS from SSN;
  - the complement of ATA's with ATD's; and
  - recording of inspections within the foreseen limits;
 Failure to do so affects the Fair Share calculation and the calculation of the number of individual ships in the Member States as well as the daily PSC operations of the Member States thus endangering missing ships with a high risk profile due for inspection.

Participants, while acknowledging the best practices, requested clarification if these would be considered to be mandatorily implemented in the future. In addition, Member States referred to the best practice of validating the inspection report by a different person than the PSCO, highlighting the increased difficulties in recruiting qualified PSCOs.

The Commission confirmed that best practices will not be mandatory. However, shared experience, ideas and practices may be beneficial to others who are struggling with similar problems.

On the proposed best practise to inspect just above the inspection commitment, several participants explained why they have inspected much more ships than their inspection commitment and a participant proposed to analyse the issue in more detail.

Participants highlighted the problem most of them have regarding estimated arrival notifications. This appears due to the fact that often SSN does not resort under the responsibility of the PSC authority which makes it difficult to implement corrective actions. The Commission, whilst understanding the problem Member States have with regard to SSN, stated that since it is a requirement of the Directive it has to be addressed during the visit. Furthermore, participants were reminded that the 72 hour ETA reporting requirement had been included in the Directive on explicit request of Member States.

## 4. Areas to be included in the next cycle

The Commission introduced the document on the third cycle of visits to Member States for the years 2017 to 2021. Commission referred to the need to continue with the visits to Member States. Verification of the follow-up actions taken by Member States in the areas where a finding was identified during the visits of the second cycle, as well as verification of the proper implementation of the provisions of the Directive where Member States are facing difficulties in such implementation, justify the third cycle of visits. Therefore a third cycle of visits should predominantly tackle those areas identified with findings during the second cycle. Among the issues identified during the EMSA visits a number of recurring findings have emerged, these include (but not limited to) the following:

- Transposition of the Directive and its amendments;
- Compliance with the inspection commitment;
- Postponement of inspections and exceptional circumstances;
- Pre-arrival notification;
- Frequency of inspections;
- Expanded inspections;
- Access refusal measures;
- THETIS SSN issues relating to ATAs and ATDs;
- Timely submission and validation of the inspection reports;
- Compliance with safety and security guidelines and procedures – Quality issues;
- Use of validation in THETIS as a quality control tool;
- Provision of adequate resources including weekend and holiday coverage;
- Professional profile of inspectors;
- Submission of data to monitor implementation.

The Commission stated further that most of the findings of the second cycle have been identified in more than one Member State which may be an indication that the findings may not be a result of poor performance by the Member State but a consequence of a provision in the Directive that either is vague or difficult to be implemented. Therefore the third cycle of visits should address the common areas identified during the second cycle and verify if implementation of corrective actions has resolved the situation or contribute to the evaluation of Directive 2009/16/EC and point to issues for which complementary measures could be proposed in a future review of the Directive with a view to improving the effectiveness of the Directive.

Furthermore, the Commission informed participants that Directive 2013/38/EU which amended Directive 2009/16/EC had not been included in sixteen visits as these had been conducted before its entry into force. In addition during visits carried out after 21<sup>st</sup> November 2014 it has been identified that either Member States had not yet transposed the amended Directive or measures were not still in place. Therefore the third cycle of visits should verify the implementation of all relevant Articles and Annexes of Directive 2013/38/EU.

The Commission informed participants that a number of legal acts (Ship recycling, MRV) have either amended Directive 2009/16/EC, thus creating more obligations to Member States, or introduced control provisions for ships in accordance with Member States' laws which will enter into force as from 2018. Therefore, all visits as from 2017 should verify the implementation of those new legal acts.

Moreover, the Commission referred to Article 11 of Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues which foresee that Member States shall ensure that any ship may be subject to an inspection in order to verify that it complies with Articles 7 and 10 (delivery of ship generated waste and cargo residues.). These inspections may be part of an inspection carried out in the context of Directive 2009/16/EC. Therefore the third cycle of visits should verify the implementation of measures in place to fulfil the specific provisions of the said Article.

As in the Agency's draft Work programme for 2016 a cycle of visits to assess the effective implementation of Directive 1999/32/EC has been included and considering that in a large number of Member States, the inspections under the Sulphur Directive are performed by the PSC authorities, an optimal planning should be established to avoid duplications of visits. Therefore the third cycle of visits could include, where possible and feasible, the provisions of Directive 1999/32/EC but only for those Member States where the responsible authority is the PSC authority.

After the introduction of the document the Commission described the next steps in view of amending the PSC Directive. The Commission stated that they foresee the following schedule:

- 2016 start the evaluation based on the work carried out by TF31 and the Horizontal Analysis;
- 2017 place the first proposal for discussion in the institutions;
- 2020 finalise the work with adoption of an amended Directive.

Noting the schedule as explained by the Commission, participants were informed that also findings identified in the next cycle can be used to request and justify an amendment of the Directive. The Commission clarified that changes to the Annexes of the Directive can be done at an earlier stage than scheduled under the provisions of Article 31 of the Directive.

Several participants stated that by adding the verification of other Directives in the PSC visits, these visits will be longer and proposed, to streamline the visits, to receive the outcome of the desktop analysis before the actual visit is taking place. This would allow preparing answers for the visit. EMSA will evaluate the proposal, mindful of resource implications and the necessary rearrangements to be done allowing fulfilment of this proposal.

One participant raised concerns that the current fair share requirements could force a change in status during the year to "overburdened State" which will result that all inspections previously done out on PII ships will not be taken into account for the calculation of the fulfilment of the commitment. Participants proposed to have a general discussion on the fair share calculation to evaluate its fairness.

Participants requested clarification whether the workshop is carried out on request of the Administrative Board and if a report to the Administrative Board will be prepared. EMSA clarified that workshop is part of the new methodology of the visit cycle as agreed by the Board and that the outcome will be included in the next cycle. The Administrative Board will be informed that the workshop has taken place but no report will be presented.

## 5. Outcome of PSCC48

Mr H. Meyer (EMSA) presented the outcome of PSCC48 on the work of TF31 and explained the impact of the presented work of TF31 on the Directive. The proposed changes to the Directive were explained in detail as follows and participants were invited to comment:

- Article 8(1) possibility of PII postponement;
- Article 8(2) possibility of PII miss justification;
- Article 8(1) expand justification for “too short for inspection” to ports;
- Article 7(2) more flexibility for underburdened States;
- Article 9(1), 9(2), 14(3) and Annex III deleting 72 hour ETA reporting obligation;
- Annex I.I(e) possibility to be a LRS for ships without ISM company.

A second presentation was given by Mr H. Meyer (EMSA) detailing the open points in the work of TF31, which are the following:

- Flexibility for Member States with a number of eligible calls just above their commitment possible options:
  - Allow miss justification for PII vessels which are calling only during the weekend;
  - Reduce the 85% inspection rate for PII applicable for underburdened States to 70%;
  - Introduce a dynamic Fair Share for underburdened States;
- Flexibility for Member States with a very high number of PI ships;
- Combining the miss rate for PI HRS (5%) and Priority with other SRP (10%);
- Imbalance in focus between Risk Ship Types and ship types other than risk ship types;
- Additional weighting point for ships which have in the last 3 years in one of the inspections carried out more than 6 deficiencies;
- Action taken code 15 should not trigger an unexpected factor;
- Calculation method for the WGB and RO performance list.

One participant stated that the proposed amendment to Article 8(2) is not clear and proposed to rephrase it.

## 6. WGB list analysis

Mr F. Rohling (EMSA) presented a technical paper regarding the formula currently in use for the calculation of the flag State performance, highlighting the following points:

- 7% detention threshold;
- Problem with the formula when changing parameters;
- Reliability issues (high number of inspection gives better results);
- Explanation of the excess factor (used only for calculating the position in the list).

Several participants commented that the WGB formula is not fair for flag States with a small fleet and therefore fewer inspections and favours flag States with a high inspection number. Furthermore, several participants proposed to delete the excess factor and rank the flag States in the WGB list per part alphabetically.

The Paris MoU Secretariat made a presentation containing proposals to amend the current formula and showed the outcome to the WGB list for various scenarios.

Participants requested clarification whether the formula used in the Tokyo MoU is the same as in the Paris MoU and asked whether the Tokyo MoU is also discussing to change the formula. The Paris MoU Secretariat informed that they were not aware of any discussion on this issue in the Tokyo MoU. Furthermore, a question was raised if the weight of all detentions is the same or if there is a differentiation between e.g. yachts and gas carriers or passenger ships. The Paris MoU Secretariat confirmed that currently no differentiation on detentions is made and proposed to investigate this further.

A representative of the Polish Maritime University of Gdynia gave a presentation on a proposed new formula with an indication of the outcome for flag States in the WGB list.

The chair summarised the discussion concluding that the discussion on the formula for the calculation of the WGB clearly indicated that more work has to be done and suggested to further discuss the issue in the context of TF31.

## 7. Passenger Ship Safety refit

The Commission gave a presentation on the overview and objectives of the Fitness Check on EU Passenger Ship Safety legislation. The fitness check has to assess if the regulatory framework is fit for purpose and, if not, what should be changed via a comprehensive policy evaluation. The fitness check has to find:

- overlaps;
- gaps;
- inconsistencies;
- impacts;
- obsolete measures;
- excessive burdens; and
- scope for simplifications.

The Commission further explained the reasoning for a fitness check on Passenger Ship Safety legislation and stated that the following Directives are in the scope of the fitness check:

- 2009/45/EC
- 2003/25/EC
- 1999/35/EC
- 1998/41/EC

Furthermore the Commission stated that the following Directives and Regulations have links to the Passenger Ship Safety legislation and therefore have to be taken into consideration as well:

- 2009/16/EC
- 2009/18/EC
- (EC) 392/2009
- 2002/59/EC
- (EC) 336/2006

Participants asked for clarification on the time schedule foreseen by the Commission for finalisation of the fitness check especially in view of Directive 1999/35/EC. Commission replied that at the end of 2015 a proposal should be ready to be presented which could include proposals to amend the Annexes of Directive 2009/16/EC.

## 8. Sulphur Directive enforcement

EMSA gave a presentation on the current status regarding the enforcement of Directive 1999/32/EC as amended (the "Sulphur Directive") based on the information recorded in THETIS-S. During the presentation, among other things, the differences between PSC and MARPOL Annex VI and the enforcement of the Sulphur Directive were highlighted. Also the 2015 inspection obligation for all Member States based on the average number of individual ships was presented. EMSA noted that this information (minimum number of inspections) has been forwarded to the Commission (DG ENV) for further distribution among all Member States.

The participants welcomed the presentation and asked for various clarifications. In particular, it was asked whether the sampling obligation can be reviewed in light of the relatively low number of cases related to non-compliant fuel which so far have been reported in the system. The Agency explained that from 1 January 2016 a sampling frequency will start been applied and therefore this may increase the number of samples and analysis conducted.

In addition, some participants reported some technical issues that they have experienced using THETIS-S. EMSA insisted on the need to report any failures or needs for improvement to the helpdesk system which is available so

that appropriate action can be taken. Also, the Agency informed that new upgrades, scheduled to be uploaded beginning of August, are under way which should tackle most of the issues reported.

EMSA further informed about the efforts placed by the Agency in terms of training of Sulphur Inspectors and on THETIS-S. A training session for all Member States was organized in February and a second is planned in November. In addition, a dedicated training was conducted in one particular Member State. There are plans to release a dedicated eLearning module towards the end of the year.

## 9. MLC, 2006 enforcement

EMSA presented a status overview of the MLC, 2006, about the transposition of Directive 2013/38/EU and the ratification of the Convention by Member States.

From the enforcement point of view, some Member States are in the process to complete the ratification of the MLC, 2006 as well as transposing the amendments to 2009/16/EC incorporating the Convention as a relevant instrument.

Inspection results after the entry into force of the MLC, 2006 revealed a shift to more document related deficiencies (e.g. SEAs, wages, manning levels and records of hours or work and rest).

With regard to the training activities, a DLP MLC, 2006 course was released on 1 July 2014. Bearing in mind the intended Paris MoU Concentrated Inspection Campaign in 2016, a seminar will take place in June 2016 (hosted by France). EMSA will also organise a workshop for EU Member States in October 2015 to discuss the lessons learned after two years of the entry into force of the Convention.

The meeting was also informed that the Commission is currently undertaking a study on the labour supplying responsibilities under 5.3 of the Convention. The outcome of the study is expected to be published in October 2015 and will help to identify whether additional legislative provisions should be adopted to enforce this regulation.

Further to the upcoming amendments to the Convention, which will come into force in 2017, the Directive would have to be revised in order to include the shipowner liability document in the list of certificates and documents (Annex IV of the Directive).

## 10. WMU presentation on PhD Study

Mr Armando Graziano, Project Officer of SAFEPEC, outlined his PhD study on Port State Control within WMU and provided details on the planned phases of the study which are:

- Precondition
- Data Collection
- Development

It was explained that EMSA will be actively engaged with this study and will assist in the work to which participants expressed no objections.

## Appendix A Participants

Country/Organisation	First Name	Name	Comments
Belgium	Bart	Heylbroeck	
Bulgaria	Hristo	Nachev	
Croatia	Neven	Tomljanović	
Croatia	Joško	Vlašić	
Denmark	Philippe	Bauchy	
Denmark	Martin	John	
Estonia	Marek	Rauk	
Finland	Marko	Rahikainen	
France	Alan	Symoneaux	
France	Camille	Medegan	
Germany	Petra	Mengelkoch	
Germany	Rainer	Mayer	
Greece	Konstantinos	Charalampous	
Iceland	Einar	Einarsson	
Iceland	Geir	Geirsson	
Ireland	Aidan	Mac Sweeny	
Italy	Fabrizio	Pirelli	
Italy	Caterina	Piccirilli	
Latvia	Arturs	Oss	
Lithuania	Paulius	Juozapavicius	
Lithuania	Jakštas	Rimvydas	
Malta	Mark	Chapelle	
Netherlands	Xander	van Holk	
Netherlands	Joop	Westers	
Norway	Randi	Birkelund	
Norway	Bjorn Ove	Hansen	
Poland	Marta	Grabowska	Only 29.06.2015
Poland	Wlodzimierz	Basandowski	
Portugal	Vitor	Antunes	
Slovenia	Tomo	Borovnicar	
Spain	Manuel	Palao	
Spain	Gerardo	Aynos	

Sweden	Dan	Sarenius	
United Kingdom	Tom	Elder	
United Kingdom	Patrick	Dolby	
European Commission	Christine	Berg	Only 29.06.2015
European Commission	John	Burke	
Paris MoU Secretariat	Carien	Droppers	Guest speaker, only 30.06.2015
Paris MoU Secretariat	Lourents	van't Wout	Guest speaker, only 30.06.2015
Gdynia Maritime University	Sambor	Guze	Guest speaker, only 30.06.2015
World Maritime University	Armando	Graziano	PhD Study on PSC, only 30.06.2015
EMSA	Manuela	Tomassini	Only 29.06.2015
EMSA	Georgios	Christofi	
EMSA	Frank	Rohling	
EMSA	Dimitrios	Karabinis	
EMSA	Holger	Meyer	
EMSA	Jaime	Gonzalez-Gill	
EMSA	Stefano	Carnevali	
EMSA	Sergio	Alda	Only for presentation on Sulphur Directive



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