



Peer Review on “Legislation and practical management of psychosocial risks at work”

Peer Country Comments Paper - France

**Preventing psychosocial risks at work:
enforcement is needed**

Stockholm (Sweden), 3-4 October 2019

DG Employment, Social Affairs and Inclusion



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Directorate B, Unit B3

Contact: Charlotte Grevfors-Ernoult

E-mail: empl-b3-unit@ec.europa.eu

Web site: <https://ec.europa.eu/social/main.jsp?catId=148>

European Commission

L-2721 Luxembourg

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1 Introduction

This paper has been prepared for the Peer Review on "Legislation and practical management of psychosocial risks at work". It provides a comparative assessment of the policy example of the Host Country (Sweden) and the situation in France. For information on the host country policy example, please refer to the Host Country Discussion Paper¹.

The issue of psychosocial risks in the workplace is a challenge to our "social model" in the protection of public health and fundamental workplace rights. In a society in which future changes to work may lead to an increase in socio-organisational problems, the gradual weakening of employment law appears to contribute to this increase². Also, a lack of resources in the French authorities responsible for ensuring the effective application of the law restricts the handling of the question of working conditions and the organisational prevention of psychosocial risks³.

2 Scale and nature of psychosocial risks at work

2.1 Identification of psychosocial risk factors

The definition commonly used for psychosocial risks in France comes from the Gollac report⁴, which was written at the request of the French Labour Ministry, in 2011: "risks for mental, physical and social health, caused by employment conditions and organisational and relational factors likely to interact with mental functioning."

The Gollac report identifies several factors that cause psychosocial risks, which are grouped into six categories:

- **Excessive work demands:** work quantity; time pressure; difficult to reconcile professional and personal life

1 Nilsson, B. 2019, How new legislation can change the approach to psychosocial risks at work, Host Country Discussion Paper – Sweden. Peer Review on 'Legislation and practical management of psychosocial risks at work'. Stockholm, Sweden, 3-4 October 2019. European Commission, DG Employment, Social Affairs and Inclusion.

2 Fantoni, S. and Héas, F., 2018, Les réformes en droit du travail : affaiblissement ou opportunité pour le droit de la santé au travail ?, *Droit social*, Dalloz (S. Fantoni and F. Héas, 2018, Labour law reforms: weakening or opportunity for occupational health law?, *Social law*, Dalloz)

3 Santé au travail : vers un système simplifié pour une prévention renforcée, Rapport fait à la demande du Premier Ministre, 2018-08, établi par Charlotte Lecoc, Bruno Dupuis, Henri Forest (Occupational Health: Towards a Simplified System for Enhanced Prevention, Report prepared at the request of the Prime Minister, 2018-08, prepared by Charlotte Lecoc, Bruno Dupuis, Henri Forest); Rapport d'information fait au nom de la commission des finances (1) sur l'inspection du travail par M. Emmanuel Capus et Mme Sophie Taillé-Polian, 2019-09-25, n° 743, Sénat (Information report made on behalf of the Finance Committee (1) on the labour inspection by Mr Emmanuel Capus and Mrs Sophie Taillé-Polian, 2019-09-25, No. 743, Senate); and Lerouge, L., 2019, Reflexions juridiques autour du rapport "Santé au travail : vers un système simplifié pour une prévention renforcée", 2019, Dalloz, p.151 (Lerouge, L., 2019, Legal reflections on the report "Occupational health: towards a simplified system for reinforced prevention", 2019, Dalloz, p.151)

4 Gollac, M. and Bodier, M., 2011, Mesurer les facteurs psychosociaux de risque au travail pour les maîtriser, *Rapport du Collège d'expertise sur le suivi des risques psychosociaux au travail*, faisant suite à la demande du Ministre du travail, de l'emploi et de la santé (M. Gollac and M. Bodier, 2011, Measuring psychosocial risk factors at work in order to manage them, Report of the College of Expertise on the Monitoring of Psychosocial Risks at Work, following the request of the Minister of Labour, Employment and Health)

- **Emotional burden linked to work:** tensions with the public; contact with people who are in situations of distress; obligation to hide emotions; fear of work-related problems
- **Lack of autonomy:** set procedures; under-use of one's abilities; loss of participation in decisions; unpredictability of work
- **Deficiency in social relationships:** lack of technical and emotional support; conflicts/bullying; lack of recognition; deficient change management
- **Moral conflicts:** obligation to perform tasks one disapproves of (ethical conflicts); insufficient resources given to do quality work ("hindered quality")
- **Insecurity of employment and careers:** job insecurity; work difficulties

These factors can lead to different psychosocial risks: occupational stress; psychological harassment; violence; sexual harassment; discrimination. In France, legal regulations on mental health are risk-based rather than factor-based.

2.2 Statistics on exposure and incidences of psychosocial risks at work

France has an active population of nearly thirty million workers⁵. National statistics on working conditions provide an overview of the prevalence of psychosocial risks in organisations. 39.5% of civil servants⁶ and 30%⁷ of employees declare that they have been the victim of at least one hostile behaviour over the past 12 months and 44.7% receive conflicting orders, thereby exposing them to the risk of psychological harassment⁸.

With respect to stress in the workplace, 35.2% of workers work under the pressure of at least three constraints in terms of the pace of work. 40% have an excessive quantity of work. 65.3% of employees and civil servants declare that they must frequently interrupt one task in order to work on another, unexpected task; 43.4% experience situations of tensions with the public; 48.3% have a pace of work imposed by short deadlines⁹.

One out of five women experience a situation of sexual harassment during their career¹⁰. 34% of active people declare that they have experienced workplace discrimination during the past five years¹¹.

Thus, exposure to problems involving a disorganisation of work is not an isolated phenomenon affecting only a few thousand people. Although not all of these problems are caused by the organisation of work, better work organisation could prevent workers from insidiously incurring health-related problems. Indeed, countless health problems are caused by socio-organisational risks, among the most important of which are musculoskeletal problems (the leading cause of occupational diseases in France, and

5 Tableau de l'économie française, 2019, INSEE (Portrait of the French economy, 2019, INSEE)

6 Les risques psychosociaux dans la fonction publique, Rapport annuel sur l'état de la fonction publique, 2014 (Psychosocial Risks in the Public Service, Annual Report on the State of the Public Service, 2014)

7 Quelles évolutions récentes des conditions de travail et des risques psychosociaux ?, déc. 2017, DARES Analyse, n° 082 (What are the most recent developments in working conditions and psychosocial risks? dec. 2017, DARES Analyse, n° 082)

8 Ibid.

9 Ibid.

10 Études et résultats, Enquête sur le harcèlement sexuel au travail, mars 2014, Le Défenseur des droits (Studies and results, Sexual Harassment at Work Survey, March 2014, The Human Rights Defender)

11 Ibid.

twice as often for women than men¹²), cardio-vascular diseases and depression. Psychosocial risks increase the probability of suffering from one of these health problems by 50 to 100%¹³.

The scope of the repercussions of health-related damages of a socio-organisational origin suggests that psychosocial risks are a public health challenge and not only an employment law issue.

The results of the ESENER-2¹⁴ survey (2014) show that there are significantly fewer enterprises with action plans to prevent work-related stress (which has no legal definition in France) , compared to procedures to deal with violence or harassment at work, which are covered in the Labour Code.

3 Legislation and practical management of psychosocial risks at work

3.1 General aspects of psychosocial risks at work legislation

In France there is no legal definition of psychosocial risks at work. The 2002 "Social Modernisation Law" introduced workplace psychological harassment¹⁵ and the right to mental health into the Labour Code. However, the scope of psychosocial risks and, more generally, mental health is much broader, because it includes stress at work, physical and psychological violence, as well as all forms of physical and mental suffering at work. It also includes, sexual harassment¹⁶, sexist behaviours¹⁷ and discrimination¹⁸ which are defined by law.

Under the impetus of European legislation, inter-professional agreements were signed in the field of occupational stress in 2008¹⁹, psychological harassment and violence at work in 2010²⁰. However, the weakness of the legal basis of this type of legislation reflects a certain ambivalence between a stated desire to prevent these risks on the one hand and effective and binding management of the prevention of psychosocial risks at work on the other²¹.

12 L'exposition des salariés aux maladies professionnelles, L'importance toujours prépondérante des troubles musculo-squelettiques, Déc. 2016, DARES Résultats, n° 081 (Exposure of employees to occupational diseases, Musculoskeletal disorders are still predominant, Dec. 2016, DARES Résultats, n° 081)

13 Gollac, M. and Bodier, M., op. Cit.

14 Deuxième enquête européenne des entreprises sur les risques nouveaux et émergents – ESENER-2 (Management of psychosocial risks in European workplaces – evidence from the second European survey of enterprises on new and emerging risks – ESENER-2), 2018, EU-OSHA

15 Art. L1152-1 du Code du travail (Article L1152-1 of the French Labour Code)

16 Art. L1153-1 du Code du travail (Article L1153-1 of the French Labour Code)

17 Art. L1142-2-1 du Code du travail (Article L1142-2-1 of the French Labour Code)

18 Art. L1132-1 du Code du travail (Article L1132-1 of the French Labour Code)

19 Accord national interprofessionnel du 2 juillet 2008 relatif au stress au travail (National interprofessional agreement of July 2, 2008 on workplace stress)

20 Accord du 26 mars 2010 sur le harcèlement et la violence au travail (Agreement of March 26, 2010 on harassment and violence at work)

21 Lerouge, L., 2011, Risques psychosociaux : politique communautaire et droits internes (France, Europe du Sud, Europe du Nord). Politique de la Commission européenne, Jurisprudence de la CJUE Belgique, Danemark, Espagne, France, Italie, Pays-Bas, Portugal : Synthèse des jour, COMPTRESEC, Université Montesquieu Bordeaux IV (L. Lerouge, 2011, Psychosocial risks: European policy and national laws (France, Southern Europe, Northern Europe). European Commission Policy, Case law of the ECJ Belgium, Denmark, Spain, France, Italy, Netherlands, Portugal: Summary of the international study days of September 29 and 30, 2011, COMPTRESEC, University Montesquieu Bordeaux IV)

In 2013, the concept of quality of work life²² was introduced. The concept of quality of work life is broader than the mere prevention of psychosocial risks, because it includes factors of workplace well-being and addresses questions such as male-female equality.

Whilst potentially less stressful for enterprises, this concept could, possibly, result in confusion, by placing psychosocial risks in an approach that differs from that of occupational risks, in other words, relegating psychosocial risks to an individual and personal level, rather than covering a social-organisational issue. Thus, when it is applied at enterprises, it is too often applied by tertiary prevention approaches.

A precise term of the risks in the law would promote a good understanding of psychosocial risks and require enterprises to think in terms of primary prevention.

Even though psychosocial risks, or socio-organisational risks, and their different variations are not defined by law, the legal arsenal has provided for total protection of salaried workers through the European Framework Directive 89/391/EEC. However, enforcement is problematic as the labour inspectorate lacks resources in terms of staff, training and skills²³.

In 2002, a French judge imposed on employers an obligation to ensure their employees workplace health and safety. According to this obligation, the recognition of gross negligence ("*faute inexcusable*"), from 2008, in terms of workplace stress, harassment or suicide, reinforced the taking in consideration of workplace mental health issues²⁴.

Over the last five years, psychosocial risks have been the subject of numerous preventive actions, coordinated under the second Health at Work Plan. These actions have raised awareness and improved the knowledge among stakeholders and promoted approaches and methods to prevent and act against these risks at their source. Several tools, guides and training are now available to employers, employees and their representatives, particularly small businesses.

For example, a guide on burnout prevention, involving the Ministry of Labour (DGT), the National Research and Safety Institute (INRS) and the National Agency for the Improvement of Working Conditions (Anact), was published in May 2015. Beyond clarifying what burnout means, this guide offers recommendations to better prevent and act on this syndrome.

Moreover, the third Health at Work Plan (2016-2020), which is a tripartite plan (employers, unions and the state) focusing on prevention policy, was adopted in 2015 by the Guidance Council for Working Conditions (COCT: Conseil d'orientation des conditions de travail). It contains 52 actions, of which five are related to psychosocial risks at work, namely:

- Action 1.17: Organising the national and regional private counsel offer;
- Action 1.18: Communication about psychosocial risks to all the stakeholders;
- Action 1.19: Give tools to employers and labour inspectorates;

22 [Accord national interprofessionnel sur la qualité de vie au travail](#), 19 juin 2013 (National Interprofessional Agreement on Quality of Work Life, June 19, 2013)

23 [Rapport d'information fait au nom de la commission des finances \(1\) sur l'inspection du travail par M. Emmanuel Capus et Mme Sophie Taillé-Polian](#), 2019-09-25, n° 743, Sénat (Information report made on behalf of the Finance Committee (1) on the labour inspection by Mr Emmanuel Capus and Mrs Sophie Taillé-Polian, 2019-09-25, No. 743, Senate) ; [Rapport d'information fait au nom de la commission des affaires sociales \(1\) sur la santé au travail](#), par M. Stéphane Artano et Mme Pascale Gruny, 2019-10-02, n° 10, Sénat (Information report on behalf of the Social Affairs Committee (1) on health at work, by Mr Stéphane Artano and Mrs Pascale Gruny, 2019-10-02, No. 10, Senate) ;

24 Since 2015, the case-law has been relaxed and now imposes an obligation of safety and prevention to the employer.

- Action 1.20: Prevent the burnout syndrome; and
- Action 1.21: Surveillance of the impact of new technologies.

²⁵The plan is implemented by different institutions and stakeholders (the Ministries of Health, Labour and Agriculture, Anact (the French National Agency for the improvement of working conditions), INRS (the French National Research and Safety Institute for the Prevention of Occupational Accidents and Diseases), OPPBTP (the French Professional Agency for Risk Prevention in Building and Civil Engineering), MSA (the Agricultural Social Mutual Fund), Santé Publique France (the French Public Health Agency and Haute Autorité de Santé (the French National Authority for Health)

This is a positive initiative, particularly as there has been a lack of effective measures in this area over the past 15 years. In particular, efforts are being made by INRS and Anact. The INRS informs the general public and raises its awareness of the need to improve workplace working conditions. In addition, Anact provides relevant assistance to enterprises.

Despite the tools developed and the training provided, challenges remain in terms of moving from diagnosis to action.

The media coverage of emblematic cases, such as that of France Télécom²⁶, has forced the authorities to increase the protection of workers against organisational problems and toxic management systems, leading to workplace suffering.

In the area of discrimination the "French Defender of Rights", which enjoys independence enshrined in the French Constitution, has been established, and there may be merit in setting up a similar independent authority with regard to workplace health and working conditions, in order to put more emphasis on the right to workplace health protection.

3.2 Focus on gender equality at work

Ever since the first law²⁷ recognising the principle of equal remuneration between men and women, several laws have followed in succession to take account of workplace gender problems.

Among the most recent changes in laws, the law of 2014, "genuine" equality between women and men requires an evaluation of occupational risks that reflects the difference in impact of exposure to risks based on gender²⁸. Many scientific studies, based on official statistics, have shown that the working conditions of men and women do not expose them to the same psychosocial risk factors²⁹.

The effort to prevent workplace sexual harassment and sexist actions has been reinforced, with the obligation to appoint a referent for this subject in enterprises having more than 250 employees. This effort has also resulted in information campaigns communicated to the general public.

²⁶ Suicides à France Télécom : le procès (Suicides in France Télécom : the lawsuit); ³⁵ Employees Committed Suicide. Will Their Bosses Go to Jail?, 2019, NY Times online; La petite boîte à outils, le procès France Télécom, Solidaires (The Small Toolbox, the France Télécom Lawsuit, Solidaires)

²⁷ Loi n° 72-1143 du 22 décembre 1972, relative à l'égalité de rémunération entre les hommes et les femmes (Act No. 72-1143 of December 22, 1972 on equal remuneration for men and women)

²⁸ Art. L4121-3 du Code du travail, dans sa rédaction issue de la loi n° 2014-873 du 4 août 2014 (Art. L4121-3 of the Labour Code, as drafted by Act No. 2014-873 of August 4, 2014)

²⁹ Bouffartigue, P. and Bouteiller, J., Les RPS au regard du genre, Étude pour le compte de l'ANACT à partir des enquêtes SIP et SUMER, Janvier 2014 (P. Bouffartigue and J. Bouteiller, Psychosocial risks regarding gender, Study for the ANACT based on the SIP and SUMER surveys, January 2014)

There are also new obligations in terms of salary equality, with an attempt to use the practice of "name and shame" for enterprises. Enterprises that have at least 50 employees are required to publish a wage gap index each year. This measure in favour of gender equality could possibly help to reduce psychosocial risks resulting from unequal pay. However, the last time (2010) the French Labour Ministry tried to use this practice of "name and shame" for enterprises that have not signed a psychosocial risks agreement, the experiment was not a success in terms of progress in effective prevention³⁰.

3.3 An expected right to psychosocial risks prevention for independent workers

Independent workers are not covered by legislation contained in the French Labour Code. Part of the digital economy is independent of employment law rules, which are not adapted to independent workers. The consequences are borne by independent workers who do not have rights to good workplace health, the prevention of workplace health problems and decent working conditions.

Some initiatives arose that promoted an approach focused on Corporate Social Responsibility. For example, the article 20 of the bill of Orientation of Mobility³¹ calls for the optional drafting of a charter by Uber-type digital platforms specifying the main points of their social responsibility. Those non-binding charters do not, however, meet the requirements of occupational health law.

To support the transformation of work, new legal texts concerning independent workers who work on platforms, are a challenge in France, as well as in other European countries. Certain courts or social security bodies are of the opinion that a relationship of subordination is established between the platform, which in that case is considered as the employer, and the independent worker, as a salaried worker.

The fundamental right to health at work does not discriminate against workers based on their status. The labour law will have to be adapted to take into account changes in work. There appears to be a need to redefine the protective framework for all workers in order to ensure that the latter is not always lagging behind societal developments.

3.4 Proposals for better management of occupational health

From a legal perspective, the definition (which leads to identification and regulation) of psychosocial risks should take account of the definitions of the three categories of psychosocial risks covered by French positive law: psychological harassment, sexual harassment and discrimination, all of which refer to a fundamental concept: dignity.

In employment law, respect of other people's dignity begins with respect of their (fundamental) rights. However, contractual employment relations, which characterise subordinate employment, interfere, at the outset, with the fundamental norm³², because they are part of a "socialised system of income distribution, rights and protections, that is indexed, it is important to recall, on an abandonment of the right of the worker to organise his/her work"³³.

30 Balandi, GG et al, 2011, [Organisational and Psychosocial Risks in Labour Law. A Comparative Analysis](#), Osservatorio per il monitoraggio permanente della legislazione e giurisprudenza sulla sicurezza del lavoro, Facoltà di Giurisprudenza dell'Università degli Studi "Carlo Bo" di Urbino (Observatory for the permanent monitoring of legislation and jurisprudence on safety at work, Faculty of Law of the University "Carlo Bo" of Urbino), p. 46-48.

31 [Bill of Orientation of Mobility, 2019](#)

32 Supiot, A. 2015, *La Gouvernance par les nombres*, Fayard (A. Supiot, 2015, *Governance through numbers*, Fayard)

33 Méda, D. and Vendramin, P., 2013, *Réinventer le travail*, PUF (D. Méda and P. Vendramin, 2013, *Reinventing work*, PUF)

Accordingly, the various types of harm to mental health are preceded by one or more violations of a worker's rights and freedoms and, therefore, of the worker's dignity. If the person's rights are not respected and, if his/her dignity is not respected, workplace health problems appear as alert signals. In a way, psychosocial risks express the immune response of the mind and the body against the violation of dignity.

Psychosocial risks could be defined as follows: risks of an organisational origin that are likely to endanger working conditions, mental health, physical integrity or the dignity of a worker in the workplace".

Psychosocial risks require both health vigilance measures and measures promoting the respect of fundamental workplace rights. Health vigilance is based on a system of monitoring, collecting and processing of data regarding the problems identified as having a health impact on a given group of people, in this case, workers.

As the State is responsible for ensuring the effective application of the fundamental right to good workplace health, the public authorities must use their powers to achieve this. The management of health risks is reflected in the application of principles resulting from health vigilance and security in several areas concerning the health of individuals. Workers represent a large group that must be protected, given the significant impacts on public health.

There are two reasons for choosing a "sociovigilance" model³⁴ (i.e. specific vigilance on workers' health). Firstly, it includes the active population, in an egalitarian manner with other groups considered (for example patients and consumers), in a system of national protection against health threats. The re-inclusion of workers, initially excluded from the benefits of the application of ordinary law, in national authorities, restores equality between individuals. Discrimination in the form of different treatment given to different people, based on the resources allocated to the protection of their fundamental rights and their right to good health, is contrary to the very essence of these rights. Secondly, vigilance on human rights and, more specifically, the fundamental right to good workplace health, requires active monitoring, and not only reactive or hypothetical action (in the case of potential recourse to the courts). The experience based on the organisation of the most advanced health vigilance to preserve public health, combined with the need to protect the fundamental rights of workers in the workplace, led to the setting up of an original independent authority combining the powers of public health law and occupational health and safety law.

4 Assessment of success factors and transferability of the host country example

4.1 True knowledge is power

The Swedish concept of organisational and social work environment is more precise, as it focuses on primary risk. As such, this concept is more likely to give the opportunity to national authorities and enterprises to create a Psychosocial Safety Climate³⁵ model based on primary prevention.

Moreover, the Swedish definition provides four risk factor categories which actually reflect practical management of occupational health within enterprises: organisation of work; control of work; communication; how decisions are made³⁶. This way of presenting socio-organisational risk factors is consistent with the reality of what enterprises are going through. As such, this type of language may be more

34 Tarhouny, N., 2018, [Psychosocial Risks at Work: Law and Prevention of a Public Health Issue](#), PhD Thesis, IRIS, Paris 13 University

35 See Maureen Dollard's research, University of South Australia

36 Nilsson, B., 2019, Op. Cit.

understandable for all stakeholders than the French way of presenting psychosocial risks in the Gollac report.

In the legal field, as in many others, efforts are being made to apply the results of academic and scientific research in order to promote physical and mental health at work. However, it can be argued that the expertise of researchers is currently not sufficiently used in France to find solutions to contemporary problems such as occupational health. Better use of this important resource could result in more effective application of the socio-organisational risks approach. France could also mobilise its experts to better (legally) define psychosocial risks and its policy for the prevention of socio-organisational risks, but also to provide digital tools to assess them more easily.

4.2 Communication and training

In addition to using scientific and academic research to develop the legal protection of workers and practical management of psychosocial risks, knowledge could also be powerful if it is disseminated to all stakeholders (employers, the labour inspectorate, unions, occupational medicine). The lack of stakeholder knowledge about what socio-organisational risks really are does not help to prevent them. Large-scale training, given by approved experts, could help France to tackle socio-organisational risks.

Sweden is a good example of how information can be disseminated both through large-scale campaigns to the general public and through a letter to all employers from SWEA's Director General. Demonstrating strong political will can encourage employers to become aware of the issues related to socio-organisational risks. At the same time, awareness by the general public (among them workers) through the media could improve prevention, as workers will be aware of their right to decent working conditions.

5 Questions

- Does SWEA use public health data to track enterprises or sectors which have occupational health problems?
- What kind of assistance do Swedish authorities provide to workers facing psychosocial risks at work problem?

Annex 1 Summary table

The main points covered by the paper are summarised below.

Scale and nature of psychosocial risks at work

- In France, psychosocial risks factors are divided in six categories: excessive work demands; emotional burden linked to work; lack of autonomy; deficiency in social relationships; moral conflicts; and insecurity of employment and careers (Gollac report).
- The concept of psychosocial risks includes stress; psychological harassment; sexual harassment; violence; discrimination.

Legislation and practical management of psychosocial risks at work

- The concept of "Mental Health" prevention became part of French law in 2002.
- In France, there is no legal definition of psychosocial risks as a whole, but specific risks are defined in the Labour Code: psychological harassment, sexual harassment, and discrimination.
- Preventative actions on psychosocial risks are coordinated under the Health at Work Plan.
- Several tools, guides and training are available to employers, employees and their representatives, particularly small businesses.
- France has specific gender-based legislations on equal pay and gender-based risks assessment.
- Independent workers are excluded from the legal health protection for employees.

Assessment of success factors and transferability of the host country example

- As in Sweden, France could adopt the concept of socio-organisational risks as a way of promoting primary prevention.
- Communication to the general public and training of stakeholders can be used to increase awareness on socio-organisational risk issues.

Questions

- Does SWEA use public health data to track enterprises or sectors which have occupational health problems?
- What kind of assistance do Swedish authorities provide to workers facing psychosocial risks at work problem?

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