



**EUROJUST**

# Eurojust Guidelines on How to Prosecute Investment Fraud

July 2021

*Criminal justice across borders*



# Contents

<b>Introduction .....</b>	<b>2</b>
<b>Part I: Online investment fraud draws in victims from all over Europe and the world .....</b>	<b>2</b>
<b>Part II: Background to the challenges.....</b>	<b>3</b>
<b>Part III: Practical guidelines .....</b>	<b>4</b>
<b>How to ensure successful coordination and cooperation.....</b>	<b>4</b>
1. Identification of parallel/linking investigations .....	4
2. Centralisation of proceedings at national level.....	4
3. Coordination at international level .....	4
<b>How to investigate money flows and recover defrauded funds .....</b>	<b>5</b>
<b>How to deal with a huge number of victims .....</b>	<b>6</b>
<b>How to cooperate in the framework of a joint investigation team.....</b>	<b>7</b>
<b>How to conduct action days successfully .....</b>	<b>7</b>
<b>Part IV: Eurojust support .....</b>	<b>8</b>
<b>Infographic: Fundamentals of investment fraud cases .....</b>	<b>10</b>

# Introduction

Investment fraud investigations are usually characterised by their extensive scope, the huge number of victims, offences causing particularly significant damage, supraregional and international connections, and the complexity of the facts. The organised crime groups (OCGs) involved in these cases are highly professional criminals carrying out their activities across multiple jurisdictions to avoid prosecution. In its daily casework, the European Union Agency for Criminal Justice Cooperation (Eurojust) has observed the challenges faced by prosecutors and investigators when dealing with investment fraud. These cases require thorough cross-border coordination between affected European Union Member States and non-EU countries.

In these guidelines, Eurojust provides an overview of the legal and operational issues that prosecutors may come across and explains how Eurojust and the European Union Agency for Law Enforcement Cooperation

(Europol) can help to bring investment fraud prosecutions to a successful end.

The guidelines are primarily based on an analysis of investment fraud cases opened at Eurojust between 2016 and 2020, complemented by experiences shared during discussions with selected Eurojust National Desks.

In Part I of the guidelines, Europol provides information on the phenomenon. Part II outlines the challenges linked to investment fraud cases, while Part III provides practical guidelines on various issues (e.g. on how to ensure successful coordination and cooperation). In Part IV, the support that Eurojust can provide in the different stages of a case is explained. Finally, at the end of these guidelines there is an infographic outlining the fundamentals of investment fraud cases.

## Part I: Online investment fraud draws in victims from all over Europe and the world

Europol's Analysis Project (AP) Terminal <sup>(1)</sup> and AP Apate <sup>(2)</sup> report that Investment fraud online and over the phone has become increasingly popular, as interest on savings is historically low and people are desperately seeking lucrative investment opportunities.

Online investment fraud is a type of fraud whereby criminals aim to lure their victims into transferring them money with appealing get-rich-quick schemes. Offering investment products such as cryptocurrencies, diamonds, gold, contracts for difference, foreign exchange and binary options trades, criminals promise victims a high financial return on their investments and keep them engaged through websites showing fake returns.

Often, victims invest smaller amounts in the beginning, when they discover appealing and professional-looking websites. They are then phoned by call

centre agents who are well trained to build up a relationship of trust with the victim and persuade them into further, much higher investments. While online investment fraud usually accounts for moderate financial loss, some victims lose their entire life savings before realising that they have fallen victim to a scam.

A number of online investment fraud cases have shown a significant level of complexity, with large networks of shell companies and call centres behind these schemes, as well as the development of software and communication tactics to systematise the exploitation of victims to their last cent.

OCGs often use payment service providers to deal with the incoming money. The development of software is outsourced to criminal experts who create what the OCG needs, thus providing crime as a service.

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<sup>(1)</sup> **AP Terminal** provides support in international payment fraud investigations (card present and card not present), including a wide range of online frauds with a clear cyber component.

<sup>(2)</sup> **AP Apate** focuses in particular on countering CEO fraud, and also supports investigations of other kinds of complex international fraud schemes, including investment fraud, pyramid fraud, Microsoft scams, dating/romance scams, boiler room fraud, Ponzi schemes, acquisition fraud, fake invoice fraud and mass mailing fraud.

Online investment fraud is difficult and time-consuming to investigate, as criminals set up complex international schemes involving groups of companies that appear to be legal, spanning several jurisdictions. The individuals behind these schemes are difficult to

identify, in part owing to their use of anonymisation tools, spoofed phone numbers and legitimate-looking websites. Observation and infiltration techniques by law enforcement agencies are more and more becoming seen as the best way to tackle this type of fraud.

## Part II: Background to the challenges

The OCGs engaged in fraudulent investment schemes **carry out their criminal activities across multiple jurisdictions**, seeking to escape effective prosecution. They are often organised as large corporate structures having a management, employees, a number of departments (software development, recruitment, call centres) and the ability to move assets. Sometimes they also cooperate with other OCGs offering crime as a service, in particular on money laundering schemes.

The challenges involve **identifying the masterminds** and other suspects high up in the hierarchy, such as top sellers and managers. This can be difficult for several reasons. For example, call centre agents use fake identities and (shell) companies are set up by straw men. Furthermore, call centres are often located in several different jurisdictions within and outside the EU. A recurring pattern is that call centres are usually set up in countries where no victims are targeted.

The **huge number of victims** is very specific to investment fraud investigations. In other areas of crime, there are rarely hundreds, thousands or even hundreds of thousands of victims in a particular case. Often, victims are located in multiple countries in Europe or worldwide, suffering huge financial losses having invested their savings and pensions in good faith. The damage in an investment fraud case thus often amounts to millions of euro.

To get an overview of the victims can be difficult, as not all victims will file a report to the police for

various reasons: victims may not (yet) be aware that they have been defrauded (this happens in particular when OCGs mix legal and fraudulent activities); victims may have feelings of shame; or they may have invested money of illicit origin. Often, victims have to be identified using bank account numbers and/or databanks from the investment platforms involved.

The **financial investigations** can be challenging because of the large number and the complexity of the financial transactions to be analysed and the use of straw men to set up companies and open bank accounts. A new trend is for criminal proceeds to be converted into cryptocurrencies in the process of money laundering.

Sometimes registered and licensed **payment service providers** facilitate investment fraud by offering easy and flexible procedures for opening a bank account: an online service, with no physical presence and no presentation of original identification documents required. In such cases, the financial institutions involved could be held accountable for lack of compliance with measures intended to prevent suspicious financial transactions.

Another complicating factor in many investment fraud cases is that they often involve **links to non-EU countries**, mostly as locations of call centres but also as places of residence of OCG members high up in the hierarchy and/or as money laundering destinations.

# Part III: Practical guidelines

## How to ensure successful coordination and cooperation

In all phases of an investment fraud case, **Eurojust** is here to support the national authorities and to ensure thorough coordination and cooperation between all countries involved. Detailed information on the support that Eurojust can provide can be found in Part IV of the guidelines. In this part, information can be found on the various considerations to take into account when dealing with an investment fraud case.

### 1. Identification of parallel/linked investigations

As a first step, it is necessary to gain an **overview of parallel or linked investigations at national and international levels**. Once these have been identified, an assessment can be made of which countries need to cooperate most intensively. Factors to take into account are whether the cases are of a similar size (e.g. in terms of number of victims, damage done) and whether the investigations are at a similar stage.

It would be beneficial if national authorities – in particular the police when victims file a report – were to take the time **to group victims by platform**, with the aim of identifying links and getting a broader picture of the situation.

**Europol can provide support** in identifying transnational links and gaining an overview of the scope of the case. Analysis Project (AP) Apate and AP Sustrans <sup>(3)</sup>, as part of the European Financial and Economic Crime Centre (EFECC) at Europol, and AP Terminal, as part of Europol's European Cybercrime Centre, can produce cross-match reports and a comprehensive analysis of the links between the platforms, people, companies and bank accounts involved. Europol can also put together packages of information relevant for each country involved. In addition, the European Cybercrime Centre can provide cryptocurrency analysis.

### 2. Centralisation of proceedings at national level

In countries with victims, territorial jurisdiction is largely determined by the place of residence of the victims, often resulting in multiple prosecution offices working on a case at national level. A solution could be

to **centralise proceedings at national level**, for example at the prosecution office with the most victims. As the case could potentially become huge, complex and time-intensive, sufficient resources, including human resources, and capacity to deal with it could be key to a successful prosecution. If proceedings are centralised at national level, it is important to inform all other prosecution offices with pending linked/parallel investigations.

### 3. Coordination at international level

With suspects operating in multiple jurisdictions, there could be a risk of **conflict of jurisdiction**. It is therefore vital to ensure a centralised and coordinated approach, not only at national but also at **international level**. The different perspectives and interests of the countries involved need to be taken into account, as countries with victims will have a different focus and different needs from countries with call centres or money transactions (e.g. the latter will need to establish the predicate crime of money laundering).

In close consultation, all the countries involved should determine the **right scope and focus of the investigation** from the start. In doing so, national authorities should not limit their cooperation to the mapping and exchanging of information on victims but should explore and use all possible means of gathering information and evidence (e.g. observation and undercover measures, digital evidence) and aim to target the top level in the OCG's hierarchy.

At an early stage, the authorities involved should discuss and decide **which country will prosecute whom and on the basis of which facts**. Various factors can be taken into account (see also Eurojust's *Guidelines for Deciding 'Which Jurisdiction Should Prosecute?'*).

For common suspects (i.e. people who are suspected of having committed a crime in more than one jurisdiction), there is significant benefit in determining a **priority to prosecute** at an early stage, but in any case prior to an action day (see also the consultation mechanism – where appropriate with the assistance of Eurojust – set out in Council Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings).

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<sup>(3)</sup> The purpose of **AP Sustrans** is to support money laundering and criminal finance investigations, in particular through financial analysis and a follow-the-money approach, with the further possibility of tracing illegal assets to deprive OCGs of their illegally obtained proceeds.

In the light of the *ne bis in idem* principle, particular attention has to be paid to the possible impact on linked/parallel proceedings when top-level suspects are prosecuted. While in relation to some perpetrators – such as call centre agents – it is in general unproblematic to prosecute individual acts, this can become more complex in relation to the top level of an OCG when a suspect is prosecuted for organised crime in one country and there are victims in multiple jurisdictions. In such cases, the ‘idem’ criterion has to be assessed (‘a set of concrete circumstances which are inextricably linked together in time, in space and by their subject-matter’<sup>(4)</sup>). Thorough coordination between all countries involved and agreement on the best approach to prosecution of suspects at the top level of an OCG is of great importance, partly to avoid forum shopping by high-level suspects.

Countries with victims could discuss the **possible centralisation of the proceedings** in one country. However, jurisdiction is regulated differently in EU Member States; while some EU Member States can include victims from other countries in their proceedings if they have been defrauded by the same OCG, others can prosecute only on the basis of the facts concerning their own victims if the perpetrators acted from abroad.

It is important to anticipate possible obstacles, such as that certain countries do **not extradite their own nationals**. There might therefore be a need for those countries to initiate their own national proceedings or a need to monitor the travel movements of targets to decide on the best timing for measures (e.g. an arrest). Another challenge observed in one case was that **surrender on the basis of a European Arrest Warrant (EAW) was refused** on the grounds that the EAW related to offences that were regarded under the law of the executing Member State as having been committed in whole or in part on the territory of the executing Member State (see Article 4(7)(a) of the EAW framework decision). In investment fraud cases with criminal activities in multiple jurisdictions, this point may influence the best approach to take.

When several countries have pending proceedings, **coordinating mutual legal assistance and mutual recognition requests** (e.g. EAWs and European Investigation Orders (EIOs)) is important to save time and avoid duplication of efforts, especially as countries with victims may have similar or the same needs

for information from countries with call centres and money laundering schemes.

## How to investigate money flows and recover defrauded funds

Particular emphasis should be placed on the **recovery of defrauded funds**, at the earliest stage possible, first and foremost for the purpose of compensating the huge financial losses suffered by the victims, but also to gather evidence on the modus operandi and prevent further use of the money by criminal networks for more serious crimes.

Essential are **early discovery** and **timely intervention**. All possible channels should be used to trace and freeze the money as soon as possible.

► **Freezing certificates based on Regulation (EU) 2018/1805** should be issued as soon as possible. Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders entered into force on 19 December 2020 and introduced a new legal framework in the EU for asset recovery, replacing the legal instruments applicable until then. Eurojust has published a note on Regulation (EU) 2018/1805 in which the key changes are highlighted. On the European Judicial Network website, freezing certificates and confiscation certificates are available in all EU languages in Microsoft Word format.

When a company involved is registered in the name of a straw man, it is important to explain in the certificate the connection between the person affected by the asset recovery measure and the company controlled by him or her (legal versus beneficial ownership).

Of great relevance is the improved protection under the new legal framework for victims of cross-border crime, in particular in relation to the rights to restitution and compensation (Article 29 of Regulation (EU) 2018/1805; see also Section 2.8 of the Eurojust note on Regulation (EU) 2018/1805).

► Involve national **Financial Intelligence Units (FIUs)** as early as possible. Although the organisation and powers of FIUs differ from one Member State to another, most FIUs are empowered to take some urgent action (freezing or postponing a transaction, for instance) if there is a suspicion that a transaction is related to money laundering.

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<sup>(4)</sup> See also Court of Justice of the European Union Judgment of 9 March 2006 in Case C-436/04, *Van Esbroeck*.

- ▶ For more on the role of FIUs, see the consolidated anti-money-laundering (AML) legal framework (Directive (EU) 2015/849 amended by Directive (EU) 2018/843).
- ▶ FIUs can share information with or request information directly from other FIUs. They do so on a regular basis in cross-border cases. In addition, Member State FIUs also have, in accordance with the EU anti-money-laundering legal framework, the obligation to share information with another Member State's FIU when that information relates to the latter's jurisdiction.
- ▶ A victim can initiate a **recall process**, contacting his or her bank directly to ask it to contact the other bank to try to stop the financial transaction and refund the money (on a voluntary basis). This process can be instantaneous or take up to 4–5 days, depending on the type of transfer and the destination country (i.e. depending on the bank's rules and regulations and local legislation). Several possible causes of delay have to be considered (weekends, public holidays, etc.); this is why some criminals are keen to commit offences just before a weekend: to delay the initiation of a recall process by the victim.

In order to do so, the main channel of communication between Member State FIUs is the FIU.net system. It is the only EU-based IT system that links all Member State FIUs. In addition, FIU Norway and Europol are connected to the system. FIUs can make simple case requests or use more sophisticated features of the system enabling them to match in a pseudo-anonymised way the information they hold in their respective national databases. For more on the role of FIU.net, see the Europol website.

- ▶ The national **Asset Recovery Offices** (AROs) in the EU Member States play a central role in the identification of proceeds of crime (see Council Decision 2007/845/JHA). Beyond the EU, additional advice and support during any stage of the asset recovery process can be provided by the Camden Asset Recovery Inter-agency Network (CARIN); EFECC hosts the CARIN Secretariat. Its services can be used by law enforcement as well as judicial authorities.
- ▶ Make use of the support services available from **EFECC** at Europol, which was established in June 2020 to enhance Europol's operational support to EU Member States and EU bodies on financial and economic crime and promote the consistent use of financial investigations. EFECC Operations provides a platform through which operational data pertaining to suspicious transaction/activity reports filed by FIUs, reports on cash detections, and ongoing economic and financial crime investigations – from all relevant agencies across the EU and beyond – are treated, analysed and processed. AP Asset Recovery is currently part of the Financial Crime Team within EFECC. The purpose of this AP is to support the tracing and identification of criminal assets <sup>(5)</sup>.

If a number of different channels are used, multiple addressees should ideally be aware of this duplication in order to facilitate coordination and ultimately enhance the chances of successful freezing and confiscation.

Of importance are the obligation of EU Member States to put in place **centralised bank account registries** directly accessible to FIUs and AROs and the ability of FIUs to share this information with each other (see Directive (EU) 2018/843 and Directive (EU) 2019/1153). For more information, see also Council conclusions on enhancing financial investigations to fight serious and organised crime.

## How to deal with a huge number of victims

At an early stage, national authorities could – if their legal system allows it – create and send a **questionnaire to victims** asking whether they would like to provide answers to the questions in written form and join the criminal proceedings to pursue compensation. Furthermore, hearings over the phone could be considered, if provided for in the national legal system. This could allow relevant information to be gathered in a unified and time-efficient manner.

Once an overview of the victims is available, it can be helpful to **categorise the victims of investment fraud**: victims of attempted fraud and completed fraud, groups of victims by amount of damage and/or victims for whom the damage was repaired and those for whom it was not.

For reasons of procedural economy, it may be advisable to focus on **victims above a certain threshold of damage**. It should be borne in mind that the legislation in the EU Member States differs as to whether all victims have to be named in an indictment/verdict

<sup>(5)</sup> **AP Asset Recovery** is dedicated to supporting AROs and, more generally, investigators who need support in identifying, tracing and seizing assets, by providing them with access to the Europol databases and offering them additional support from Europol.



or whether there is the possibility to include victims with more limited damage by referring to ‘other victims’ and the combined amount of damage.

During the trial stage, **selected victims** could be heard in person, representing the different categories. However, in some countries the legal system requires that all victims be heard in person during trial, and there are limited grounds for using written statements in court. A possible solution could be for victims to share legal counsel, to prevent all the victims having to be heard separately.

In relation to victims, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime is of particular relevance.

### How to cooperate in the framework of a joint investigation team

The countries involved might decide to set up a joint investigation team (JIT) to cooperate at a higher level. The legal framework of a JIT facilitates the conduct of cross-border investigations and also the use of special investigative measures such as undercover agents, secret surveillance and wiretapping of telecommunications.

In investment fraud cases, a multitude of countries may be involved, and it is necessary to **keep the JIT focused and manageable**. It is therefore advisable to have only a **limited number of parties to the JIT**, for example those countries where the most victims are located or where the defrauded money went and/or the countries with the strongest links. The aim of the JIT could be to identify suspects who are high up in the hierarchy, such as top sellers and managers.

In Eurojust’s experience, when JIT parties request support from a (non-EU) country with one JIT party taking the lead, there is a higher chance that a positive response will be received. A reference to the JIT should be included in letters of request (LoRs) / mutual recognition requests, together with a request to authorise the sharing of the answer with other JIT parties.

### How to conduct action days successfully

Once the investigations in the countries involved have reached an advanced stage, the national authorities may decide to organise **action days** to execute simultaneously certain measures, such as arrests, searches, hearings and asset recovery measures. Sometimes action days are conducted at an earlier stage, to gather evidence in order to proceed with the investigation or to identify the top levels of the OCG.

It is a priority to first identify any linked/parallel investigations to ensure thorough coordination during the action day, to avoid the parties jeopardising each other’s investigations and to prevent duplication of efforts or misunderstandings. The risk involved in simply sending out requests (EAWs, EIOs, LoRs, freezing certificates, etc.) to other countries without prior consultation is that linked investigations could be discovered at a very late stage, hampering the execution of the requests.

Once there is an overview of the countries involved, those relevant for the action day need to be identified. It is important to involve all **key countries** in the action day to avoid the destruction of crucial evidence.

A **priority to prosecute** should preferably be decided on for common suspects prior to the action day to avoid any infringement of the *ne bis in idem* principle.

National authorities may decide to **focus on specific aspects** and, for example, tackle call centres located in various countries first. Depending on the number of measures to be executed, an action day may in fact last several days. In that case, there may be a need to **prioritise the measures to be executed** (with the most important measures to be executed on day 1). It is advisable to check staff capacity in the countries involved beforehand, especially if multiple measures are to be executed. Again, there may be a need for prioritisation.

In planning an action day, it is advisable to anticipate possible issues arising from **differences in the procedural status of a person** (e.g. in one country, a call centre agent might be considered a suspect, whereas in another they would be considered a witness).

**Eurojust** can set up dedicated **coordination centres** in support of action days to ensure the coordinated and simultaneous execution of measures in multiple countries (see also Part IV). Setting up a coordination centre ensures that:

- ▶ prior to the action day relevant documents (e.g. EIOs, EAWs, LoRs, freezing certificates) are exchanged and possible legal and operational issues are anticipated and resolved (e.g. in relation to common targets, the countries involved might need to decide on a priority to prosecute prior to the action day);
- ▶ during the action day, operational information is collected in real time from and disseminated to national authorities involved;

- ▶ any legal, operational or practical issues that emerge in the course of an action day are addressed and resolved immediately (e.g. when additional addresses need to be searched, or additional bank accounts / assets need to be frozen urgently).

The coordination centre thus acts as a central information hub and the joint operations are constantly monitored and coordinated by Eurojust, with all key stakeholders being in direct and immediate contact with each other. Key to success is the continuous availability during the action day of the Eurojust National Desks corresponding to the countries involved, supported by Eurojust's legal and technical experts. When appropriate, national judicial and law enforcement authorities and representatives of other EU agencies or bodies also participate (either being

physically present or participating by videoconference link).

**Eurojust can support action days** through the deployment of mobile offices, a Universal Forensic Extraction Device and a virtual command post, a collaboration tool the main objective of which is to provide law enforcement and judicial authorities with a secure platform for real-time communication during an operation or emergency response.

With regard to **the follow-up on an action day**, a realistic time frame needs to be planned for, as the analysis of seized material can be very time-intensive and technically complex. Furthermore, keep in mind that the seized material may be of relevance to other countries with linked/parallel proceedings.

## Part IV: Eurojust support

Eurojust's assistance may be requested at any stage by any of the judicial authorities involved.

- ▶ Eurojust can organise a dedicated coordination meeting on a case at any stage in an investigation/prosecution. The aim of a coordination meeting is to reach agreement between the national authorities involved on how to proceed in relation to identified coordination/cooperation issues. Those issues could include, inter alia, the identification and coordination of parallel and linked proceedings, the prevention and/or settlement of conflicts of jurisdiction, a decision on the best place to prosecute, *ne bis in idem* issues, the transfer of proceedings and the use of instruments giving effect to the principle of mutual recognition (e.g. EAWs, EIOs, freezing certificates and confiscation certificates). Coordination meetings create an opportunity to meet face to face at the Eurojust premises or by videoconference in a secure environment and with simultaneous interpretation, if needed (or consecutive interpretation in videoconferences with more than three languages).
- ▶ Eurojust can assist in discussing the suitability of a case for setting up a JIT, help with the drafting of the JIT agreement and assist in the operational phase of the JIT, for example by providing advice on how to ensure effective information exchange in the framework of a (possibly multilateral) JIT. Furthermore, Eurojust support is vital in relation to LoRs / mutual recognition requests (e.g. EIOs) to countries outside the JIT.
- ▶ Eurojust also provides **financial assistance for cross-border activities of JITs**, to help with travel and accommodation costs, interpretation and translation costs (often considerable in investment fraud cases) and the costs of transferring items. In addition to a regular funding scheme under which eight calls for proposals are issued each year, Eurojust also provides financial assistance to JITs for urgent and/or unforeseen actions falling outside the scope of the scheme. For more information, visit the JITs funding page on the Eurojust website.
- ▶ Eurojust can set up a coordination centre in a particular case to facilitate the coordinated and simultaneous execution of measures in multiple countries during an action day. The coordination centre acts as a central information hub, in which joint operations are constantly monitored and coordinated by Eurojust, with all key stakeholders being in direct and immediate contact with each other. The participation of all key stakeholders allows Eurojust to assist promptly with legal and practical advice and facilitates the issuing of critical judicial instruments, ensuring that the actions taken lead to successful prosecutions.
- ▶ Eurojust can facilitate **cooperation with non-EU countries**: international agreements, working arrangements, Liaison Prosecutors and Contact Points form Eurojust's global network, which gives prosecutors access to jurisdictions in more than 50 non-EU countries worldwide. More

information can be found on the Eurojust website. In particular, the **Liaison Prosecutors posted to Eurojust** can facilitate cooperation with their respective national authorities, attend coordination meetings, support the setting up and operational phase of JITs and ensure that actions are taken in

their country in the framework of action days. So far, 10 non-EU countries have seconded Liaison Prosecutors to Eurojust: Albania, Georgia, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States of America.

## Infographic: Fundamentals of investment fraud cases







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