

# Management Control and Internal Audit as Instruments for Realization of Public Tasks Performed by Territorial Local Government Units

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## Abstract

*The issue of delegating the part of public tasks, previously performed by the state, to the newly established entities of the public law became topical after the territorial self-government was introduced in Poland. Those tasks concern the satisfaction of the collective needs of communities by reaching or maintaining the certain status, in particular relating to the protection of daily or cultural needs. Those tasks are mainly realized by the units of territorial local government and the units of local government connected with them, which are the part of the public finance sector. Management control is the overall process which is closely integrated with the activity of the unit of the public finance sector and which constitutes a set of actions and events to provide the realization of the unit's goals. The goal is the realization of the public tasks entrusted to them. The role of the internal audit is to show whether all the actions taken to ensure the realization of the goals and tasks are performed in a lawful, efficient, economical and timely manner. Management control and internal audit were created due to the necessity to establish legal conditions and instruments which enable the optimal realization of public tasks. Simultaneously, their use by the local government units which are the part of the public finance sector is not sufficient. It means the necessity of the actual implementation of the mechanisms of the management control and their independent and objective assessment by the internal audit.*

**Keywords:** territorial local government, units of the public finance sector, public tasks, management control, internal audit

**JEL:** H7, H83, M42, R51, R58

## Introduction

The issue of delegating the part of public tasks, previously performed by the state, to the newly established public law bodies became topical after the political reform and the introduction of firstly one-tier and then three-tier structure of the territorial local government. The regulations in this respect are contained in the European Charter of Local Self-Government ratified by the Republic of Poland, which formulates the concepts of the local self-government and which states that the local self-government means the right and ability of the local communities to manage and administer the significant part of public matters, on their own responsibility and in the best interest of their residents, within the limits defined by the law.<sup>1</sup> The Constitution contains the basic regulation under which the territorial local government is a constituent of the system of public authority. Pursuant to the Constitution of the Republic of Poland, the territorial system of the Republic of Poland ensures the decentralization of the public authority and the territorial local government

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1. See: Europejska Karta Samorządu Terytorialnego, sporządzona w Strasburgu dnia 15 października 1985 r. [the European Charter of Local Self-Government drawn up in Strasbourg on 1985.10.15]. DzU z 1994 r. nr 124 poz. 607, Art. 3 para. 1.

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participates in the exercise of public authority.<sup>2</sup> Simultaneously, the territorial local government performs a substantial part of public tasks, vested in it and delegated under laws, in its own name and on its own responsibility. Fundamental territorial division of the state, considering social, economic and cultural bonds, which was defined in law, aims at providing the territorial units with the ability to perform public tasks.<sup>3</sup>

As an extension to the aforesaid regulations forming the subsidiarity principle in Chapter 1 of the Constitution of the Republic of Poland, signalized in its preamble as well, further regulations contain the presumption of competence of the territorial local government in performing public tasks. The territorial local government performs public tasks which were not reserved by the Constitution or other laws for the bodies of other public authorities.<sup>4</sup> The cited principle is in connection with the regulations under which a commune as a basic unit of the territorial local government performs all its tasks not reserved for other units of the territorial local government.<sup>5</sup> Therefore, the position of the constitutional institution which is the territorial local government was built by defining the competences vested in it, which include both the rights and duties concerning the realization of public tasks. Certain features ascribed to the territorial local government directly relate to it. The literature in particular indicates the participation in the exercise of power, through (inter alia) the performance of the essential and numerous tasks of public administration, the legal personality, the local enactments, the independence from the government administration bodies, supervising the activity as to its legality, with the simultaneous independence (also financial).<sup>6</sup>

The need to provide the said territorial local government units with the funds should be also highlighted to enable them the performance of the public tasks which have been delegated to them. The amount of the financial resources of local communities should be adjusted to the scope of the rights vested in them by the Constitution or by law.<sup>7</sup> The Constitution of the Republic of Poland gives a basic and stringent guideline that units of territorial local government shall be provided with the part of public funds adequate for the performance of the duties assigned to them. Due to the limitations of the public funds it is necessary to distribute the resources among the public law bodies performing their public tasks. The appropriate distribution of the public funds should be made in accordance with the principles of proportionality and appropriateness. Additionally, in connection with the rule contained in the Constitution, consequently, the changes in the scope of the duties and competences of the units of territorial local government should be also related to the relevant changes in the distribution of the public funds.<sup>8</sup>

## 1 Nature of the public tasks performed by the territorial local government

Despite the importance of the aforesaid regulations, there is no normative definition of such a key concept as public tasks. The Constitution of the Republic of Poland does not define them, even by defining their constituent features, giving their catalogue or providing their exemplary enumeration. It should be understood that the lack of the definition of public tasks in the Constitution was purposeful. Public goals or public interests to which the public tasks refer are not fixed, but they change in time and space, they depend on the certain legal, political, and social context or adopted value system, as well as the extension of the functions of the contemporary state (Bosek

2. See: *Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. uchwalona przez Zgromadzenie Narodowe w dniu 2 kwietnia 1997 r., przyjęta przez Naród w referendum konstytucyjnym w dniu 25 maja 1997 r., podpisana przez Prezydenta Rzeczypospolitej Polskiej w dniu 16 lipca 1997 r.* [the Constitution of the Republic of Poland of 1997.05.02]. *DzU z 1997 r. nr 78 poz. 483 as amended*, Art. 15 para. 1 and Art. 16 para. 2 clause 1; the statement of reasons for the judgement of the Constitutional Tribunal of 2009.04.08 (File no. K 37/06); see also Jagoda (2011, 34–35).

3. See: The Constitution of the Republic of Poland, Art. 16 para. 2 clause 2 and Art. 15 para. 2.

4. See: The Constitution of the Republic of Poland, Art. 163.

5. See: The Constitution of the Republic of Poland Art. 164 para. 1 and 3.

6. This is further elaborated by Oniszcuk (2002, 24–25), Izdebski (2014, 130ff.), and Dolnicki (2016, 21ff.).

7. See: The European Charter of Local Self-Government, Art. 9 para. 2.

8. See: The Constitution of the Republic of Poland, Art. 167 para. 1 and 4; the transfer of the public funds to the units of territorial local government to perform their duties is further elaborated by Niezgoda (2012).

and Safjan 2016, 884; Stahl 2007, 95). The inherent element of the public task is a competence of a particular body of the public law—i.e., the legal duty to perform it (Tabernacka 2007, 85ff.). It is understood that public tasks are the tasks connected with public administration, the content of which is to perform executive authorities with binding effect for other entities. Those tasks also concern the satisfaction of the collective needs of particular local or regional communities or even the whole society by reaching and maintaining the certain condition, in particular relating to the protection of daily or cultural needs (Błaś 2000, 34). Simultaneously, they are the tasks which generally are not a profit-making business venture (Banasiński and Kulesza 2002, 16). Additional criterion to consider a given task as public is the circumstance that the state or the unit of territorial local government hold legal responsibility to realize them (Izdebski 2014, 150; Stahl 2007, 95).

Particular local government acts expand and specify the presumption of the units of territorial local government to perform public tasks. The range of activity of the local government of the voivodship includes: performing the public tasks of voivodship nature, not tightened by the laws for the benefit of the bodies of government administration, a county performs public tasks, defined in law, of supra-municipal nature, whereas the range of activity of a commune includes all the public matters of local relevance, not tightened by the laws for the benefit of other entities.<sup>9</sup> Basing on the legal regulations resulting from the local government acts, but omitting the division into obligatory and non-obligatory tasks, its own tasks, entrusted tasks, and commissioned tasks (which is practically important but of secondary importance for the issues of this dissertation), it should be stated that the catalogue of public tasks performed by the units of territorial local government is extended and diversified.<sup>10</sup> Simultaneously, it is not closed due to the aforesaid rules and factors. For example, that catalogue contains the activities constituting the environmental protection, social services, public education, protection and guardianship of monuments, physical culture and culture in general, public mass transit and public roads, ensuring spatial order, counteracting unemployment, and many others. It should be understood that the previously stated thesis that those tasks as to their nature are not profit-making actions is confirmed and proven by the presented enumeration. Therefore, the legal forms and financing the performance of public tasks by the public law bodies, more specifically by the units of territorial local government, are a very important topic (cf. Feret 2016, 55ff.). Secondarily, in this area the principle of management of public funds and the principle of universality (equality) of the access to the performance of the tasks financed from the public funds should be pointed out, which are contained in the Public Finance Act. Under this principle, the right to perform the tasks financed from public funds shall be vested in all the entities, unless separate acts provide otherwise.<sup>11</sup> It means that the tasks financed from public funds, which are public tasks, may be performed not only by the units of the public finance sector but also by the entities excluded from this sector (Kosikowski 2006, 187). In practice, the essential and dominant part of the public tasks (both when it comes to their kind and scope) is performed by the entities from the public sector in local government section. It is a derivative from the constitutional presumption that the public tasks are performed by a commune or other units of territorial local government in stipulated forms through conducting non-commercial activity, which is not profit-but quality-oriented, which means the best possible performance of the entrusted tasks.

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9. See: Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 13 kwietnia 2018 r. w sprawie ogłoszenia jednolitego tekstu ustawy o samorządzie województwa [the Act on Voivodship Government of 1998.06.05]. DzU z 2018 r. poz. 913 as amended, Art. 2 para. 2; Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 9 maja 2018 r. w sprawie ogłoszenia jednolitego tekstu ustawy o samorządzie powiatowym [the Act on County Self-Government of 1998.06.05]. DzU z 2018 r. poz. 995 as amended, Art. 4 para. 1; Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 9 maja 2018 r. w sprawie ogłoszenia jednolitego tekstu ustawy o samorządzie gminnym [the Act on Communal Self-Government of 1999.03.08]. DzU z 2018 r. poz. 994 as amended, Art. 6 para. 1.

10. See: the Act on Communal Self-Government Art. 7 para. 1; and the Act on Voivodship Self-Government Art. 14 para. 1.

11. See: Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 13 października 2017 r. w sprawie ogłoszenia jednolitego tekstu ustawy o finansach publicznych [the Public Finance Act of 2009.08.27]. DzU z 2017 r. poz. 2077 as amended, Art. 43.

## 2 Local-government units of the public finance sector performing public tasks

The performance of public tasks by the units of territorial local government was statutorily hedged with the defined organizational and legal forms added to the public finance sector (Feret 2016, 458). The concept of public finance was defined in the Public Finance Act<sup>12</sup> by elaborate enumeration including the entities diversified in many aspects. The diversity of the units indicated therein is manifested by holding a legal personality or the lack of it, in the way in which they are related to the proper budget or the kind of the performed public tasks. Some of the units may be part of both the state and local government sector; however, others may substantially belong to only one of them. The units of the public finance sector are established only in the forms stipulated in the chapter concerning those units, which was contained in the Public Finance Act, and the grounds for establishing them may be either the Public Finance Act or separate laws.<sup>13</sup> Their essential common feature is their establishment to perform public tasks which are financed from the public funds subject to planning, control, reporting, and discipline in accordance with the uniform rules (Lipiec-Warzecha 2011, 83–84).

Among the units of the public finance sector, which constitute legal forms of performing public tasks and which belong to the local government sector, the following ones may be differentiated: budgetary units, local government budgetary entities, independent public health care facilities, local government cultural institutions and other local government legal persons established under separate laws to perform public tasks, excluding enterprises, research units, banks, and commercial law partnerships and companies. Each of the aforesaid categories is internally diversified and legally regulated structure with a defined specification, which is derivative from the kind of the delegated and performed public tasks. To illustrate the practical dimension and importance of the public tasks performed thereby, which lie within the competence of the territorial local government, the following entities may be indicated as an example: primary schools, libraries, community centers, municipal services offices, social welfare centers, cemeteries. Fragmentary activities of those entities constitute the realization of the public interest through the performance of stipulated tasks of public nature.

## 3 Management control and internal audit

Performance of the public tasks, which is essential for the proper functioning of the society, is an element of public safety. The concept of safety, being a derivative from the term “safe,” means the state of non-threat, calmness, confidence (according to Zgółkowska 1995, 128–129). Public safety is defined as the whole order and social facilities protecting the citizens against the phenomena which are dangerous for the legal order.<sup>14</sup> Legally regulated control and supervision are an interesting theme within the scope of the internal and public safety of the state. They were formed as first in history. Management control and internal audit evolved from those concepts; however, they took another normative form. It should be understood that the indicated legal institutions constitute the type of instruments aiming at the realization of the public safety by ensuring that the public tasks, including those performed by the units of local government, are properly realized.

Management control and internal audit were created due to the necessity to establish legal conditions and instruments which enable the optimal realization of public tasks with the realization of the principle of subsidiarity. Otherwise, the public law bodies, including the units of territorial local government, would be unable to perform their basic tasks, which would be in breach of the rule of decentralization of public authority, which is essential for any democratic state and which is realized by establishing and functioning of the territorial local government.<sup>15</sup> The instruments which are to ensure the proper performance of public tasks are management control and internal

12. See: The Public Finance Act, Art. 9.

13. See: The Public Finance Act, Art. 8 para. 1 and 2.

14. It also includes the system protection against the attacks on the basic political institutions in the state (Zgółkowska 1995, 128).

15. Cf. the statements of reasons for the judgements of the Constitutional Tribunal of 2003.02.18 (File no. K 24/02, OTK-A of 2003, no. 2, item 11) and of 2006.11.03 (File no. K 31/06, OTK-A of 2006, no. 10, item 147).

audit, presently regulated by the Public Finance Act of 2009. Their implementation and realization aim at performing public tasks and, thus, maintaining the state of internal safety when it comes to the proper functioning of the state. Those institutions concern the activity of the entities composing the public finance sector, including those which are connected with local government, the basic purpose of which is the performance of public tasks.

Management control in the units of the public finance sector comprises all the activities taken to ensure the realization of the goals and tasks in a lawful, efficient, economical, and timely manner.<sup>16</sup> This definition stresses the complex and systemic nature of the activities which constitute the discussed concept. The complexity means that all the activities taken in all the units of the public finance sector are covered by its scope, and the systemness needs those activities to take a coordinated form and to reflect the systemic nature of that sector (cf. Misiąg 2015, 274). Management control should be connected with the management of a unit or a group of units, and its basic element is the system of setting the goals and tasks, as well as monitoring the degree of their realization. The idea of the internal control is ensuring the performance of the set goals and tasks in the aforesaid manner. The management control in particular aims at providing the compliance with the provisions of law and internal procedures, the effectiveness and efficiency of operations, the credibility of reports, the protection of resources, the compliance with and promotion of the code of ethical behavior, the effectiveness and efficiency of the flow of information and risk-management.<sup>17</sup> The unit's areas for action, which were indicated in the law and which are the goals of the management control, are the activities whose proper functioning in effect should lead to the realization of the public tasks (the goal) delegated to a given unit of the public finance sector (Mazurek and Knedler 2010, 42).

The crucial element of the management control in the units of the public finance sector is the liability of every head of such unit for implementing and monitoring such elements of the management control to make the unit achieve its targets. In the local government sector the head of the commune, the town mayor, the city mayor, the county starost or the voivodship marshal, as well as the heads of particular units are the subjects of the duties which include the provision of adequate and efficient management control.<sup>18</sup>

The management control is specified by the detailed guidelines contained in the standards and directives given by authorized entities, which led to the creation of the system of the management control in the units of the public finance sector. A key role is played by the standards of the management control for the entire public finance sector obligatorily given by the Minister of Finance. They should be consistent with the international standards in this respect, which results from the Public Finance Law;<sup>19</sup> it was reflected in the content of the announcement of the Minister of Finance referring to the standards indicated by the European Commission and international institutions.<sup>20</sup> They define the basic requirements on the management control in the public finance sector and they constitute the ordered collection of guidelines, which should be followed by the above-mentioned persons responsible for its functioning in order to create, assess, and improve the system of management control. Those standards aim at developing uniform and consistent model of management control with the consideration of the specifications and conditions under which the implementing units operate. The standards were presented and specified in five groups corresponding to the particular elements of management control: internal environment, targets and risk management, control mechanisms, information and communication, monitoring and assessment. The said elements depict that the management control includes all the activities of the units which apply it, which is in accordance with its idea visible in the statutory definition.

16. See: The Public Finance Act Art., 68 para. 1.

17. See: The Public Finance Act, Art. 68 para. 2.

18. See: The Public Finance Act, Art. 69 para. 1.

19. See: The Public Finance Act, Art. 69 para. 3.

20. Announcement no. 23 of the Minister of Finance of 2009.12.16 on the standards of the internal control for the public finance sector takes into consideration the standards established by: the International Organisation of Supreme Audit Institutions and the Committee of Sponsoring Organisations of the Treadway Commission (see: Komunikat nr 23 Ministra Finansów z dnia 16 grudnia 2009 r. w sprawie standardów kontroli zarządczej dla sektora finansów publicznych. Dziennik Urzędowy Ministra Finansów z 2009 r. nr 15 poz. 84).

The institution of the management control is presented as one of important elements of the entire process of the efficient and organized activity of a given unit (cf. Zdyb 1987), aiming at the realization of the tasks imposed on it. The basic function of the analyzed legal construction is the improvement of the processes of management of public entities in order to achieve certain public goals by maintaining the standards of the tasks performed by them (Walczak 2012, 151).

Whereas, the internal audit is an independent and objective activity, which aims at supporting the minister heading the department or the head of the unit in the realization of goals and tasks by the systematic assessment of the management control (so-called operations to ensure) and advisory services. The said assessment in particular concerns the adequacy, effectiveness and efficiency of the management control in the public administration division or unit.<sup>21</sup> The internal audit supports the organization in achieving the intended goals by taking systematic and consistent actions to analyses and improve the efficiency of risk-management, control system, and organization management processes.<sup>22</sup> As the audit under the Public Finance Act concerns the assessment of the management control, which in its scope covers all the aspects of the units of the public finance sector functioning, it is focused on the goals and tasks of those units and the efficiency of their realization (Smoleń 2012, 1137). The Minister of Finance stipulated (in the form of an announcement) the standards of the internal audit for the units of the public finance sector in accordance with the commonly accepted standards of internal audit. When conducting their actions, the internal auditor follows the instructions contained in the standards of the internal audit.<sup>23</sup> In general, it may be stated that the management control is a basic area covered by the internal audit. Simultaneously, the audit should not be treated only as the expansion of the management control, because it comprises both the indicated ensuring actions and advisory services.

The group of entities performing public tasks which are a constituent of the local government sector and in which the internal audit is conducted under the Public Finance Act is limited. In particular, they are not covered by absolute audit, and when it comes to conditional absolute audit, it only refers to the units of territorial local government, if the amount of revenues and income or the amount of spending and expenditures (presented in the budget act) exceeds PLN 40 000. However, other local government units of the public finance sector may be covered by relative audit, which is voluntary. The Act does not provide for the obligation to conduct audits in such entities; however, it admits the internal audit on the basis of the decision of the head of a given unit.<sup>24</sup>

To sum up the remarks on both legal institutions, it should be emphasized that there is a close link and correlation between the management audit and internal audit; however, they have different goals and nature (Kiziukiewicz and Szymańska 2013, 59–63). They are not identical concepts, but they are differently correlated legal institutions and, as stated in the literature, they are often confused (cf. Gołębiowski and Russel 2012, 1; Misiąg 2015, 823–824). Taken the above into consideration, it seems to be justified to indicate the factors allowing to clearly differentiate between them. The basic element is the presented analysis of the statutory definitions of those concepts. In the alternative, what may be helpful is the location of the discussed constructions in the Public Finance Act; those processes were clearly separated by the legislator to create order (Ruśkowski and Salachna 2014, 1206). The catalogue of the units of the public finance sector, in relation to which the said constructions are applied, is diversified with the complexity of conducting the management control and the selectivity of conducting the internal audit. In the end, it should be signalized that the group of entities or persons responsible for ensuring the functioning of the management control is differently regulated—somewhat simplified, heads of units authorized to conduct internal audit—the auditor employed in the unit or external service provider. Additionally, actions in breach

21. See: The Public Finance Act, Art. 272 para. 1 and 2.

22. From the definition of the internal audit formulated by the Institute of internal auditors pursuant to Czerwiński (2005, 10).

23. See: the Public Finance Act, Art. 273 para. 1 and 2 and the Announcement of the Minister of Development and Finance of 2016.12.12 on the standards of the internal audit for the units of the public finance sector. (see: Komunikat Ministra Rozwoju i Finansów z dnia 12 grudnia 2016 r. w sprawie standardów audytu wewnętrznego dla jednostek sektora finansów publicznych. Dziennik Urzędowy Ministra Rozwoju i Finansów z dnia 16 grudnia 2016 r. poz. 28).

24. See: The Public Finance Act, Art. 274 para. 1, 3 and 4.

of the public finance discipline due to the omission to conduct the internal audit in the unit of the public finance sector obliged thereto and the failure to perform it or undue performance thereof by the head of the unit belonging to that sector are regulated in separate editorial units when it comes to the management control.<sup>25</sup> Simultaneously, those elements indicate that it is necessary to differentiate between those institutions which, although closely correlated, are separate legal constructions.

## Conclusions

The Management control is the overall process which is closely integrated with the activity of the unit of the public finance sector and which constitutes a set of actions and events to provide the realization of the unit's goals (Misiąg 2015, 825). The goal is the realization of the public tasks entrusted to them. The assessment of the management control by internal audit concerns in particular its adequacy, effectiveness and efficiency. The role of the audit is to show whether all the actions taken to ensure the realization of the goals and tasks are performed in a lawful, efficient, economical, and timely manner. It should be emphasized that those constructions draw on the proven international and European Union patterns. It is reflected in the standards for the units of the public finance sector given by the Minister of Finance under the Public Finance Act.

To sum up, it should be stated that the management control and the internal audit, which are correlated, are the instruments properly regulated in the Public Finance Act. Those institutions are necessary to ensure the proper realization of the public tasks within the scope of (inter alia) education, social welfare or culture and, thus, the provision of the safety of the state, the public law bodies, and (most importantly) the society as a system of particular citizens. Those tasks are mainly realized by the units of territorial local government and the units of local government connected with them, which are the part of the units of the public finance sector. The analyzed modern legal instruments constitute a kind of tools whose implementation and use by the heads of particular units performing public tasks may streamline their actions and achievement of the expected results.

Simultaneously, the reservations and critical assessment of the practical appliance of the discussed institutions, which were made in the literature or which come from the control findings of the supreme body of state auditing, should be noted. Their use by the local government units, which are the part of the public finance sector, is not sufficient (cf. Domańska 2012, 35–36; Jastrzębska 2014, 497–498; Kopyściański and Ignacy 2014, 509–511).<sup>26</sup> It means the necessity for further propagation of not only the construction solutions per se (for example by standards and instructions) but also for the actual implementation of the mechanisms of the management control and for their independent and objective assessment by the internal audit. It will enable the wider and more holistic presentation of the activity of those units and thanks to that their more efficient realization of public tasks. The management control and the internal audit concern the legally regulated various appearances of meaning of the concept of safety. All those meanings lead to the state of safety in the cited meaning—the state of non-threat, peace, confidence that the needs exceeding the capacity of the unit constituting public tasks will be realized.

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25. See: Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 8 czerwca 2017 r. w sprawie ogłoszenia jednolitego tekstu ustawy o odpowiedzialności za naruszenie dyscypliny finansów publicznych [the Act of 2004.12.17 on liability for violation of public finance discipline]. DzU z 2017 r. poz. 1311 as amended, Art. 18a and 18b.

26. See also: Informacja o wynikach kontroli funkcjonowania kontroli zarządczej w jednostkach samorządu terytorialnego ze szczególnym uwzględnieniem audytu wewnętrznego. LGD-4101-036/2011, Nr ewid. 140/2011/P10132/LGD. NIK, Delegatura w Gdańsku, Gdańsk, wrzesień 2011 r., pp. 7ff.

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