

ISSUES REGARDING THE DISSEMINATION OF INFORMATION IN THE CREDIT RISK CENTER TO THE REVIEWED PERSON

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Abstract

In the field of credit for consumption, the priority is, in granting the loan, to stave off the temptation of potential borrowers to borrow for the purchase of a large number of goods and services, as well as that of professional creditors, to enforce their own clientele by granting loans. The aspects shown in ut supra had as a consequence the elaboration of some systems for the substantiation of the decision to grant the loan or the one to refuse to grant it, based on an analysis carried out by the creditor both in his interest and that of the debtor. This is because, for the first, the risk of non-recovery of the loan is reduced, and for the second, the risk of non-repayment of the loan or of over-indebtedness is reduced. This article analyzes the regulation in the field of Central Credit Risks and, the analysis perspective is a novel one: to what extent the benefit of disseminating the information registered in the CRC to the declarants - credit institutions on their own initiative or at the request of the latter, it would be necessary to extend it to the reviewed persons - natural or legal persons to whom credit has been granted. The present study represents a plea for any situation of dissemination by the CRC of the information registered here to the declarants - credit institutions, to be distributed, at the same time, to the persons reviewed - natural or legal debtors, on the grounds of informing them in order to protect against the risks of non-repayment of the loan and over-indebtedness.

Keywords: central credit risks; the reporting person, the reviewed person; credit risk; over-indebtedness.

JEL Classification: K23, K35

1. Introduction

The system of recording the credit risk information in the power plant managed by the National Bank of Romania for this purpose has an undisputed utility. Recorded and disseminated on electronic media, the information that generates exposure to an important category of risks in the banking field, is the granting of loans to a debtor, as well as the assumption of commitments by the reporting person on behalf of the debtor, either to a natural or legal person other than the reporting person or to a credit institution abroad, either to another reporting person or credit institution operating on the territory of Romania.

The persons reviewed are those who, as it results from the name of their date, are reported in the functions of credit risk that they attract on the grounds of the protection of the credit institution that granted them financing. The individual risk is established according to the value criterion in relation to a certain reporting person. The overall risk sums up the individual risks reported for the same person reviewed - the debtor. Being held on electronic media, the information from the CRC, the dissemination and consultation of the information has the rules expressly established for the reporting persons in the banking system, thus ensuring their protection against the credit risk. But, as long as the information in the CRC is stored on an electronic medium, thus ensuring easy access to its content, we believe that this information, disseminated ex officio by the CRC to the reporting persons - credit institutions, would be beneficial to be disseminated simultaneously to the persons reviewed - debtors, an aspect that we will develop in the following.

2. Regulation in the field of Central Credit Risks, *sedes materiae*, scope, definitions and correlations

Regulation no. 2/2012 of the National Bank of Romania², regarding the organization and

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² Hereinafter referred to as NBR.

functioning at the NBR of the Credit Risk Central Office³, constitutes the headquarters of the matter in the analyzed field.

According to the provisions of art. 1, the Credit Risk Central⁴ manages *the credit risk information* and the information about card frauds for the specific purposes of the users, under the conditions keeping of professional secrecy. The National Bank of Romania ensures, at its headquarters, the technical conditions that allow the registration, management and dissemination promptly, without alterations, on electronic media of credit risk information and information on card frauds.

The concept of "credit risk information" is defined in the NBR Regulation 2/2012 as follows: the identification data of a debtor, individual or non-banking legal person and the operations in RON and in foreign currency through which the reporting persons are exposed at risk to that debtor. Credit risk information is the information that is reported by the reporting persons, processed and disseminated by the CRC.

The operations by which the reporting persons are exposed to risk shall be, in accordance with the provisions of Article 1 of the Regulation, the following:

- a) granting credits;
- b) the assumption of commitments by the reporting person, on behalf of the debtor, towards a natural person, a legal person, other than the reporting persons, or towards a credit institution /financial institution from abroad;
- c) the assumption of commitments by the reporting person, on behalf of the debtor, towards another reporting person operating on the territory of Romania.

The risk typology includes the following categories: individual risk and overall risk. *The individual risk* is the sum of the values of the operations referred to in Article 1 of the Regulation, reported to the CRC, by a reporting person for a debtor, natural person or non-bank legal person, provided that it is equal to or higher than the reporting limit. Art. 3, alin. (1), of the Regulation, provides that the reporting limit, according to which the reporting persons transmit to the CRC the individual risk of a debtor, is *at least 20,000 (two tens of thousands) lei*.⁵ The individual risk also represents the exposure of a reporting person to a debtor and is determined by the reporting person.

For the calculation of individual risk, both the operations carried out by the debtor in his own name and those carried out together with other natural and/or legal persons, which form a group of related clients, respectively a single debtor, are taken into account, and the composition of the group is related to the CRC. When determining the scope of the group, the reporting persons shall take into account that the reporting person will record exposure to at least one of the people in the group.

The overall *risk* is the sum of the individual risks reported by all the reporting persons *for the same debtor and* represents the exposure of all the reporting persons in Romania to a single debtor. The source and typology of the risk of exposure of the reporting persons can be found in Fig. 1.

3. Structure of the CRC database, organization and management of information

According to the provisions of art. 4, of the NBR Regulation 2/2012, the CRC organizes and manages a database that includes:

- a) *The central file of the credits*⁶, which contains the credit risk information reported by the reporting persons, processed and disseminated by the CRC in order to be capitalized by the users in the conditions of professional secrecy;
- b) *The outstanding loans file*⁷, which is fed monthly by the FCC with credit risk information regarding the borrowers and their outstanding loans towards all the reporting persons in Romania;

³ Published in the Official Gazette no. 49 of January 20, 2012, as amended and supplemented, hereinafter referred to as NBR Regulation 2/2012, available online at <https://legislatie.just.ro/Public/DetaliuDocument/134665>, consulted on 05.04.2022.

⁴ Hereinafter referred to as CRC.

⁵ The amount that represents the reporting limit and can be modified by the NBR.

⁶ Hereinafter referred to as FCC.

⁷ Hereinafter referred to as FCR.

c) *The groups file*⁸, which is fed monthly by the FCC with information about the groups;

d) *Card fraud file*⁹, which contains information about card fraud committed by debit and/or credit cardholders.

According to the provisions of art. 16 of the NBR Regulation 2/2012, the CRC ensures the registration of the information reported by the reporting persons in the FCC and the processing of this information in order to obtain the aggregated data necessary for the users.

The FCC is managed according to the CRC's own needs, so that it can operationally highlight information on:

- identification of debtors and highlighting, where appropriate, special situations;
- the individual risks and their characteristics;
- the global risks and their characteristics.

The credit risk information entered in the FCC is updated monthly and is grouped into:

- FCR is managed according to the CRC's own needs, so that it can operatively highlight the information on deviations from the loan repayment schedules, registered by the debtors towards all the declarants in the Romania.

- FG is managed according to the CRC's own needs, so that it can highlight the information about groups of natural and/or legal persons.

- The FFC is managed according to the CRC's own needs, so that it can highlight information about card frauds committed by their holders.

The importance of the accuracy of reporting and registration in the CRC results from the provisions of art. 15, according to the act, CRC cannot modify on its own initiative the credit risk information and/or the information about card frauds transmitted by reporting persons.

We mention that the credit risks generated by the obligations arising under the provisions of art. 5 para. (31) of Law nr. ANRE President's Order no. 77/2016 on the payment of real estate in order to settle the obligations assumed through credits, with subsequent amendments and completions are not subject to reporting or are deleted if they have been registered in accordance with the provisions of Regulation nr. 1 of 22 February 2021 for the amendment of the Regulation of the National Bank of Romania no. 2/2012 on the organization and functioning at the National Bank of Romania of the Central Credit Risk Office.¹⁰

According to the provisions of art. 17 of the Regulation, credit risk information and card fraud information are maintained in the FCR and FFC for a period of 7 years from the date of registration.

4. CRC users

CRC users are the reporting persons and the NBR. The use by the declared persons is carried out through the accredited person. This is the employee authorized by the management of the reporting person to transmit to and receive from the CRC credit risk information and information about card frauds. In order to access the database, the declarants have the obligation to designate a maximum of 5 persons accredited to the CRC. According to the provisions of art. 5, para. 1, of the Regulation, the access to the CRC information system by the accredited persons is based on the name assigned by the NBR¹¹.

The persons declaring to the CRC are:

- credit institutions, Romanian legal persons, for all credit risk information and information about card frauds collected from their territorial units in Romania;
- branches in Romania of foreign credit institutions, for all credit risk information and information about card frauds collected from their territorial units;

⁸Hereinafter referred to as FG.

⁹Hereinafter referred to as FFC.

¹⁰Published in the Official Gazette no. 204 of March 2, 2021, see *Stergerea din centrala riscului de credit bancar tinuta de catre BNR a celor ce sunt notati cu cereri de dare in plata*, article available online at <https://indrumari-juridice.eu/indrumarijuridice/stergerea-din-centrala-riscului-de-credit-bancar-pentru-cei-ce-au-dat-in-plata/>.

¹¹To do this, you must be completed and updated the form "Fișă de acreditare la CRC a persoanelor autorizate să transmită și să recepționeze informații de risc de credit și informații despre fraudele cu carduri" (F1).

- non-banking financial institutions, Romanian legal entities, registered in the Special Register¹², for all credit risk information and information about card frauds collected from their territorial units in Romania;
- branches in Romania of foreign financial institutions¹³ entered in the Special Register, for all credit risk information and information about card fraud collected from their territorial units in Romania;
- electronic money institutions¹⁴, Romanian legal entities, which register a significant level of lending activity, according to the NBR Regulation no.8/2011 on electronic money institutions, with subsequent amendments, for all credit risk information and information about card frauds collected from territorial units in Romania;
- payment institutions, Romanian legal entities, which register a significant level of lending activity, according to the NBR Regulation no. ANRE President's Order no. 21/2009 on payment institutions, with subsequent amendments, for all credit risk information and information about card fraud collected from their territorial units in Romania.

The natural person or non-banking legal person, registered in the CRC database as a result of the reporting by the reporting persons is a debtor and bears the name, as indicated *ab initio*, of the person reviewed. We note that the reporting person is not included by the regulation in the category of CRC users. Moreover, even from the provisions of art. 1 of the Regulation it results that the information is managed by the CRC "for the purposes specific to the users", namely the declarants and the NBR.

5. Transmission and registration of credit risk information

According to the provisions of art. 6, of the NBR Regulation 2/2012, the reporting persons are obliged to report to the CRC, the credit risk information for each debtor who meets the condition of having reported, respectively to have registered an individual risk towards him.

In order to fulfil the obligation provided for in Article 6 and indicated *in accordance* with the provisions of Article 10 of the Regulation, the reporting person must transmit to the CRC, monthly, in electronic format through the interbank communications network, during the reporting period, the risk information credit, necessarily using certain procedures.¹⁵

Registration in FCC can be performed if the credit risk information submitted by a reporting person cumulatively meets the following *validation conditions*, referred to in Article 14, para. (1), points (a) and (b) of the Regulation, namely:

- *complies with the content standards* and the way in which the forms in the regulation are filled in;
- is in accordance with the credit risk information contained in the previous reports, according to the criteria established by the CRC in this respect.

The reporting period is the interval between the 1st and 17:00th of the month in which the credit risk information for the previous month is reported.¹⁶

6. Dissemination of credit risk information and consultation of the database

The concepts of "*disseminating*" the information from the CRC on its own initiatives or at the request of the declaring persons are fulfilled with the one of "*consultation*" from the own initiative of the person declaring the registered information, and both concepts reveal the purpose, the finality of

¹² Special Register, available online at https://www.bnr.ro/files/d/RegistreBNR/ifn/RegistrulSpecial/registrul_special_ifn_active_tot.htm/.

¹³ Institutions from other EU Member States for which the competent authorities have notified the NBR of the provision of services directly in Romania, a list available online at <https://bnr.ro/Registre-si-Liste-717-Mobile.aspx#AI>.

¹⁴ Electronic issuing institutions, list available online at https://bnr.ro/files/d/RegistreBNR/IEME/IEME_PSD2_A.htm.

¹⁵ Debtor reporting procedure – "Formularul de raportare debitori" (F2 A); Group reporting procedure – "Formularul de Raportare a grupurilor" (F2 B); Individual risk reporting procedure – "Formularul de raportare a riscurilor individuale" (F3 A).

¹⁶ If the 17th is not a banking day, the reporting period ends on the next banking day at 17.00.

the entries in the CRC database.

According to the provisions of Article 19 of the Regulation, the CRC may disseminate the information contained in its database on *its own initiative* or *upon request*. So, the CRC operates with two *dissemination* assumptions:

(i) the dissemination of *information from its own initiative*, takes place in accordance with the provisions of Article 20, according to which, the CRC transmits monthly to each reporting person, on its own initiative, *the information on* :

- the overall risk to debtors reported by the reporting person in that month,
- card frauds,
- information about payment incidents of the reviewed persons.

We note that, on its own initiative, the CRC transmits the information to the declarant, for those debtors who were once reported by the declarants. Therefore, by way of *dissemination*, the declaring person, after reporting a person reviewed in CRC, is informed monthly, on their status, respectively, on the situation of their own debtors, *in concreto* on their payment incidents, by CRC. We find that the obligation to disseminate by CRC to the declaring persons, who have registered a debtor in the database, is established *ex lege* exclusively for their benefit, having as purpose the protection of each credit institution against its own creditors, as well as systemic protection. banking at the national level. The broadcast has this time, therefore, protective purposes and is provided by CRC. Please note that the CRC's obligation to disseminate any information from the CRC does not extend to the persons reviewed.

(ii) the dissemination of the information by the CRC may also take place at the request of the declaring person, according to the provisions of art. 21 of the regulation, CRC transmits information *on outstanding loans for the last 7 years*, highlighted in the FCR, for any debtor reported by it in that month, and the outstanding loans situation also includes information on global risk, card fraud, and information on debtors' payment incidents.

According to the provisions of art. 23 of the regulation, the declaring persons may request the CRC, for their own branches, to grant the right to consult the database. The connection of the branches is made through their headquarters, based on the name assigned by the NBR¹⁷. In the event that a branch of the reporting person or a territorial unit loses this status, the reporting person has the obligation to request the CRC to withdraw the right to consult the database for these entities.¹⁸

(iii) the third hypothesis is indicated by art. 24 of the regulation, namely, the declaring persons may consult the CRC database, in order to obtain the credit risk information regarding any non-bank natural or legal person, *provided that they have the written consent of that person*, respecting the legal conditions. If the credit risk information for which the registrant *consults* the database relates to a debtor reported by it in the last reporting period and/or if it relates to card fraud, *no agreement is required. the reviewed person*.

The data that can be consulted by the declarant are:

- FCC global risk data for the last month, in the name of the person being reviewed;
- the data regarding the global risk and the outstanding credits registered towards all the declaring persons in the last 7 years at most, by the same reviewed person;
- data regarding card fraud in the last 7 years at most; and/or
- the data regarding the situation of the groups reported by each declaring person, respectively the global risk and the outstanding amount related to the groups for the last completed month.

Data on the overall risk recorded on behalf of the reviewed person, as well as data on outstanding loans, also include information on card fraud and payment incidents.

We note that, in order to inform the CRC about a natural or legal person who does not have

¹⁶ If the declaring persons do not have branches, they may request the granting of the right to consult the CRC database for a territorial unit in each county. The connection of the territorial units is made through their headquarters, based on the name assigned by the National Bank of Romania.

¹⁷ A number of forms for consulting the CRC database are also contained in the regulation.

¹⁸ See also ANEXA 11 of the NBR Regulation no. 2/2012- "Fluxul informațional privind transmiterea, înregistrarea organizarea și difuzarea informației de risc de credit și a fraudelor cu carduri".

the quality of a debtor of a credit institution, the requirement of the prior written consent of the person expressly given for this specific purpose is established.

In the event that the debtor is one of those reported to the CRC by the reporting person, this agreement is not necessary, the reporting person having the right to consult the database in full at any time and thus obtain price information on the reported reviewer.

We are of the opinion that the written agreement is requested from the natural and legal person by that credit institution, which being in the “antechamber” of the credit agreement, informs the *potential creditor* to decide whether to grant or refuse the loan, depending on its situation, resulting from the information in the CRC. In fact, in the practice of forming the credit agreement, an express agreement regarding the CRC consultation is one of the elements of the credit documentation.

We conclude that, in the conditions in which a reviewed person was reported by a reporting person, ie, by a creditor - credit institution at CRC, a bilateral legal information report takes place, by ex officio dissemination of data on the overall risk and payment incidents between the CRC and the declarant. These information dissemination actions of the declaring person completely exclude the *co-participation* of the reviewed person, respectively the dissemination for information to him, of the data from the CRC, data that are relevant for the reviewed person.

We also note that while the dissemination and consultation of credit risk information in the CRC by the reporting persons is based on a procedure with data and information expressly provided, the declaring person or those obtained because of the CRC consultation by the declaring person are not communicated to the reviewed person.

As if to alleviate this situation, we find a mention in the NBR Regulation 2/2012 on the generic right of the declaring person, according to which he can, on request, inform himself on his own initiative, based on a request submitted to any credit institution, on his information entered in the CRC. So, the right to information of the reviewed person is his exclusive attribute and can be exercised randomly, but the practice of credit reporting between credit institutions and debtors reveals the annihilation of this right.

7. Conclusions and proposals

The credit risk registration system in CRC analyzed *hit et nunc* is constituted “for the specific purposes of the users”, respectively the declaring persons and the NBR. Given that responsible lending is the new paradigm in the contractual relationship arising from the credit agreement, having as parties the creditor/credit institution and the natural or legal person, it must extend to credit risk registration systems.

The right of the reviewed person-natural or legal person having the quality of debtor, to be informed about his situation, as it results from the CRC records, it is necessary to be complied with the dissemination *ex lege* and to the reviewed person-debtor, of the registered information in the CRC, whenever they are disseminated to the reporting persons-credit institutions.

On payment incidents, it would raise awareness of the problems that occurred during the life of the credit and would be a decisive information for initiating steps to take measures such as payment rescheduling, extending the duration of the return with the reduction of the rate, etc.

Given the recurring difficulties in repaying loans by debtors, both individuals and legal entities, the forced execution of debtors and the (over) indebtedness of the population, credit prevention is a necessity. The measure proposed in this article is in line with establishing by the means the prevention of credit and reducing the risk of default. The proposed measure is sustainable because the information in the CRC is stored on an electronic medium, it is distributed to the declaring persons, therefore, its distribution to the reviewed persons would be particularly easy.

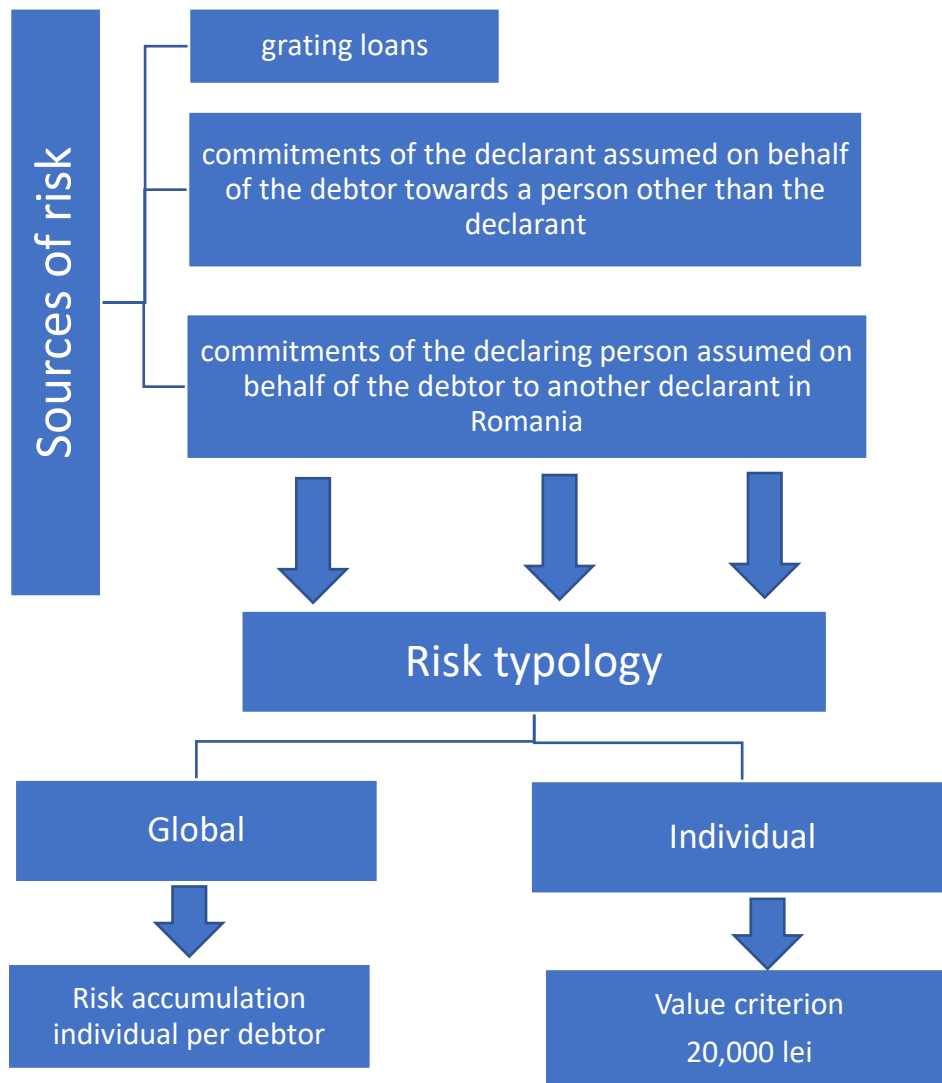


Fig. 1. - Source and type of risk of exposure of declarants

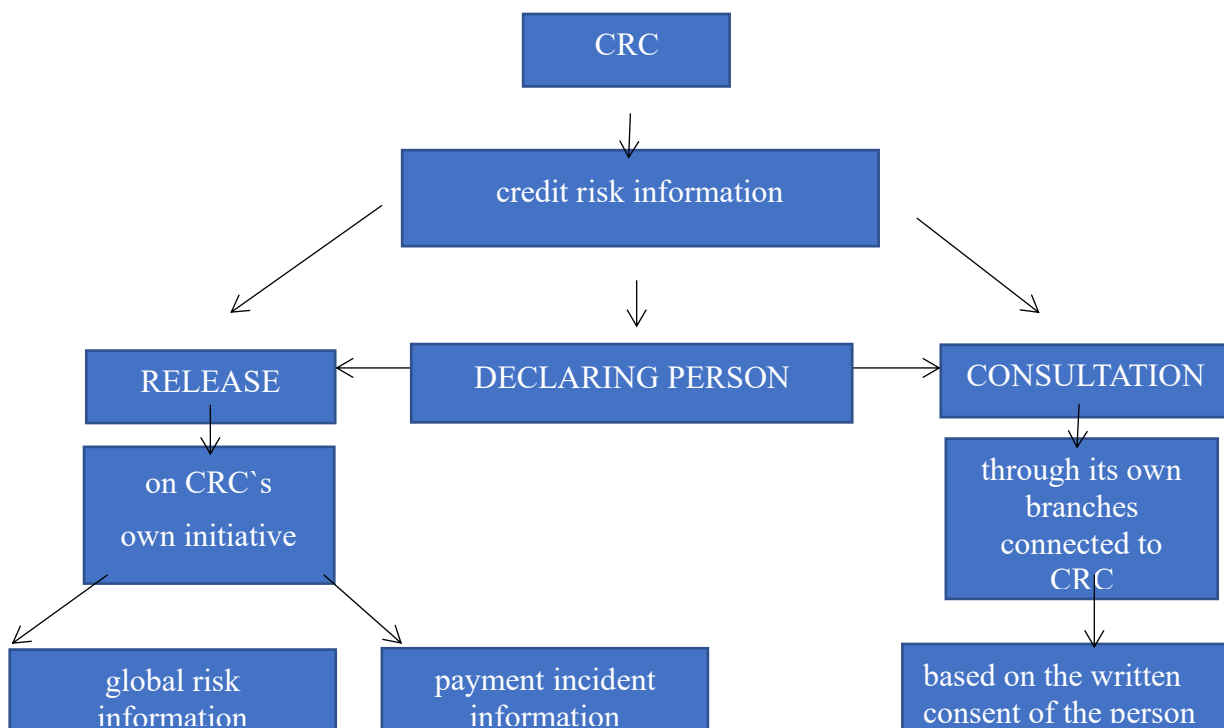


FIG. 2 - Dissemination and consultation of credit risk information in CRC

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