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Private Limited Companies
Legal Certainty
Employer's Obligation

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Whistleblower Protection Model
Motor third-party liability insurance



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Administrative Law Division	Transparency in Private Limited Companies: The Reform That Could Change Transactions, Financing and Public Procurement Joan Sánchez	4
Tax Law Division	Legal Certainty and the Limits of Proportionality in the Tax Consolidation Regime Guillermo Maruri	6
Labour and Social Security Division	Supreme Court Judgment of 22 December 2025 on the Employer's Obligation to Adapt and Reassign the Workplace Following a Declaration of Permanent Incapacity Nerea Lozano	7
Public Law Division	Opportunities Arising from the Implementation of the Industry Plan - Euskadi 2030 Irati Oleaga	11
Criminal Law Division	The AIPI Advances the Consolidation of the Whistleblower Protection Model Zoe Verano	13
SPS Portugal	Does compulsory motor third-party liability insurance provide an answer to all issues that arise in the event of a road traffic accident? Susana Rodrigues Ferrão	14

Transparency in private limited companies: The reform that could change transactions, financing and public procurement

The Spanish economy is experiencing a context of heightened demands in corporate transparency, access to financing and reputational risk control. Within this framework, Component 9.4 of the State Anti-Corruption Plan (9 July 2025) proposes a reform with direct impact on real businesses: incorporating ownership of company shares (participaciones sociales) into the Commercial Registry and strengthening their traceability.

For the time being, this is a proposed reform pending regulatory development and parliamentary approval.

This is no minor change. For thousands of private limited companies, especially SMEs and family businesses, it could introduce a new logic in three key economic areas: transaction closings (M&A), access to credit and dealings with the public sector.

What Is Being Proposed and Why It Matters Economically

The roadmap includes four measures:

1. Mandatory registration in the Commercial Registry of all transfers of shares.
2. Annual electronic filing of the shareholders' register.
3. Effectiveness of share transfers vis-à-vis third parties conditional upon registration.
4. The possibility of granting shares as security (pledge) through registration in the Chattels Registry.

Translated into business language: less opacity, greater evidentiary value of registry records, and more "execution discipline" in corporate life. This may enhance legal certainty in commercial transactions, but it could also increase formal and operational requirements for companies.

Practical Impact on Clients' Business Operations

1) Mergers and Acquisitions (M&A)

Until now, many transfers of shares in private limited companies relied on public deeds without registry publicity, combined with internal control through the shareholders' register. If effectiveness vis-à-vis third parties depends on registration, the registry will shift from being a formality to becoming a critical closing element.

Practical impact:

- Longer or more technically complex transaction timelines.
- Share Purchase Agreements (SPAs) including new conditions precedent and registry cooperation obligations.
- Greater risk of friction where historical ownership discrepancies exist.

2) Financing and Banking

The possibility of pledging shares with proper registry recognition may improve their "bankability" as collateral, which is particularly relevant in refinancings, inorganic growth operations or working capital facilities.

Practical impact:

- More alternatives in structuring security packages.
- Potentially stronger negotiating positions with lenders in certain cases.
- The need for a flawless ownership chain to ensure that the security is effectively enforceable.

3) Public Procurement and Compliance

One of the declared aims of the reform is to strengthen integrity in public procurement by making opaque ownership structures more difficult.

Practical impact:

- Increased scrutiny of corporate structures in tender procedures.
- Growing importance of "corporate housekeeping" as a compliance variable.
- Reputational and operational risk for companies with outdated documentation.

Where Value (and Risk) Will Lie for Companies

This reform may create value if properly managed:

- Reduces uncertainty in transactions.
- Facilitates due diligence and the entry of investors.
- Provides greater predictability in shareholder disputes.

But it may also generate costs if addressed too late:

- Delays in closings due to registry issues.
- Increased legal and documentation costs for regularisation.
- Greater exposure to contingencies arising from incomplete corporate records.

The difference between these scenarios will depend largely on the company's degree of internal preparedness.

Added Value: A 5-Step Action Plan to Get Ahead

Without waiting for the final text of the reform, high-impact measures can already be implemented:

- 1. Historical ownership audit**
Review transfers, supporting documents, dates and consistency between corporate documentation and the shareholders' register.
- 2. Preventive corporate clean-up**
Correct gaps or inconsistencies before launching funding rounds, selling the company or refinancing.
- 3. Updating contractual templates**
Adapt shareholders' agreements, transfer clauses and sale contracts to incorporate clear registry obligations.
- 4. Annual corporate governance protocol**
Establish an internal circuit (legal-finance-corporate secretary) to prepare electronic filing and documentary evidence.
- 5. Integration with business strategy**
Treat corporate transparency as a value lever: improving negotiations with banks, investors and potential buyers.

Conclusions

The proposed reform on transparency in private limited companies is not merely a technical issue of corporate law: it is a measure with direct economic impact on how companies grow, finance themselves, buy and sell businesses, and contract with the public sector. Nevertheless, until its approval and entry into force, the current corporate regime governing share transfers and the shareholders' register remains applicable.

For our clients, the message is clear: the best defence against future regulatory requirements is not to react once the law changes, but to anticipate corporate regularisation now. Those who are prepared will reduce risk, save transaction costs and better protect the value of their business.

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Legal Certainty and the Limits of Proportionality in the Tax Consolidation Regime

Judgment 320/2025, dated 1 September, of the High Court of Justice of the Basque Country (TSJPV) constitutes a particularly significant ruling on the limits applicable to the use of tax credits by groups subject to the tax consolidation regime under Corporate Income Tax (CIT).

The tax consolidation regime is one of the areas in which the Historical Territories (HTs) hold limited regulatory powers, pursuant to Article 20 of Law 12/2002, which approves the Economic Agreement of the Autonomous Community of the Basque Country. Among the matters open to specific regulation within this regime is the application of tax credits within the tax group. At present, however, the regional (foral) and Common Territory regulations are substantially aligned on this issue.

In situations of regulatory alignment, taxpayers consider not only the interpretative criteria of the Administration before which they file their returns, but also those adopted by other tax authorities. In this regard, the Spanish State Tax Agency (AEAT) published two information notes in 2022 and 2023 setting out its position on the offsetting, by tax groups, of tax loss carryforwards (NOLs) and deductions generated in prior tax years.

The administrative position introduced through these notes significantly restricted the use of tax credits by groups and increased the complexity involved in determining the applicable limits. It is therefore essential to summarise its key elements in order to understand the scope of the judgment.

First, the AEAT maintains that the offsetting of credits within the group must comply with a proportionality rule linked to each entity's contribution to their generation. This requirement was based on extending the rule applicable to situations involving the departure of an entity from the group or the group's dissolution—contained in Article 66 of Law 27/2014 (Corporate Income Tax Act) and Article 99 of the Regional Corporate Income Tax Regulations—to tax years in which the consolidation regime remained fully in force. According to this interpretation, proportionality must be preserved at all times, even when there are no changes in the group's composition.

Secondly, the application of this rule affects tax credits generated by entities prior to their entry into the group. Under the administrative approach, NOLs generated under the consolidation regime and attributed to the entities that contributed to their formation consume the individual limit applicable to the offsetting of pre-existing credits, thereby restricting their future use.

In light of this interpretation, the question arises as to whether this criterion is transferable to the Historical Territories, given that the regional legislation is drafted in similar terms to the state legislation. Of the three Regional Tax Authorities, only the Gipuzkoa Regional Tax Authority (HFG) has expressly chosen to apply the proportionality criterion, while Álava and Bizkaia have

not taken a formal position.

It was precisely this application that was examined by the TSJPV in its Judgment, which considers whether the proportionality rule designed for situations of group dissolution or the exit of entities may be extended to ordinary tax years in which none of those circumstances occur.

The Gipuzkoa Regional Tax Authority itself acknowledges that Article 99 of the regional legislation provides for proportionality exclusively in cases of exit or dissolution of the group, but nonetheless defends its application during the life of the regime on the grounds that it is logical and appropriate.

However, the Court rejects this argument, holding that mere membership of a tax consolidation group does not constitute the factual situation envisaged by the rule. Consequently, it finds that there is no legal basis for limiting the use of tax credits through a proportionality rule outside the cases expressly regulated. Through this interpretation, the Court reaffirms the principle of statutory (or Regional Law) reservation in tax matters and closes the door, within the Historical Territories, to extending the proportionality criterion in the use of tax credits by consolidated tax groups beyond the expressly provided cases.

In conclusion, the Judgment analysed here significantly strengthens legal certainty for regional taxpayers subject to the tax consolidation regime. At the same time, it opens a possible avenue for taxpayers in the Common Territory by calling into question the criterion upheld by the AEAT, without prejudice to any future ruling by the Supreme Court.

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Supreme Court Judgment of 22 December 2025 on the Employer's Obligation to Adapt and Reassign the Workplace Following a Declaration of Permanent Incapacity

Last June, we analysed the entry into force of Law 2/2025 of 29 April, which amended Article 49 of the revised text of the Workers' Statute Act, approved by Royal Legislative Decree 2/2015, thereby bringing an end to the automatic termination of employment contracts following a declaration of permanent incapacity.

As we noted at the time, this was less a genuine substantive innovation than the codification of an interpretative line that the courts had already anticipated: contractual termination based solely on a declaration of incapacity could be discriminatory if the impossibility of adaptation or reassignment had not first been demonstrated.

Recent Supreme Court case law has now clarified the true scope of this employer obligation and, above all, its procedural consequences.

In this regard, **the Supreme Court judgment of 22 December 2025 (appeal no. 3965/2024)** examines a case in which the employee, who had worked for the company since 1999 and held the category of skilled employee, performed duties as a sales assistant in the gardening section. Following several periods of temporary incapacity and medical assessments in which she had been declared "fit with limitations", the occupational health service ultimately issued a report declaring her "unfit" for the position.

The report set out very specific limitations: restrictions on handling loads, inability to remain standing for prolonged periods, prohibition of lumbar flexion-extension postures, lifting arms above shoulder height, or kneeling. The job functions included handling weight, stocking goods, physical exertion, continuous movement and standing throughout the working day.

On the basis of this report, the company proceeded with an objective dismissal for supervening ineptitude under Article 52(a) of the revised text of the Workers' Statute Act (Royal Legislative Decree 2/2015).

Both the Labour Court and the High Court of Justice declared the dismissal unfair. The company lodged an appeal for the unification of case law, submitting as a conflicting precedent the judgment of the Social Chamber of the High Court of Justice of Castilla-La Mancha of 9 February 2023 (appeal no. 2284/2022), which had held that a declaration of "unfit" exempted the employer from the obligation to reassign.

The Supreme Court found a contradiction between the two rulings: in both cases, there was a dismissal for supervening ineptitude based on a prevention service report declaring the worker "unfit", yet in one case proof of the impossibility of adaptation or reassignment was required, while in the other the medical report was deemed sufficient.

The central issue, therefore, was whether the employer may terminate the contract solely on the basis of the occupational health service report.

The Court relied on its own prior case law, particularly Judgment 177/2022, and recalled that prevention services are tasked with monitoring workers' health and informing on their fitness in relation to workplace risks, pursuant to Article 22 of the Occupational Risk Prevention Act.

However, a declaration of "unfit" does not in itself constitute full proof of supervening ineptitude for termination purposes. Its purpose is preventive, not dismissive. For safety reasons, the employer may remove the worker from the position, but may not automatically terminate the contract solely on the basis of that opinion.

The report must precisely identify the specific functional limitations and their impact on the job's duties. A generic statement of loss of aptitude is insufficient unless duly justified and supported by additional evidence.

The judgment reinforces a key point: an employer who chooses to terminate under Article 52(a) of the Workers' Statute assumes the burden of proving that it has first complied with its prior obligations.

In the case at hand, the Supreme Court found that the company had not demonstrated any attempt at adaptation or reassignment to a compatible position. Nor had it justified the existence of an excessive burden. Accordingly, the termination was correctly classified as an unfair dismissal.

The Court expressly incorporates the doctrine of the Court of Justice of the European Union of 8 January 2024 (Case C-631/22), which held that automatic termination of an employment contract due to permanent incapacity arising from disability, without first implementing reasonable accommodations, is contrary to Article 5 of Directive 2000/78/EC.

The Supreme Court adopts this interpretation and integrates it into its analysis of Article 52(a) of the Workers' Statute, emphasising that a change of position may constitute an appropriate reasonable accommodation provided that it does not impose a disproportionate burden on the employer.

Although Law 2/2025 did not apply *ratione temporis* to the facts of the case, the Chamber refers to it as evidence of the adaptation of domestic law to the aforementioned European doctrine, thereby reinforcing the interpretative line now consolidated.

In conclusion, case law has now firmly established the employer's obligation to attempt adaptation and reassignment following a declaration of permanent incapacity of an employee. Supervening ineptitude remains an objective ground for termination, but its application requires a prior assessment of possible adaptation or reassignment consistent with the principles of equality and non-discrimination on the grounds of disability.

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Opportunities Arising from the Implementation of the Industry Plan – Euskadi 2030

In the European context marked by a relative loss of industrial and technological competitiveness compared to other major economic powers, particularly the United States and China, Europe risks being displaced from industrial leadership and the global technological arena.

This situation results from several concurrent factors: fragmentation of the internal market, lower levels of investment in innovation, dependence on third countries in strategic sectors, and the cumulative impact of recent health, energy and geopolitical crises. This scenario represents a turning point for European industrial policy and opens a window of opportunity for those regions capable of aligning their industrial fabric with the new strategic agenda.

The diagnosis formulated at the European level in the Letta and Draghi Reports highlights the structural deterioration in European competitiveness. The Letta Report warns of the limitations of the single market in generating sufficient industrial scale and proposes greater integration in key areas such as knowledge, innovation and financing. The Draghi Report identifies three major weaknesses in the European model: stagnating productivity growth, insufficient investment in R&D&I, and increasing external dependence in energy, critical raw materials and strategic technologies.

This context is compounded by a profound transformation of the international geopolitical and trade landscape, marked by the return of active industrial policies and, in some cases, openly protectionist measures. The United States has deployed a large-scale industrial strategy through instruments such as the Inflation Reduction Act and the CHIPS and Science Act, aimed at attracting investment, reshoring productive capacity and securing technological leadership. China, meanwhile, has consolidated its position as a global industrial power through sustained strategic planning, advancing rapidly in areas such as artificial intelligence, electric mobility and renewable energy.

In this scenario, European strategic autonomy has ceased to be an abstract political objective and has become an urgent geopolitical and economic necessity. Europe must strengthen its capacity to guarantee the supply of essential goods, protect critical infrastructure and maintain control over key technologies, particularly in energy, technological and industrial supply chains.

In response, the European Union has promoted the revitalisation of industrial policy through a new strategic architecture. Notable initiatives include the Competitiveness Compass, which structures European action around innovation, decarbonisation and economic security; the European Green Deal and the Clean Industrial Deal, which integrate the climate transition as a driver of industrial competitiveness; and the reinforcement of instruments such as IPCEIs (Important Projects of Common European Interest), which allow strategic industrial projects to be financed beyond traditional state aid limits. Emphasis has also been placed on regulatory simplification and the reduction

of administrative burdens as necessary conditions to accelerate industrial investment.

Within this framework, the Industry Plan – Euskadi 2030 is positioned as the Basque Government's main strategic instrument for guiding industrial policy over the next five years.

The Plan structures its intervention around three strategic pillars — More Industry, Better Industry and Fewer Emissions — complemented by a cross-cutting axis of administrative simplification. These pillars are developed into fifteen strategic priorities aligned with European objectives of strategic autonomy, technological leadership and climate neutrality, enabling public action to be structured in a systematic and measurable manner.

One of the most relevant conceptual elements of the Plan is the definition of strategic sectors, classifying industrial sectors into three categories — IRABAZI, HAZI and JAUZI — following a rigorous, data-driven approach.

The Plan is primarily implemented through Transformative Projects, conceived as the main execution instrument of the industrial strategy. These are high-impact initiatives with a cross-sectoral vocation, based on public-private collaboration and consolidating a principle of proactive co-creation that is essential for developing innovative solutions.

From a budgetary perspective, the Plan establishes an integrated financial framework based on the coordination of public resources and the mobilisation of private investment, highlighting the Basque Financial Alliance as a key mechanism for supporting strategic industrial projects. The new Industry Plan – Euskadi 2030 will mobilise €3.9 billion for productive development, sourced from the Department of Industry, Energy Transition and Sustainability, the Basque Financial Alliance and other departments of the Basque Government.

Finally, the Plan defines a governance, evaluation and strategic adaptation model supported by indicator systems and monitoring structures, based on the principles of good administration, transparency and accountability.

Overall, the Industry Plan – Euskadi 2030 leverages the current European context as a strategic opportunity to position the regional business fabric as an essential actor in the new European industrial policy, consolidating a stronger, more innovative, sustainable and competitive industry by 2030.

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The AIPI Advances the Consolidation of the Whistleblower Protection Model

The implementation of internal reporting channels has become one of the pillars of Spain's new compliance framework following the approval of Law 2/2023 of 20 February, on the protection of persons who report regulatory breaches and on the fight against corruption (**Law 2/2023**).

This law, which transposes Directive (EU) 2019/1937 into Spanish law, has introduced the obligation for numerous public and private sector entities to establish internal systems that allow irregularities to be reported in a secure, confidential and anonymous manner, with the aim of strengthening prevention and early detection of misconduct.

Beyond merely having a whistleblowing channel in place, Law 2/2023 establishes a comprehensive system of safeguards requiring organisations to adopt appropriate case-management procedures, ensure protection against retaliation for reporting persons, and implement effective internal control mechanisms.

In this context, the role of the Head of the Internal Information System (**HIIS**) is of particular importance. This individual is responsible for overseeing the functioning of the reporting channel, handling or coordinating the processing of communications received, and ensuring compliance with the principles of independence, confidentiality and diligence required by law.

Article 8.3 of Law 2/2023 expressly establishes the obligation to notify the Independent Whistleblower Protection Authority (**AIPI**) of both the appointment and dismissal of the HIIS, thereby reinforcing institutional oversight of the effective functioning of internal reporting systems.

The AIPI formally commenced its activities on 1 September 2025, marking the effective launch of the whistleblower protection system. However, it subsequently clarified that the two-month period provided for notifying the appointment or dismissal of the HIIS would not begin to run from that date, but rather from the moment the specific form for this purpose became available on its electronic headquarters.

In this regard, on 9 February 2026 the AIPI took a significant step in the practical implementation of its functions by publishing on its website the specific form for notifying the appointment and dismissal of the HIIS (<https://sede.proteccioninformante.gob.es/procedimientos/index/categoria/1>).

As a result, the two-month period for complying with this obligation began on 10 February 2026. From that date onwards, obligated entities must submit the relevant information within the applicable timeframe.

The Authority has also clarified that this notification must in all cases be made to the AIPI, irrespective of any notifications that may also be required before regional authorities in territories that have established equivalent bodies.

Alongside the form, the AIPI has published a completion guide addressing practical issues of interest, such as access to the electronic headquarters, identification of the applicant, proof of representation, the procedure for registering and deregistering the responsible person, and examples of properly completed forms.

From a practical perspective, the activation of this procedure marks a new milestone in the effective implementation of the whistleblower protection system in Spain and raises the level of compliance requirements. Obligated entities must not only verify that they have an internal information system that complies with the requirements of Law 2/2023, but also ensure that the appointment of the HIIS has been properly formalised and communicated within the established deadline.

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Does compulsory motor third-party liability insurance provide an answer to all issues that arise in the event of a road traffic accident?

The legal framework governing compulsory motor third-party liability insurance in Portugal is set out in **Decree-Law No. 291/2007 of 21 August**. This is a foundational piece of legislation which transposes European Union directives (**Directive 2009/103/EC and Directive (EU) 2021/2118** of the European Parliament and of the Council of 24 November 2021—also known as the Sixth Motor Insurance Directive), intended to ensure uniform protection for victims of road traffic accidents across the various Member States. Road traffic accidents are a reality common to all Member States, and victims must be guaranteed effective compensation for the damage suffered, regardless of where the accident occurs, so as to prevent injured parties from being left without protection.

As in other European legal systems, the Portuguese legislature proceeded on the assumption that the circulation of motor vehicles is an inherently risk-generating activity, and that it cannot be separated from the guarantee of effective compensation for damage caused to third parties. Compulsory insurance therefore emerges as an essential mechanism for protecting injured parties, transferring to the insurance sector the civil liability arising from the accident.

Accordingly, **Decree-Law No. 291/2007** provides that insurance covers bodily injury and property damage caused to third parties, within the minimum limits established by law, in line with the requirements of European law. This harmonisation is intended to ensure that compensation does not depend on the financial solvency of the person responsible for the accident.

However, the central issue within this regime lies in how compensation is determined. In the Portuguese legal system, the principle of *restitutio in integrum* applies, under which compensation must, insofar as possible, place the injured party in the position they would have been in had the harmful event not occurred, covering both pecuniary and non-pecuniary losses. In other words, the person who caused the damage bears the duty to restore the situation that existed prior to the injury.

While compensation for pecuniary damage does not generally raise significant controversy, since it is based on quantifiable criteria, the same cannot be said of non-pecuniary damage—particularly physical and psychological suffering, loss of quality of life, or permanent functional limitations.

Decree-Law No. 291/2007 of 21 August imposes on insurers the duty to present a “reasonable compensation proposal” at the out-of-court stage, based on guiding criteria (e.g. disability tables, biological damage, periods of functional impairment, etc.). However, these criteria are not binding on the courts, on the one hand, nor do they exhaust, on the other, the complexity involved in assessing damage.

Despite the efforts of case law, particularly that of the Supreme

Court of Justice, to establish reference parameters, the reality is that courts have faced the difficult task of standardising compensation amounts from the perspective of legal certainty and equality, at the risk of reaching decisions that fail to reflect the true extent of the harm suffered by the injured party.

It is precisely here that the greatest challenge arises in the context of compulsory insurance: ensuring that the compensation awarded for the harm suffered is adequate, proportionate, and fair in light of the specific circumstances of each injured party—especially where permanent sequelae and significant impacts on the victim’s life are involved.

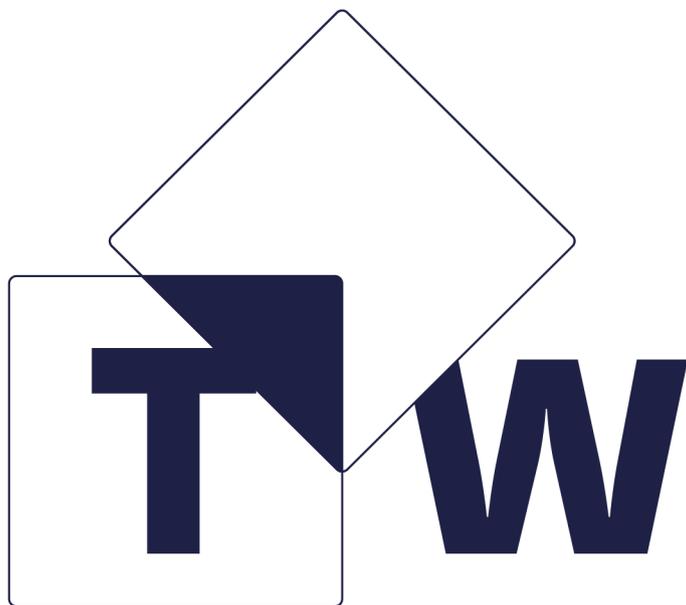
Indeed, compensation cannot be merely symbolic or standardised; it must fairly and proportionately reflect the seriousness of the pecuniary and non-pecuniary damage suffered, the permanent repercussions in the personal, family, and professional spheres of the injured party, as well as the principle of full compensation enshrined in the Portuguese legal system.

Thus, although compulsory insurance is an essential instrument for protecting victims of road traffic accidents, it remains difficult in practice to achieve an appropriate balance between the assessment of pecuniary and non-pecuniary damage and the award of fair compensation capable, as far as possible, of restoring the victim’s position prior to the accident. All of this must be achieved without losing sight of the fundamental purpose of the regime: the effective protection of injured parties and the principle of restitution in kind.

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