

**The Legal Status of the Legal Person in Consumer Relations:
A Study on the Expansive Scope of the Consumer Concept and the
Ambiguity of the Specialization Criterion**

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Abstract

This study examines the legal status of the legal person within consumer relations, highlighting the legislative gap that arises when a legal entity contracts outside the scope of its professional specialization. The article aims to analyze the expansive approach adopted by the Algerian legislature, which has incorporated the 'legal person' within the definition of the consumer under Laws No. 09-03 and No. 18-05. The central research challenge lies in determining the precise dividing line between professional and consumer conduct for an entity that, by law, lacks a 'private life.' Drawing on the French legal experience, the article examines the introduction of the 'non-professional' category under Ordonnance No. 2016-301 as a mechanism to restore contractual balance. The findings underscore the imperative for the Algerian legislature to adopt the 'non-professional' concept as a means of protecting legally vulnerable entities from economic dominance. The proposed framework constitutes a legal safety valve that guarantees the protection of legal persons when they engage in transactions outside their professional environment.

Keywords: Legal person; Non-professional; Consumer; Specialization criterion; Contractual imbalance.

Introduction

Legal personality constitutes the cornerstone upon which transactions in contemporary law are built. The Algerian legislature has not confined this attribute to natural persons alone; it has extended its reach to legal entities by virtue of Articles 49 and 50 of the Civil Code,¹ endowing

¹Law No. 05-10 of June 20, 2005, Official Gazette No. 44, issued June 26, 2005, amending and supplementing Order No. 75-58 of September 26, 1975, containing the Civil Code.

them with an independent existence comprising a distinct financial patrimony, contractual capacity, and the right of access to the courts. While legal entities — such as corporations, associations, and trade unions — are presumed to operate within the sphere of 'professionalism' in pursuit of their institutional objectives, practical realities have laid bare the limitations of such an absolute categorization. Legal entities frequently find themselves in a position of 'informational weakness' when they conclude contracts outside the bounds of their technical or professional specialization, placing them in a situation closely analogous to that of the ordinary consumer.

Both Law No. 09-03 on Consumer Protection and Fraud Suppression² and Law No. 18-05 on Electronic Commerce³ reflect the Algerian legislature's commitment to an 'expansive' approach, under which legal persons are explicitly included within the statutory definition of the consumer. Nevertheless, these legislative texts have remained silent on the criteria that would distinguish purely professional conduct from what might aptly be described as the 'consumer impulse' of a legal entity — a silence rendered all the more consequential by the absence, in the case of legal entities, of any analogue to the 'private life' that ordinarily grounds consumer protection analysis. The result has been a state of legal uncertainty in judicial practice.

Against this backdrop of tension between the inherently professional character of the legal entity and its need for consumer-type protection, the central research question may be formulated as follows: *To what extent has the Algerian legislature succeeded in reconciling the fundamental characteristics of the legal person with the conferral of consumer status, in light of the expanding scope of legal protection? Furthermore, can the absence of a 'non-professional' concept in Algerian law — unlike its French counterpart — be regarded as an obstacle preventing the formulation of a precise criterion for the protection of legal entities when they contract outside the scope of their professional specialization?*

In addressing this question, the study adopts a combined methodological approach. The analytical method is applied through a close reading of the relevant provisions of the Algerian Civil Code and the Consumer Protection Law, as well as an interpretive analysis of their content with a view to discerning legislative intent behind the broadening of the consumer concept. The comparative method is employed by setting the Algerian legal framework against

²Law No. 18-09 of June 10, 2018, on Consumer Protection and Fraud Suppression, Official Gazette No. 35, issued June 13, 2018, amending and supplementing Law No. 09-03, issued February 25, 2009.

³Law No. 18-05 of May 10, 2018, on Electronic Commerce, Official Gazette No. 28, issued May 16, 2018.

its French counterpart — particularly with respect to the introduction of the 'non-professional' concept as a mechanism for protecting legal entities — in order to draw out lessons that may be transposed to the Algerian context to fill the current conceptual void.

A thorough engagement with this subject necessitates a synthesis of both earlier and current legislative texts, through which one may trace the evolution of the legislature's approach to defining the legal entity that transacts outside its professional competence. To this end, the article proceeds in two main parts: it first examines the legislature's consistent will to extend consumer protection to legal entities, before turning to the legal uncertainty that continues to surround such extension

1. Is the Legal Person a Consumer?

Consumer law offers a protective regime for consumers, and over time certain of its provisions have been broadened to encompass non-consumers — a category that has come to be known as the 'non-professional' (non-professionnel). This concept emerged tentatively through case law before being crystallized into binding statutory provisions, a development that has made it possible to more precisely delimit the scope of consumer law. This evolution calls for an examination of the legal person as a consumer and as a non-professional, both prior to and following the enactment of Ordonnance No. 2016-301.

1.1. The Legal Person as a Non-Professional Consumer Prior to Ordonnance No. 2016-301

The Scrivener 2 Law did not directly address non-professionals in the chapters governing consumer information. The term 'non-professional' appeared only in the fourth chapter, entitled 'Protection of Consumers against Unfair Terms.' Article L. 212-1 of the Consumer Code — which transposed Article 35 of Law No. 78-23⁴ — provided that in contracts concluded between professionals and non-professionals, or consumers, certain terms may be prohibited, restricted, or regulated when they appear to have been imposed on the non-professional or consumer through the abuse of the other party's economic power, conferring upon that party

⁴"In contracts concluded between professionals and non-professionals, or consumers, certain clauses may be prohibited, restricted, or regulated (...) where such clauses appear to be imposed on non-professionals or consumers by an abuse of the economic power of the other party, and confer an excessive advantage upon that party": Law No. 78-23 of January 10, 1978, on the Protection and Information of Consumers of Products and Services, repealed by Law No. 93-949 of July 26, 1993, art. 4, Official Journal of the French Republic, July 27, 1993.

an undue advantage. This provision was the first to establish a legal mechanism in French law for combating unfair terms in consumer contracts. The placement of the term 'non-professional' before 'consumer' in this text — and the framing of both as contracting parties opposite the 'professional' — suggests that the legislature treated the two terms as synonymous, since it placed them on the same side of the contractual divide. This made Law No. 78-23 the first French statute to use the expression 'non-professional'.⁵

The Consumer Code was first codified in 1993 with the aim of redressing the imbalance between professionals and consumers. Neither 'consumer' nor 'professional' was defined at that stage; one had to await the Hamon Law of 2014. In the absence of precise statutory definitions, the courts played a constitutive role. Case law came to define the non-professional as "a natural or legal person who concludes a contract for the supply of goods or services that do not directly relate to the professional activity they practice."⁶ This jurisprudential elaboration served to rapidly illuminate the contours of the non-professional concept: by its very nature, a professional who acts outside their area of specialization is quickly absorbed into the protective framework of consumer law, and the relevant distinction thereby becomes more perceptible.⁷ Indeed, through the expansive reading of the consumer concept,⁸ the French Court of Cassation held that a professional who transacts outside their area of specialization qualifies as a consumer entitled to the statutory protections afforded under consumer law.

Between 1987 and 1993, the First Civil Chamber of the Court of Cassation relied on a subjective criterion of professional competence to extend protection to professionals contracting outside their area of expertise. Subsequently, the Court shifted its focus from the profile of the contracting party to the nature of the act itself, applying the criterion of 'direct connection' with the professional activity — a standard that distinguished contracts intrinsic to the professional activity from those merely useful to its exercise. However, the Court of Cassation soon retreated from this protective stance, closing its doors to the conflation of the

⁵Haba Parfait, "The Non-Professional and the Small Professional: The Protection of Two Weak Contracting Parties under Private Law" (doctoral thesis, University of Paris Nanterre, December 12, 2017), 29.

⁶Court of Cassation, First Civil Chamber, November 25, 2015, No. 14-20.760: RJDA 2/16, No. 107. Available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000031539333> (accessed August 27, 2022).

⁷PDT Avocats & Associés, "The Concept of the Non-Professional in Consumer Law," published February 18, 2021. Available at: <https://avocatendroitdesaffaires.com/blog/notion-de-non-professionnel-droit-de-la-consommation/> (accessed August 27, 2022).

⁸Under the expansive approach, a consumer is defined as any natural or legal person who concludes a legal act to obtain a product with the intention that they or their dependents be the final user thereof; this characterization equally extends to a professional who contracts outside the scope of their area of specialization. See: Azzouz Saidi, "Requirements for Providing Protection to the Electronic Consumer under the Algerian Consumer Protection and Fraud Suppression Law," *Afaq Journal of Research and Studies* 2, no. 2 (June 2018): 3.

non-professional and the consumer. In a number of decisions, the Court moved toward a narrower reading of the consumer definition, excluding professionals from the protective ambit of consumer law and applying the criterion of direct connection between the concluded contract and the professional's commercial activity.⁹

European Directive No. 2011/83/EU,¹⁰ in Article 2(1), restricted the definition of 'consumer' to natural persons alone, making the directive's protections exclusively available to natural persons. The directive thus made no reference to the non-professional, notwithstanding the complex issues raised by entities acting outside their area of specialization — leaving the problem confined to their status as professionals, even where they were acting beyond their commercial activity.

With the enactment of the Hamon Law in 2014, the French legislature still declined to provide a comprehensive definition for this unclassified party, and refrained from including it alongside the consumer as a formally recognized vulnerable contracting party when acting outside its professional environment. The Hamon Law defined the consumer as any natural person acting for purposes unrelated to their commercial, industrial, craft, or liberal activity — leaving the professional, as such, outside the scope of consumer protection.

Throughout successive iterations of the Consumer Code, the French legislature never formally defined the non-professional, despite the numerous legal questions and practical controversies generated over the years. It was ultimately case law¹¹ that supplied a comprehensive definition of the non-professional — a contribution that subsequently paved the way for a statutory formulation in later legislation.

⁹Natalie Picod, "The Paradoxical Protection of Legal Persons under Consumer Law: A 'Positive' Law, a Progressive Law," *Lextenso*, May 7, 2021, 475.

¹⁰Even following the issuance of Ordinance No. 2016-301, the European directive refrained from defining the non-professional, confining itself to definitions of the consumer and the professional alone, as evidenced by the text of the 2019 European directive: Directive (EU) 2019/770 of the European Parliament and of the Council of May 20, 2019, on Certain Aspects Concerning Contracts for the Supply of Digital Content and Digital Services, *Official Journal of the European Union*, No. L 136, May 22, 2019.

¹¹Court of Cassation, Third Civil Chamber, February 4, 2016, No. 14-29.347, applied the concept exclusively to legal persons without profit-making activity, such as associations, works councils, and co-ownership unions (Court of Cassation, First Civil Chamber, November 25, 2015, No. 14-20.760), to the exclusion of commercial companies (Court of Cassation, Commercial Chamber, December 3, 2013, No. 12-26.416). It was precisely to prevent legal persons without lucrative activities from being excluded from the scope of the definition — and to prevent commercial companies from being admitted — that said definition was subsequently revised. See: Agnès Maffre-Baugé, "Clarification of the Concept of the Non-Professional in Consumer Law," published February 27, 2017. Available at: <https://www.editions-legislatives.fr/actualite/clarification-de-la-notion-de-non-professionnel-en-droit-de-la-consommation> (accessed August 27, 2022).

1.2. The Legal Person as a Non-Professional Following Ordonnance No. 2016-301

Given the sustained judicial effort to define the legal entity and to extend to it the protections afforded to the consumer, it became incumbent upon the legislature to recognize this gap and to supply a definition — lest the task be left entirely to the courts, which have on many occasions been unable to accommodate such entities within the protective framework of consumer law. Accordingly, Ordonnance No. 2016-301 provided a statutory definition of the non-professional in its preliminary article, stating: "A non-professional is any legal person acting for purposes that do not fall within the scope of its commercial, industrial, craft, liberal, or agricultural activity."¹² By addressing the lacuna in French consumer law, the legislature acknowledged the necessity of defining this party as one of the recognized participants in the consumer relationship, thereby dispelling all ambiguity surrounding the characterization of an entity that transacts outside its area of specialization. Henceforth, non-professionals became entitled to benefit from certain protective provisions applicable to consumers — most notably those governing unfair terms and the tacit renewal of service contracts.¹³

Ordonnance No. 2016-301 thus defined the non-professional in parallel with its definition of the consumer, the principal distinction being that the consumer is a natural person whereas the non-professional is a legal person. Ordonnance No. 2017-203 subsequently amended this definition, stripping out the enumeration of activities and simplifying the formulation to read: "Non-professional: any legal person not acting for professional purposes."¹⁴ The following table illustrates the distinctions between the parties to the consumer relationship.

Table 1: Distinctions Between the Parties to the Consumer Relationship

	<i>Natural Person (Individual)</i>	<i>Legal Entity (Entity/Corporation)</i>
<i>Acting within the scope of their commercial, industrial, craft, professional, or agricultural activity</i>	<i>Professional</i>	<i>Professional</i>

¹²"Any legal person acting for purposes that do not fall within the scope of its commercial, industrial, artisanal, liberal, or agricultural activity": Ordinance No. 2016-301, op. cit.

¹³PDT Avocats & Associés, op. cit.

¹⁴"Non-professional: any legal person not acting for professional purposes": Law No. 2017-203, op. cit.

	<i>Natural Person (Individual)</i>	<i>Legal Entity (Entity/Corporation)</i>
<i>Acting outside the scope of their commercial, industrial, craft, professional, or agricultural activity</i>	<i>Consumer</i>	<i>Non-professional</i>
<i>Without commercial, industrial, craft, professional, or agricultural activity</i>	<i>Consumer</i>	<i>??? **</i>

Source: Champollion Attorneys, the "non-professional" - What is it? ¹⁵

It may therefore be concluded that when a legal entity transacts in the virtual environment, it falls within the scope of consumer protection, provided that such transactions occur outside its professional field of specialization.

2. A Consistent Legislative Will to Extend Consumer Protection to Legal Entities

The French legislature succeeded in accommodating the non-professional within the protective framework of consumer law, thereby sparing the courts and legal scholars the burden of textual interpretation. This newly introduced concept gave expression to an intent already oriented toward targeting legal entities whose statutory activity is non-professional in character. Yet such an extension is often a delicate matter: the newly crafted protection forestalls contractual imbalance between the parties to the consumer relationship within its narrowly defined boundaries, while case law continues to exclude certain legal entities from the category of 'non-professional.'

2.1. Narrowly Tailored Protection for the Non-Professional against Contractual Imbalance

Returning to the preliminary article of Law No. 2016-301, which defines the non-professional as "any legal person acting for purposes that do not fall within the scope of its commercial, industrial, craft, liberal, or agricultural activity," the legislative intent would appear at first glance to have broadened the scope of protection available to legal entities acting outside their area of competence. In practice, however, the legislature effectively excluded legal entities that

¹⁵ Champollion Avocats, "The 'Non-Professional' — What Is It?," published July 27, 2016. Available at: <https://www.champollion-avocats.com/fr/actualites/2016/07/27/Le-non-professionnel-kesako/> (accessed August 27, 2022).

do not engage in any professional activity — such as associations or trade unions. This definition did not rest on any pre-existing legislative text and departed from the line of case law that had targeted associations and trade unions without confining itself to natural persons. The provision appears to address legal entities that pursue a professional activity but act outside its scope: the use of the possessive pronoun in the phrase 'within the scope of its activity' seems directed at entities that exercise a professional activity yet occasionally act for non-commercial purposes. Consequently, every legal entity whose purpose is cultural — such as an association — is excluded from the ambit of this protection.¹⁶

The enactment of Ordonnance No. 2017-203, which amended Ordonnance No. 2016-301, rectified this ambiguity through a more precise formulation, targeting 'any legal person not acting for professional purposes.' The non-professional concept thereby became a 'refuge concept' (concept de refuge) for legally vulnerable legal entities,¹⁷ with the French legislature removing all enumerated categories of professional activity and refining the definition of the non-professional accordingly. This refinement gave clear expression to the legislature's intent to protect legal entities whose statutory activity is not professional in nature. Pursuant to this framework, when an association engages in commercial activity expressly provided for by its by-laws, it will be classified as a professional — as stipulated in Article L. 442-10 of the Commercial Code.¹⁸

The newly enacted provision enabled a number of pending cases to resolve the issue of non-professionals acting outside their area of specialization. For instance, trade unions with no genuine professional activity have been classified as non-professional entities under the most recent case law,¹⁹ entitling them to benefit from the provisions governing tacitly renewable service contracts. Similarly, an association that pursues commercial activity expressly provided for by its by-laws may be regarded as a professional in its particular field — without this precluding it from invoking the protections of consumer law when it acts outside that activity. A fortiori, where an association undertakes no professional paid activity whatsoever — that is, where it is non-profit — it unquestionably benefits from the provisions of consumer law.²⁰

¹⁶Yves Picod and Nathalie Picod, *Consumer Law*, 5th ed. (Paris: Dalloz, 2021), 79.

¹⁷Natalie Picod, "The Paradoxical Protection of Legal Persons under Consumer Law," *op. cit.*, 475.

¹⁸"No company association or cooperative may habitually offer products for sale, sell them, or provide services if such activities are not provided for in its articles of association": Commercial Code, as amended by Ordinance No. 2019-359 of April 24, 2019, art. 2, Official Journal of the French Republic, No. 0097, April 25, 2019.

¹⁹Court of Cassation, First Civil Chamber, March 29, 2017, No. 16-10007, D. act., April 26, 2017. Available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000034339076> (accessed August 28, 2022).

²⁰Natalie Picod, "The Paradoxical Protection of Legal Persons under Consumer Law," *op. cit.*, 475.

Such entities may accordingly be classified as professional or non-professional, depending upon the nature of the activity they exercise.

This protection enables the non-professional to restore the contractual equilibrium that was disrupted by its prior classification as a professional, before the enactment of Ordonnance No. 2017-203. The French legislature thus preserved contractual balance between the parties in the conclusion of consumer contracts, pending the Algerian legislature's formal inclusion of the non-professional among the recognized parties to the consumer relationship.

2.2. The Exclusion of Certain Legal Entities from the Non-Professional Category by Case Law

Having established the French legislature's consistent will to bring the non-professional within the protective scope of consumer law, it emerges that legal entities acting outside their area of specialization may generally invoke that law, subject to the condition that they are 'not acting for professional purposes.' This formulation, however, raises interpretive difficulties, as its meaning may vary depending on the analytical framework applied.

One restrictive strand of legal thought has favored the exclusion of companies from non-professional status, on the ground that legal entities incapable of acting beyond their corporate object invariably conclude contracts related exclusively to their activity — and thus possess an inherently professional character. Proponents of this view nonetheless acknowledge that companies may sometimes commit to acts that exceed their founding corporate purpose and must therefore be categorized and protected accordingly when dealing with professionals. Yet this approach has been challenged by the argument that the legal characterization of a company may be affected by the fact that the concluded contract is not always related to its activity; some scholars have questioned whether the extension of protection to commercial companies is at all feasible. Following this restrictive trend, early attention to the 'small professional'²¹ is notable here, and the clearest illustration is provided by certain decisions of the courts, which held that 'a commercial company is neither a consumer nor a non-professional,'²² thereby

²¹The Hamon Law defines the "small professional" as an enterprise employing between zero and five employees. Such a small professional benefits from the protection of French consumer law if the concluded act does not fall within the principal field of activity of the professional: *Haba Parfait*, op. cit., 68.

²²See, among numerous judgments to this effect: Court of Cassation, First Civil Chamber, December 11, 2008, No. 07-18.128, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000019923081> ; Court of Cassation, Commercial Chamber, September 6, 2011, No. 10-21.583, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000024548611/> ; Court of Cassation, Commercial Chamber, December 3, 2013, No. 12-26.416, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000028294588>

treating it as an unambiguously professional legal entity. The opposing, less restrictive view holds that a company acting outside its area of specialization is entitled to invoke the protections afforded under consumer law, and that non-professional status constitutes a necessary qualification for companies seeking to benefit from the protective provisions of consumer legislation.²³

In its judgment²⁴ of 4 February 2016, the Third Civil Chamber of the Court of Cassation upheld the non-professional status of a real estate development company which claimed to have engaged construction contractors outside the scope of its own area of specialization, pursuant to Article L. 132-1 of the Consumer Code. The court held that, while the company was indeed a professional in the real estate sector, it was not a professional in the construction sector — and was therefore entitled to invoke consumer law protections. Similarly, the Commercial Chamber of the Court of Cassation delivered a ruling based on Article L. 136-1 of the Consumer Code in a case where Klekoon and Ozon'Eco had concluded a one-year service contract providing for the possibility of tacit renewal. Following a dispute over the renewal, Ozon'Eco invoked Article L. 136-1 of the Consumer Code, which entitles both consumers and non-professionals to terminate a contract at any time from the date of its renewal where the professional has failed to comply with its duty to provide prior notice of such renewal. The court held that Ozon'Eco should be regarded as a non-professional in this context, since it did not operate within the specialized field of Klekoon.²⁵

On the basis of the foregoing analysis, commercial companies may be characterized as either professional or non-professional, depending upon the nature of the activity they undertake. Where the activity falls within their professional purpose, they are to be regarded as professionals; where it falls outside their professional field, they may be assimilated to non-professionals and thus afforded the protections of consumer law. It has become abundantly clear that the formal inclusion of the non-professional within the contractual framework in Algerian law is now a pressing necessity — given that such entities are inevitably exposed to

. Ruling: "A commercial company is neither a consumer nor a non-professional." See also: Davy Huet, "The Small Professional in Its Contractual Relations" (doctoral thesis, University of Clermont Auvergne, 2020), 73–74.

²³Cabinet Aude Dupont, "Are Companies Non-Professionals?," published August 8, 2017. Available at: <http://www.dupont-avocat.fr/blog/les-societes-sont-elles-des-non-professionnelles> (accessed August 30, 2022).

²⁴Court of Cassation, Third Civil Chamber, February 4, 2016, No. 14-29.347. Available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000031988799> / (accessed August 28, 2022).

²⁵Court of Cassation, Commercial Chamber, September 6, 2011, No. 10-21.584. Available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000024550491> / (accessed August 30, 2022).

economic dominance by parties with specialized expertise in the relevant field. So that this dimension of the law does not remain unregulated, a call for new legislation is more than warranted.

Conclusion

This study concludes that the legal status of the legal person within consumer relations remains shrouded in a state of 'legal uncertainty' under Algerian law. Despite the expansive approach to the consumer concept in Laws No. 09-03 and No. 18-05 — which formally extend its scope to legal entities — the legislature's silence on the professional specialization criterion has left the protection of these entities suspended between the two classifications of 'professional' and 'consumer.' The comparative analysis with the French legal system demonstrates that the resolution of this conceptual impasse requires the adoption of an intermediate category capable of restoring the lost contractual equilibrium.

Findings

- The legal entity, despite its inherently professional character by virtue of its founding purpose, may find itself in a position of technical vulnerability when contracting outside the scope of its specialization, making it deserving of exceptional consumer-type protection.
- The French experience has demonstrated that the 'non-professional' (Non-professionnel) concept is the most appropriate legal instrument for protecting legal entities — most notably associations and small enterprises — from unfair terms and the economic dominance of professionals.
- The distinction between the professional and consumer status of a legal entity turns on the purpose of the contract and the extent to which the contract is directly related to the entity's principal professional activity.

Recommendations

- Legislative Intervention: The Algerian legislature is called upon to expressly incorporate the concept of 'non-professional' among the recognized parties to the consumer relationship in Law No. 09-03, thereby severing the conflation of the consumer impulse with the private life — an attribute that the legal person, by its very nature, does not possess.

- Refinement of the Specialization Criterion: It is necessary to adopt the 'direct connection' standard as a legal parameter, whereby a legal entity is treated as being in the position of a consumer (non-professional) whenever it contracts for purposes that fall outside the core of its professional specialization.
- Activation of the Judicial Role: The Algerian judiciary is called upon to embrace the 'refuge concept' (concept de refuge) for legally vulnerable legal entities — particularly small and medium-sized enterprises — when they are confronted with unfair terms imposed by entities possessing greater economic dominance and technical expertise.
- The adoption of this approach does not merely reinforce consumer protection; it also contributes to the consolidation of legal certainty and the stability of economic transactions by clarifying the legal positions of the contracting parties.

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