



Council of the
European Union

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NOTE

From:	Budget Committee
To:	Permanent Representatives Committee/Council
Subject:	Council recommendation on the discharge to be given to the Commission in respect of the implementation of the general budget of the European Union for the financial year 2021

- *Adoption*
- *Approval of a letter*

COUNCIL RECOMMENDATION
on the discharge to be given to the Commission
in respect of the implementation of the general budget
of the European Union
for the financial year 2021

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 319 thereof,

Having carried out the examination provided for in Article 319(1) TFEU,

Whereas:

(1) According to the revenue and expenditure account for the financial year 2021:

- revenue amounted toEUR 239 596 016 381.24
- expenditure disbursed from appropriations
amounted toEUR 226 175 075 902.27
- cancelled payment appropriations
carried over from year *n-1* amounted toEUR 264 502 697.48
- appropriations for payments carried over to year *n+1*
(including earmarked revenue) amounted toEUR 10 576 393 358.48
- EFTA payment appropriations carried over from year *n-1*
amounted toEUR 5 381 143.66
- the balance of exchange-rate differences amounted toEUR 125 865 965.42
- the positive budget balance amounted toEUR 3 229 534 639.73

- (2) Cancelled payment appropriations for the financial year amounted to EUR 264 502 697.48;
- (3) EUR 1 821 086 469.54 (87.32 %) of the EUR 2 085 589 167.02 in appropriations for payments carried over to year 2021 have been used;
- (4) The observations in the report by the Court of Auditors for the financial year 2021 call for certain comments by the Council, which are ANNEXED hereto;
- (5) The Council attaches importance to its comments being followed up and assumes that the Commission will implement all of the recommendations in full, without delay;
- (6) The Council has adopted conclusions concerning special reports published by the Court in 2021 and 2022¹;
- (7) Following the examination referred to above, implementation by the Commission of the budget for the financial year 2021 taken as a whole, on the basis of the observations made by the Court of Auditors, is such as to allow a discharge to be given in respect of such implementation,

HEREBY RECOMMENDS, in the light of these considerations, that the European Parliament grant discharge to the Commission in respect of the implementation of the budget of the European Union for the financial year 2021.

Done at Brussels,

For the Council

The President

¹ Docs. 6697/22, 6829/22, 7275/22, 8156/22, 8452/22, 10307/22, 10504/22, 11209/22, 11480/22, 11518/22, 12778/22, 12815/22, 13081/22, 13426/22, 13519/22, 14751/22, 15746/22, 15747/22, 15921/22, 15991/22, 6071/23, 6163/23 and 6289/23.

INTRODUCTION

1. The Council welcomes the European Court of Auditors' annual report and Statement of Assurance on the implementation of the EU budget and the analysis of the audit findings and conclusions provided. The Council attaches great importance to the independent audit work carried out by the Court, as provided for in Article 287 TFEU, and specifically to the primary task of providing a Statement of Assurance on the reliability of the accounts and examining the legality and regularity of revenue and expenditure.
2. The Council takes note that for the financial year 2021, just as for the previous two years, the Court has drafted a report that covers the performance of spending programmes under the EU budget. This report is a distinct document, separated from the report concerning the reliability of the EU consolidated accounts and the regularity of transactions, which, for the first time, includes expenditure related to the Recovery and Resilience Facility (RRF). In this year's performance report, the Court has analysed the mainstreaming of five horizontal policy priorities into the EU budget. The Council calls on both the Court and the Commission to continue the assessment of the performance of the EU budget, which is a measure of the true value delivered to EU citizens. Specifically, the Council calls on the Commission to increase the focus on result-based performance indicators that can be directly linked to EU actions.
3. The Council welcomes the Court's finding that the EU accounts present a true and fair view of the EU's financial position and that the Court has issued a clean opinion on the reliability of the 2021 accounts. The Council also welcomes the fact that the revenue for 2021 was found to be legal, regular, and free from material error. However, the Council regrets the fact that the estimated level of error reported by the Court is still material and that, for the third consecutive year, the Court has issued an adverse opinion on the legality and regularity of expenditure. The Council welcomes that the Court has issued a clean opinion on the first payment under the RRF.

4. The Council acknowledges the findings of the Court, as specified in its annual report and in the report on performance, and supports the Court's recommendations, inviting the Commission and the other institutions to also take the relevant Council recommendations into account.
 5. Despite the repeated calls from the Council, the Court once again did not present a level of error for each chapter, making no change in this respect compared to the previous reports related to the multiannual financial framework (MFF) 2014-2020. In this regard, the Council recognizes the importance of ensuring comparability between years within each policy area and again asks the Court to provide error rates for all headings, irrespective of the size of expenditure.
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1. THE STATEMENT OF ASSURANCE AND SUPPORTING INFORMATION

- 1.1. The Council regrets that the estimated level of error reported by the Court in 2021 has increased to 3.0 % from 2.7 %, further deviating from the materiality threshold, and notes that a substantial proportion of the expenditure audited by the Court, 63.2 % mainly reimbursement-based expenditure, is materially affected by error. Moreover, the Council regrets the increase of the estimated level of error in high-risk expenditure from 4.0 % in 2020 to 4.7 % in 2021, also deviating further from the materiality threshold of 2 %. The Council notes that the Court considers that the effects of the errors found in the accepted expenditure of the year are both material and pervasive.
- 1.2. The Council stresses that to achieve a reduction in error rates and ensure the effective and correct management of EU funds, simpler, more transparent and more predictable legislation and implementing measures should remain a top priority. The Council calls on the Commission to identify and simplify unnecessarily complex rules and procedures, without lowering standards and requirements needed for accountability.
- 1.3. The Council acknowledges that the spending programmes and related control systems, as well as the management cycles, cover multiple years. In this regard, the Court and the Commission have different roles in the annual and multiannual control processes, which could lead to different results. The financial corrections and recoveries applied by the Commission have the objective of bringing the level of error below materiality. In this context, the Council notes that the Commission has estimated the risk at payment to be 1.9 % and the level of error at closure to be 0.8 %, below the materiality threshold.
- 1.4. The Council is concerned about the reoccurring lower level of risk estimated by the Commission for certain headings, compared to the level of error estimated by the Court. In the opinion of the Court, this is due to weaknesses in some ex-post checks, affecting the risk assessment by the Commission.

- 1.5. The Council recalls that the Court's estimated level of error is not a measure of fraud, inefficiency, or waste of funds per se, but of payments which were not made in accordance with the applicable rules and regulations regarding eligibility of spending.
- 1.6. The Council welcomes the clean opinion given by the Court on the reliability of the annual accounts of the European Union (hereinafter "the accounts") for the financial year 2021. The Council also notes with satisfaction the Court's statement that the accounts present fairly, in all material respects, the EU's financial position, as of 31 December 2021, and the results of its operations, its cash flow and the changes in its net assets for the year then ended, in accordance with the Financial Regulation and with accounting rules based on internationally accepted accounting standards for the public sector.
- 1.7. The Council also welcomes the fact that the revenue underlying the accounts for 2021 is legal and regular in all material respects, as in previous years.
- 1.8. The Council notes with satisfaction the work carried out by audit bodies in detecting errors and mismanagement of EU funds, as well as the continuous efforts and actions undertaken by the Commission and the Member States to implement the Court's recommendations. However, the Council recognises the shortcomings identified by the Court in the work of some audit authorities. Based on the findings of the Court, the Council encourages the actors involved in the management and control of the EU budget implementation to further improve their work so that the Court could make better use of it in view of developments connected to the principle of cross reliance.
- 1.9. Bearing in mind that it is essential that the EU budget efficiently delivers true value to EU citizens, the Council considers that an assessment of the results achieved by the EU budget is an important element of the annual evaluation of the sound financial management of EU funds.
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2. **BUDGETARY AND FINANCIAL MANAGEMENT**

- 2.1. The Council takes note of the almost full budget implementation in 2021 in payments and the increased absorption of the funding from the European Structural Investment Funds under the 2014-2020 MFF.
- 2.2. On the other hand, the Council notes the low implementation in commitment appropriations, mostly due to the late adoption of the sectoral regulation underpinning the 2021-2027 MFF.
- 2.3. The Council is concerned by the new record high for outstanding budgetary commitments, while taking note that, in 2021, the increase is due to the commitments related to the NextGenerationEU (NGEU) instrument and the EU budget outstanding commitments have decreased. In this context, the Council supports the Court's recommendation addressed to the Commission to inform the budgetary authority about the factors contributing to the evolution of outstanding commitments and to take appropriate action with a view to gradually reducing outstanding commitments in the long term.
- 2.4. The Council takes note of the assessment of the Court regarding the increased exposure of the EU budget due to NGEU and to the loans provided under the SURE instrument. It also takes note of the risks assessed in relation to Russia's war of aggression against Ukraine, notably the higher risk of contingent liabilities to the EU budget being triggered. Therefore, the Council supports the Court's recommendation to the Commission to closely monitor this risk and act accordingly.
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3. REVENUE

- 3.1. The Council notes with satisfaction that the revenue part of the budget was not affected by material error in 2021 and that the examined revenue-related systems were assessed as being generally effective. However, the key internal controls of traditional own resources (TOR) in certain Member States, as well as the management of VAT reservations and TOR open points at the Commission were assessed as being partially effective, due to persistent weaknesses.
- 3.2. In this respect, the Council supports the Court's observation that the Commission is not applying a common approach for all Member States in setting deadlines to calculate the financial impact and to record the amounts related to VAT reservations, and that the Commission has not fully implemented a system for ranking and prioritising the shortcomings resulting from its TOR inspections and has not set deadlines for their follow-up actions.
- 3.3. The Council encourages the Commission, in order to ensure predictability for Member States, to review as soon as possible the financial implications of the UK undervaluation judgment of 8 March 2022.
- 3.4. The Council equally notes that the implementation of several actions in the Commission's Customs Action Plan contributing to reduce the customs gap has been delayed. In this respect, the Council supports the Court's view that the Commission has made insufficient progress in its Customs Action Plan, and the development of its monitoring strategy on the goods imported into the EU via Northern Ireland has not been finished.
- 3.5. Accordingly, the Council supports the Court's related recommendation to improve the assessment of financial risks in customs by the deadlines set in the Customs Action Plan.

4. SINGLE MARKET, INNOVATION AND DIGITAL

- 4.1. The Council regrets that the estimated level of error reported by the Court increased from 3.9 % in 2020 to 4.4 % in 2021 and continues to be well above the materiality threshold.
- 4.2. The Council notes that the 7th Framework Programme for Research (FP7) and Horizon 2020 (H2020) spending remains high-risk and is a main source of errors, representing 45 % of the estimated level of error for this heading in 2021.
- 4.3. The Council regrets that despite the administrative simplification of H2020 and reported improvements in the programme design and in the Commission's control strategy, research spending is still affected by material error. The Council consequently urges the Commission to continue its efforts to reach an error rate below the materiality threshold.
- 4.4. The Council regrets the Court's finding that the estimated level of error would have been 1.7 percentage points lower if the Commission or the auditors contracted by beneficiaries had made proper use of all available information to prevent, detect and correct errors before accepting the expenditure. Therefore, the Council supports the recommendation that the guidance for independent auditors be improved. At the same time the Council recognises that some corrective measures applied by the Commission reduced the estimated level of error by 0.2 percentage points. The Council reiterates its appeal to the Commission to continue its efforts to address the causes of error, with a particular focus on the programmes subject to persistently high error levels, and to strengthen its efforts to fully implement the measures already taken in this respect.

4.5. The Council regrets that, as in previous years, the main risk identified by the Court relates to ineligible costs declared by beneficiaries. According to the Court's analysis, ineligible personnel costs still account for most quantifiable errors. Such errors mostly concern private entities, in particular SMEs and new entrants. Therefore, the Council supports the Court's recommendations on H2020 and Horizon Europe and renews its request to the Commission to enhance its information campaign and communication efforts in order to provide beneficiaries with proper guidance on complex issues. The Council also supports the Court's recommendation to improve the ex-ante controls in order to identify and eliminate potential ineligible adjustments made to the personnel costs submitted by the beneficiaries following recalculation of the hourly rates.

5. COHESION, RESILIENCE AND VALUES

- 5.1. The Council regrets the increase of the estimated level of error reported by the Court for payments in the "Economic, Social and Territorial Cohesion" policy area from 3.5 % in 2020 to 3.6 %, in 2021, after decreasing for two consecutive years from 4.4 % in 2019 and 5.0 % in 2018. Moreover, the Council regrets that the estimated level of error remains well above the materiality threshold of 2 %. On the other hand, the Council recalls that the estimated level of error for the transactions in 2000-2006, when the error rate was first calculated, was significantly higher than for the 2014-2020 period.
- 5.2. The Council acknowledges that while the Court still cannot fully rely on the work of some of the audit authorities, the cohesion assurance packages represent a larger proportion in the sample this year than the last years and a smaller proportion of these packages had a residual error rate above 2%. While recognising the efforts made by the audit authorities and the improvements achieved so far, the Council encourages further steps, with the assistance of the Commission, towards reliability and mitigation of the high risk of error.
- 5.3. The Council welcomes the simplification in cohesion programmes, particularly for the 2021-2027 programming period, and the increased use of simplified cost options in view of a reduced error rate. However, the Council recognises that the main sources of error are still ineligible costs and projects and urges the Commission, the co-legislators and the Member States to continue their efforts to simplify the legislation governing EU funds, including at national level, and to put more emphasis on the selection and funding of clearly eligible projects and costs. Simplification, however, should not come at the expense of robust rules and control.

- 5.4. The Council notes that the control and assurance framework for cohesion programmes have both an annual and a multiannual character. While the current rules are built around a system based on the Commission's acceptance of annual accounts, the operational programmes cover multiple years. As a result, the Commission, as manager of the EU budget, puts in place multiannual control strategies designed to prevent errors and, where this is not possible, to detect them and apply corrections before the closure of the programmes. This demonstrates that the Commission and the Court play different roles in the control chain of the EU budget, which could lead to different results. In this respect, the Council notes that the Commission has estimated the risk at payment for Cohesion, resilience and values to be 2.3 %, and the risk at closure, based on an estimation for future corrections, to be 1.2 %.
- 5.5. The Council regrets the procurement weaknesses which the Court identified in connection with the Emergency Support Instrument and supports the Court's recommendation that the Commission verifies that COVID-19 vaccine manufacturers comply with the terms of advance purchase agreements and take corrective action as necessary.
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6. NATURAL RESOURCES

- 6.1. The Council welcomes the fact that the estimated level of error reported by the Court for payments in the “natural resources” policy area has decreased from 2.0 % in 2020 to 1.8 % in 2021, and notes that the error level is below but still close to the materiality threshold.
- 6.2. The Council welcomes the fact that the corrective measures applied by the Commission and the Member States reduced the estimated level of error by 0.3 percentage points, while noting that the level of error for this chapter could have been 1.2 percentage points lower had all available information been used. Thus, the Council encourages the Commission to continue and intensify its support to Member States in taking all necessary actions to prevent, detect and correct errors, and thus continuing the declining path. Nevertheless, an appropriate cost-benefit ratio has to be respected.
- 6.3. The Council welcomes the fact that direct payments, which account for 67 % under the MFF heading “natural resources”, were free, as a whole, from material error. In this context, the Council notes the effectiveness of “checks by monitoring” and supports the Court’s recommendation to facilitate the sharing of best practices in Member States’ use of new technologies in view of the implementation of the Area Monitoring System.
- 6.4. The Council takes note that the risk of error in this chapter is concentrated in the areas of rural development, market measures, maritime, fisheries, and environment and climate action. The Council supports the Court’s recommendation for further monitoring action for Measure 21, which addresses liquidity problems of beneficiaries particularly affected by COVID-19 crisis.
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7. MIGRATION AND BORDER MANAGEMENT, SECURITY AND DEFENCE

- 7.1. The Council takes note that, concerning heading 4 (*Migration and border management*) and heading 5 (*Security and defence*), the Court's examination was once again not representative of the spending under these two headings despite the Council's previous recommendations. Consequently, the Court did not estimate error rates for these headings. In view of the increased political focus on these policy areas and their growing budget, the Council urges the Court to cover a representative sample in its audit scope, so as to be able to provide an error rate for these two headings in the following years.
- 7.2. The Council welcomes the Court's conclusion that the national audit authorities for the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF) it examined have appropriate procedures for reporting and for addressing the requirements of the relevant fund-specific regulations, being compliant with audit standards. The Council expresses concern, however, about the Court's findings on some weaknesses in the work of the audit authorities, in particular where these undermine the necessary checks on procurement procedures or eligibility of declared expenditure.
- 7.3. The Council supports the Court's recommendation and invites the Commission to provide further guidance both to the beneficiaries of Union action and emergency assistance, and to the Member States' authorities responsible for implementing funding under these two headings, on adhering to applicable rules (e.g. collection of supporting documentation, public procurement).
- 7.4. The Council also supports the recommendation addressed to the Commission to carry out better and targeted ex-ante checks on the eligibility of expenditure, especially in the case of emergency assistance, bearing in mind the particularly difficult context in which emergency actions are carried out by the beneficiaries.
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8. NEIGHBOURHOOD AND THE WORLD

- 8.1. The Council takes note that, in relation to substantive testing in the area of “Neighbourhood and the World” and despite its previous recommendations, the Court’s examination was once again not representative of the spending under this heading, and that, consequently, the Court did not provide an estimated level of error for this chapter. The Council therefore urges the Court to cover a representative sample in its audit scope in this high-risk area, so as to be able to provide an error rate for this heading in the following years.
- 8.2. The Council emphasises the importance of having maximum transparency and measurability of the spending in the heading and, in that respect, welcomes and supports the three recommendations of the Court regarding the need to deduct any commitments or advance payments claimed as incurred costs before carrying out payments or clearings, strengthen controls when drafting financing agreements for budget support operations, and disclose the type and value of contracts excluded from the population of the residual error rate study. The Council also calls on the Commission to continue to provide guidance, where necessary, on the definition of costs incurred.
- 8.3. The Council notes that the Court, according to the TFEU, is entitled to receive the documents or information necessary for the performance of its task. The Council therefore regrets that the audit of international organisations was not performed in the best conditions and that there were delays for access related reasons.
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9. EUROPEAN PUBLIC ADMINISTRATION

- 9.1. The Council welcomes the fact that the administrative and related expenditure of the EU institutions remained, as in previous years, free from material error. The Council notes with satisfaction that the annual activity reports reviewed by the Court also did not identify material levels of error. In addition, the Council invites the Commission to provide a performance assessment for the administrative expenditure.
- 9.2. The Council regrets the Court's observation related to an error in a payment made by the European Parliament to a European political group and, related to that, the Court's finding that the internal procurement rules of the European Parliament and their application in some aspects are still inconsistent with the Financial Regulation which might pose a risk to the effective protection of the financial interests of the Union. The Council calls on the European Parliament to improve its procedures, instructions, and control mechanisms to prevent such errors and shortcomings from occurring in the future.
- 9.3. The Council, while recognising that the European External Action Service (EEAS) has made improvements to procurement processes, regrets the Court's findings of deficiencies in ex-ante publicity, method to score price and the use of the type of procurement procedure. The Council also notes the Court's finding of weaknesses in recruitment procedures for local agents. The Council agrees with the Court's recommendation to the EEAS to take appropriate measure to ensure correct application of procurement rules and to enhance training and guidance both on procurement and recruitment procedures.
- 9.4. The Council regrets that despite of the Commission's actions to improve its relevant IT systems and reinforce consistency checks the errors on staff members' declarations of allowances received from other sources continue to persist. The Council supports the Court's recommendation to the Commission to improve as soon as possible the systems for managing family allowances.

10. RECOVERY AND RESILIENCE FACILITY

- 10.1. The Council welcomes the fact that the European Court of Auditor's first audit on the Recovery and Resilience Facility (RRF), which related to the only RRF payment made in 2021, has resulted in a clean opinion and thus, RRF expenditure for 2021 is free from material error.
- 10.2. The Council notes that the Court assessed one milestone as not satisfactorily fulfilled but that for the overall assessment this has no impact for a clean opinion. In this regard, the Council invites the Commission to further clarify the methodology it uses in assessing the achievement of milestones and targets. Moreover, the Council is concerned that currently the Commission does not have a method for quantifying the impact of non-achievement of a milestone or target and calls for a swift adoption of such a method, in order to ensure the application of the assessment criteria in a consistent manner and to guarantee equal treatment in the forthcoming assessments.
- 10.3. Finally, the Council supports the Court's recommendations on clarifying the elements for the assessment of milestones and targets, to develop a methodology for the (partial) suspension of a payment and to improve documentation of the assessment of milestones and targets.
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PERFORMANCE OF THE EU BUDGET

1. The Court addressed the mainstreaming of five horizontal policy priorities into the EU budget:

- combating climate change;
- preserving biodiversity;
- gender equality;
- the Sustainable Development Goals (SDGs) of the United Nations; and
- the digital transition.

The Court examined whether the horizontal priorities have been incorporated throughout selected EU spending programmes and whether the Commission had applied an appropriate performance framework to measure the EU budget's contribution to these horizontal priorities. The Court also followed-up the audit recommendations made in special reports published in 2018.

2. As regards combating climate change, the Council welcomes the Court's findings that consider the climate horizontal priority as being well integrated into the performance framework of the EU budget.
3. However, the Council regrets the Court's finding about the existence of weaknesses in the reported figures for climate-relevant measures and their tracking, leading to overly positive conclusions, and that the Commission overestimated the climate contribution of agricultural funding. The climate-tracking methodology is based mainly on ex-ante estimates by assigning "EU climate coefficients" to budget commitments, and the Council urges the Commission to also provide information on actual climate expenditure in the programme statements or in the Annual Management and Performance Report (AMPR).

4. In relation to preserving biodiversity, the Council welcomes the Court's findings that consider the biodiversity horizontal priority as being well integrated into the performance framework of the EU budget.
5. The Council notes the existing overlaps between climate and biodiversity goals and invites the Commission to consider this when calculating the contribution made by annual spending under the MFF to biodiversity objectives. The Council also notes the Court's finding about the existence of weaknesses in the reported figures for biodiversity-relevant measures and their tracking.
6. The Council notes the Court's view that the integration of gender equality into the performance framework of the EU budget is partially complete and rather limited, and also takes note of the Court's finding that the EU's budget cycle has not yet adequately taken gender equality into account. However, the Council considers the Commission's pilot methodology to measure expenditure on gender equality as a positive step forward in gender equality tracking.
7. The Council notes the Court's finding that the Commission has not yet developed a methodology to measure relevant expenditure for each programme aimed at achieving the Sustainable Development Goals (SDGs) of the United Nations. The Council also notes the fact that the Commission has begun reporting on the links between EU spending programmes and the SDGs, and that most programmes contributed to at least one SDG in 2021.
8. As regards the digital transition, the Council notes the Court's findings that the Commission reported information on the digital transition for programmes with relevant general or specific objectives, notwithstanding the fact that the digital transition is not included as a mainstreaming objective in the MFF 2021-2027.

9. Considering all the above, the Council shares the Court's recommendation for the Commission to better integrate the horizontal policy priorities into the performance framework, in particular by following up on the results of its pilot project on performance indicators of the effects of budget expenditures on horizontal priorities, by refining the methodology for tracking gender expenditure, and by analysing whether and deciding how to track expenditure to support the digital transition and the SDGs.
 10. The Council also supports the Court's recommendation concerning the need for enhancing the reporting on horizontal policy priorities in the AMPR and the programme statements. The Council urges the Commission to improve the reliability of information reported on the horizontal priorities both for the individual programmes and for the EU budget as a whole, in particular by including the relevant information in the AMPR, also highlighting the use of expenditure covering various horizontal priorities (e.g. synergies), as well as the total relevant expenditure of the budget having a positive impact on gender equality.
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