Cross-border internal security cooperation between Poland and Germany

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Introduction

The 25th anniversary of the conclusion of the Treaty on Good Neighbourliness and Friendly Cooperation between Poland and the Federal Republic of Germany (the Treaty), which is celebrated in 2016, provides an excellent opportunity to conduct a variety of analyses and assessments in relation to the application of the Treaty in a range of areas. In addition, 2016 marks 25 years of the Polish-German Intergovernmental Commission on Regional and Cross-border Cooperation established on 17 June 1991, on the same day that the Treaty was enacted.

Cross-border cooperation is undoubtedly one of the key areas of relations between Poland and Germany – it was emphasised in the Treaty itself and further developed in the years that followed. Still, because of rapid changes in the international environment as well as the emerging challenges and threats to both internal and external state security, their territorial units and local communities – even though Polish-German cross-border cooperation in the area of security (especially internal security) is successful – there are also numerous challenges that cause the two states’ authorities and local governments to reflect on the further development of their bilateral cooperation.

The focus of this paper concerns cross-border cooperation between Poland and the Federal Republic of Germany in the area of internal security, i.e. at the local level, since the conclusion of the Treaty in 1991, and the

1 The author has used the text of her earlier article and expanded the studies presented in it – see: K.P. Marczuk, 2016. Współpraca transgraniczna Polski i RFN w obszarze bezpieczeństwa wewnętrznego [Cross-border cooperation between Poland and the Federal Republic of Germany in the area of internal security]. Krakowskie Studia Międzynarodowe, 2, pp. 93–104. The author would like to thank the volume’s editor, Prof. Erhard Cziomer, for his consent to the use of this text here. English language translation by Maja and Tomasz Wolsan (hereafter M. and T. W.).
challenges this cooperation presently faces. It has been assumed – consid-
ering developments in the international environment – that the key chal-
 lenges in the area of cross-border cooperation between Poland and Ger-
many lie in the sphere of ensuring internal security at the level of local
 communities. For the purpose of this study, the notion “internal security”
 should be understood in the broad sense, namely as protection against
 threats not only to the interior of the state, but also to society (here – the
 community) in conditions of respecting the law and civil liberties and as
 the state’s ability to maintain the stability of the political system, ensure
 public safety and order (Marczu k, 2012, p. 50). The research questions
 concern, first, the legal bases and areas of past and present cross-border
 cooperation between Poland and Germany, and second, the current chal-
 lenges faced. The principal method employed by the author in order to
 find the answers to these research questions is analysis of source materials
 and documents. The article culminates with a concise presentation of con-
clusions.

The legal bases and areas of cross-border cooperation between Poland and Germany

From a legal standpoint, cross-border cooperation between Poland and the
Federal Republic of Germany was made possible especially as a result of
two legal acts signed by the Polish authorities in the early 1990s. The first
of these was the European Outline Convention on Transfrontier Co-opera-
tion between Territorial Communities or Authorities concluded in Madrid
in May 1980 and joined by Poland in 1993. The second document was the
Treaty on Good Neighbourliness and Friendly Cooperation between
Chronologically, we need to discuss the provisions of Poland’s constitu-
tion adopted in 1997 (already after ratification of the above-mentioned
documents). According to Article 172(2) of the constitution: “A unit of lo-
cal government shall have the right to join international associations of lo-
cal and regional communities as well as cooperate with local and regional
communities of other states” (Konstytucja Rzeczypospolitej Polskiej,
1997). This provision makes it possible to conclude partnership initiatives
with foreign local authorities. Germany’s constitution, in turn, stipulates
that while the federal authorities are responsible for foreign relations, the
governments of the constituent states (Länder) may conclude treaties with

https://doi.org/10.5771/9783845280363-166
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other countries upon the federal authorities’ consent (Ustawa Zasadnicza dla Republiki Federalnej Niemiec, 2010, Article 32).

Changes in Poland’s administrative system after the breakthrough of the early 1990s, which had previously been centralised, also had an impact on the development of cross-border cooperation between the two states. The reforms can be divided into three main stages. The first stage (1989–1997) related to the beginnings of the systemic transformation, the change of the model of operation of local administration and changes at the level of central authorities. During the second stage (1998–2003), there was reform of the state’s territorial division, local government, government administration at the provincial level, and certain corrections regarding central administration. In the third stage (from 2004), as part of the adjustments necessary to prepare Poland for European Union (EU) membership, some modifications in the functioning of public administration were introduced (Stefaniuk and Szreniawski, 2009, pp. 673–674). With regard to the issues discussed herein, the period especially worth examining is the second stage of reforms, i.e. 1998–2003, which started after the adoption of the 1997 constitution. The new provisions implemented a programme of decentralisation of the state and reform of local government (Ibidem, p. 678). New legislation adopted in 1998 introduced a three-tier territorial division consisting of the following three levels of administration: the lowest level – communes (gminy), the middle level – districts (powiaty), and the highest level – provinces (województwa). This solution made it possible to pursue regional policy, which was becoming increasingly important with the deepening of European integration (Ibidem). In the context of relations between Poland and Germany, administrative reform in Poland translated into the possibility of developing a good neighbourhood policy between the two states, the priorities of which included regional and cross-border cooperation, which deepened in the years that followed.

2 M. Stefaniuk and J. Szreniawski in fact describe the third stage as covering the period from 2004 to 2009, but since their study was published in 2009 it does not take into account the years that followed.


4 See the paper by Dariusz Popławski in this volume entitled Poland’s and Germany’s good neighbourhood policy.
The key provisions for the development of cross-border cooperation between Poland and Germany are those of the Treaty of 1991. On the one hand, in its Article 12 the Treaty promoted in various spheres the deepening and development of bilateral relations regarding cross-border cooperation between the two states. On the other hand, the authors of the Treaty emphasised bilateral cooperation in issues related to ensuring internal security; although we need to remember that the Treaty was drafted in the early 1990s, when internal security issues were not yet critical priorities of European governments. Considering this, we can identify a number of key areas of Polish-German cross-border cooperation.

First, Article 12 of the Treaty provides for cooperation in various fields between territorial units of the two states, especially those located in borderland areas: “1. The Parties to the Treaty attach great weight to partnership between regions, cities, communes and other territorial units, in particular in borderland areas. 2. The Parties to the Treaty shall facilitate and support this partnership in all fields, in particular the activity of the Inter-governmental Commission on Regional and Cross-border Cooperation” (Traktat między Rzecząpospolitą Polską a Republiką Federalną Niemiec o dobrym sąsiedztwie i przyjaznej współpracy, 1992)\(^5\). Second, in its Article 13 the authors of the Treaty stressed the need for Poland and Germany to cooperate on issues related to land management, i.e. concerning the functioning of local communities in the border regions of the two states: “The Parties to the Treaty agree that there is a need for the countries of an integrating Europe to align their policies in the area of land management, in particular between neighbouring countries. Therefore the Parties will implement cross-border cooperation at all levels in the area of land management and planning” (Ibidem). Third, both states provided for mutual assistance in the event of disasters and serious accidents (Article 17). In addition, they intended to support cooperation in the field of preventive health care (Article 34). These issues can be incorporated into the area of emergency management. Finally, Articles 18 and 19 place particular emphasis on the need to improve international mobility of people and transportation links between the states, also as regards borderland traffic – “1. The Parties to the Treaty strive to expand air, rail, road, maritime and inland waterway transport connections using the latest technologies. 2. The

\(^5\) All passages of the Treaty and other documents cited in the article were translated by M. and T. W.
Parties to the Treaty will make all efforts to create favourable conditions for the use of their transportation routes between their territories and in transit. 3. The Parties to the Treaty strive to expand, improve and harmonise telecommunications connections [...]” (Ibidem) and “1. The Parties to the Treaty will take all relevant actions to support and facilitate passenger traffic [...]. 3. The Parties to the Treaty intend, depending on the intensity of traffic, to expand and modernise the existing border crossings and to open new ones if necessary” (Ibidem). These articles provided the basis for developing cross-border cooperation between Poland and Germany in the years that followed the conclusion of the Treaty. Furthermore, Poland’s accession to the European Union further facilitated the processes launched in the 1990s.

Initiated under the Treaty provisions, cross-border cooperation was subsequently developed in an institutionalised form, namely in the Polish-German Intergovernmental Commission on Regional and Cross-border Cooperation, established on 17 June 1991 by the then foreign ministers of the two states (Krzysztof Skubiszewski for Poland and Hans-Dietrich Genscher for Germany). One of the tasks entrusted to the Commission was to support cooperation in numerous fields in the border area, pursued by both state institutions and non-governmental entities (Nota z 17.06.1991 r. w sprawie utworzenia Polsko-Niemieckiej Komisji Międzyrządowej ds. Współpracy Regionalnej i Przygranicznej, 1991).

The scope of cross-border cooperation between Poland and Germany in the area of internal security (1991–2011)

An important issue in the context of developing cross-border cooperation and exchange is ensuring internal security in both states in the border area. Closer relations, increased the movement of people or expanded communication, and the exchange of financial assets, which could have potentially contributed to the fact that apart from law-abiding citizens, criminals could cross the border more easily. On the other hand, there are other issues related to internal security cooperation, such as cooperation between the police forces of the two states and between other services responsible for ensuring public safety and order, disaster management, etc.

The authors of the Treaty took into account the possibility of the emergence of cross-border crime benefiting from the two states’ rapprochement and from the fact that they were now open to one another. As a solution to
this potential problem they penned the provisions of Article 33, which promote strengthening cooperation in the field of ensuring internal security (“2. The Parties to the Treaty will work together towards eliminating organised crime, terrorism, economic crime, drug-related crime, illicit trafficking in works of art, illegal violations of the security of civil air space and maritime transport as well as production, and introducing into circulation of counterfeit payment means. The procedure and conditions of this cooperation will be established by means of a separate agreement”) (Traktat między Rzecząpospolitą Polską a Republiką Federalną Niemiec o dobrym sąsiedztwie i przyjaznej współpracy, 1992). As we can see, they focused primarily on cooperation in combating cross-border crime, but they also listed terrorism, which is worth stressing given that the Treaty was signed in the early 1990s, when neither Poland nor Germany experienced the effects of this phenomenon on any meaningful scale.

A review of the communications from the meetings of the Polish-German Intergovernmental Commission on Regional and Cross-border Cooperation that took place in the years following its establishment shows that initially the Commission focused on issues related to developing cooperation in areas such as: education, youth exchange, cultural matters, communication and transport, land management, water resource management and flood protection. In 2011, on the 20th anniversary of the conclusion of the Treaty on Good Neighbourliness and Friendly Cooperation, the Commission also recognised the need to develop cooperation in areas belonging to internal security. It noted, among others, the conclusion by the two governments of an agreement on establishing the Polish-German Cooperation Centre for Border, Police and Customs Services in Świecko, and it once again emphasised the need to intensify work on drafting a Polish-German framework agreement on cross-border cooperation in the area of medical rescue (the Commission mentioned this issue in 2009 and 2010) (Komunikat z XXII posiedzenia Polsko-Niemieckiej Komisji Międzyrządowej ds. Współpracy Regionalnej i Przygranicznej w Gorzowie Wielkopolskim, 2011). Furthermore, the Commission advocated the formation of combined patrols under the planned agreement between the Polish Police and Border Guard as well as the German Federal Police (Zalecenia z XXII posiedzenia Polsko-Niemieckiej Komisji Międzyrządowej ds. Współpracy Regionalnej i Przygranicznej w Gorzowie Wielkopolskim, 2011). The desire to further deepen cross-border cooperation was expressed in a Joint Declaration on the occasion of the 20th anniversary of the conclusion of the Treaty on Good Neighbourliness and Friendly Cooperation entitled...
Having regard to the development and facilitation of contacts between our citizens we wish to intensify cross-border and regional cooperation. In order to achieve this, we will strive to, among others, improve the infrastructure of passenger and rail, road and waterway transport (Wspólna Deklaracja Rządów Rzeczypospolitej Polskiej i Republiki Federalnej Niemiec, 2011). As we can see, the parties focused chiefly on infrastructure-related issues; the Declaration does not include any direct reference to cooperation with respect to internal security matters.

Cooperation in this area was, however, addressed more broadly in the Programme of Cooperation that accompanied the Declaration. The Programme announced the future signing of the above-mentioned framework agreement on cross-border cooperation in the field of medical rescue and emphasised the development of joint flood protection activities: “With this aim, we will take steps to develop a joint emergency plan for improving crisis response and rescue capabilities in the event of floods. We wish to consolidate our cooperation through joint training” (Program współpracy, 2011). In addition, the Programme provided for strengthening cooperation between police forces, including in the area of improving security in road traffic and exchanging the experience of police officers as regards joint cross-border operations (Ibidem).

The key provisions of the Programme concerning cooperation (including cross-border) between the two states in the area of internal security are those relating to joint actions regarding ensuring public safety and order. It was declared that the actions undertaken in this respect should focus mainly on combating international crime and terrorism, the goal being to increase the sense of security of the citizens of Poland and Germany as well as the citizens of other EU member states. With this aim, it was announced that the area subject to the existing intergovernmental agreement on cooperation between police forces, border guards and customs services in borderland areas would be expanded in order to streamline and intensify cooperation between services dealing with ensuring public safety and order (Ibidem). The goal was to have the agreement cover the entire territories of Poland and Germany. Poland was also to engage in closer cooperation with Germany to ensure internal security in the run up to and during the UEFA European Championship to be held in Poland and Ukraine in 2012.
On 14 November 2012, Władysław Bartoszewski, the then Secretary of State at the Chancellery of the Prime Minister of Poland and Plenipotentiary of the Prime Minister of Poland for International Dialogue, and Cornelia Pieper, former Minister of State at Germany’s Federal Foreign Office and Coordinator of German-Polish Inter-societal and Cross-border Cooperation, issued a joint communique summing up the state of implementation of the 2011 Programme of Cooperation. The tone of the document was rather optimistic – the parties agreed that the progress of the projects initiated was satisfactory and that prospects for further bilateral cooperation were very encouraging. As regards cross-border cooperation in the field of internal security, the document stated that matters of direct significance to the inhabitants of border regions were first of all the conclusion of the framework agreement on medical rescue and the implementation of the pilot project on joint border posts. It added that coordination of police activities during the 2012 UEFA European Championship had been an example of model cooperation (Komunikat na temat realizacji polsko-niemieckiego Programu Współpracy, 2012).

In the years that followed, emphasis was placed on cross-border cooperation in providing mutual assistance during times of natural and man-made disasters. To further this goal the Polish-German Intergovernmental Commission on Regional and Cross-border Cooperation established a working group that was to deal with updating the existing agreements (at the level of ministries of the interior) with the borderland German constituent states (Komunikat z XXIV posiedzenia Polsko-Niemieckiej Komisji Międzyrządowej ds. Współpracy Regionalnej i Przygranicznej, 2013). Another issue that was addressed was water resource management and flood protection measures (Zalecenia XXIV posiedzenia Polsko-Niemieckiej Komisji Międzyrządowej ds. Współpracy Regionalnej i Przygranicznej, 2013). Issues related to cross-border cooperation in the sphere of internal security were the subject of the Commission’s interest especially in 2013 and 2014. The report from the Commission’s meeting of 2014 highlighted not only the above issues, but also the need to develop good practice, i.e. standards of operation in the face of disasters, which would contribute to improving coordination of operations undertaken by the Polish and German services responsible for protection of their respective populations (Protokół z XXV posiedzenia Polsko-Niemieckiej Komisji Międzyrządowej
ds. Współpracy Regionalnej i Przygranicznej, 2014). It was judged that the agreement on cooperation between police forces, border guards and customs services that was to enter into force in July 2015 would contribute to improving security in border regions (Deklaracja Koordynatora ds. Polsko-Niemieckiej Współpracy Przygranicznej i Regionalnej, 2015).

It is safe to say that cross-border cooperation between Poland and Germany in the field of internal security was strengthened, in particular, after 2011. Intensified cooperation in this field was caused firstly, by the floods that affected borderland areas in both Poland and Germany, requiring the relevant services from the two states to cooperate, and secondly, the aforementioned 2012 UEFA European Championship and the resulting need to strengthen cooperation between Polish and German services, with the mutual exchange of data and information. This thesis is confirmed not only by the content of the documents cited above, but also by the agreements on cross-border cooperation in the area of internal security concluded by Poland and Germany and adopted between 2011 and 2015. At this point we should list some of the most important ones among them:

1. Agreement between the governments of Poland and Germany on early notification of nuclear accidents, on the exchange of information and experience as well as on cooperation in nuclear security and radiation protection, signed in Warsaw on 30 July 20096.

2. Agreement between the governments of Poland and Germany on the establishment of the Polish-German Cooperation Centre for Border, Police and Customs Services, concluded on 17 February 20117.

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6 Although the agreement was signed before the period in question, in 2009, it needs to be mentioned here because it concerns nuclear energy security, which is linked to ensuring internal security – see: Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Federalnej Niemiec o wczesnym powiadamianiu o awarii jądrowej, o wymianie informacji i doświadczeń oraz o współpracy w dziedzinie bezpieczeństwa jądrowego i ochrony radiologicznej podpisana w Warszawie dnia 30 lipca 2009 r., 2009. Monitor Polski, 72, item 910.

3. Framework agreement between Poland and Germany on cross-border cooperation on medical rescue, signed in Warsaw on 21 December 2011.

4. Agreement between the governments of Poland and Germany on cooperation between police forces, border guards and customs services, drawn up in Zgorzelec on 15 May 2014.

5. Agreement between the governments of Poland and Germany on joint improvement of the situation on the waterways of the Polish-German borderland (flood protection, flow and navigation conditions), signed in Warsaw on 27 April 2015.

In the report compiled after the jubilee meeting of the Commission in 2016, marking the 25th anniversary of the signing of the Treaty as well as the 25th anniversary of the establishment of the Commission, cooperation between the parties was once again deemed highly successful and the Commission expressed its satisfaction with the results achieved in this period (Protokół z XXVII posiedzenia Polsko-Niemieckiej Komisji Międzyrządowej ds. Współpracy Regionalnej i Przygranicznej, 2016). It is important to stress that with the development of the international situation and the mass influx of refugees into Europe, new challenges faced by the two states in the field of internal security were pointed out; among recommendations, the document highlights the issue of “migration and integration”. Second, the document also speaks of what is referred to as “regional energy strategies” – the Commission stresses the particular significance of cross-border cooperation in the sphere of energy in Europe and recognises that Poland and Germany face similar challenges in this regard (Ibidem).

8 See: Umowa ramowa między Rzecząpospolitą Polską a Republiką Federalną Niemiec o współpracy transgranicznej w ratownictwie medycznym podpisana w Warszawie dnia 21 grudnia 2011 r., 2013. Dziennik Ustaw, item 678.


10 See: Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Federalnej Niemiec o wspólnej poprawie sytuacji na drogach wodnych na pograniczu polsko-niemieckim (ochrona przeciwpowodziowa, warunki przepływu i żeglugi) podpisana w Warszawie dnia 27 kwietnia 2015 r., 2015. Monitor Polski, item 1273.
Challenges to cross-border cooperation between Poland and Germany in the field of internal security

Cross-border cooperation between Poland and Germany in the sphere of internal security is undeniably affected by current trends in the international environment and the development of the international situation, and will most likely continue to be affected by these trends. Although it concerns mainly the border regions of the two states, which means that – as if by definition – it should be focusing on local-level issues, it is inevitably subject to the impact of globalisation; we are witnessing its internationalisation. We are therefore dealing with a certain paradox, described in the academic literature as follows: the phenomenon of cross-border cooperation presently constitutes both a challenge and a dilemma as it is set between localism (being closest to the citizens) and globalism (progressing globalisation) (Kusiak-Winter, 2011, p. 11). Taking these processes into account, we should note that the present challenges to cross-border cooperation between Poland and Germany in the field of internal security can be reduced to three key issues:

1. Legal challenges

The challenges in the legal sphere mainly concern the legal framework of cross-border cooperation between Poland and Germany. As noted above, presently cross-border cooperation between the two states is based on the provisions of the Treaty on Good Neighbourliness and Friendly Cooperation, which was adopted a quarter of a century ago. Since then, the international political situation and environment have changed and this needs to be respected. First of all, since 2004 Poland has been a member of the European Union, and cross-border cooperation is subject to the framework of European regional policy. Second, as members of the Schengen Area, Poland and Germany no longer need to focus on expanding the infrastructure of the border crossings between them. Third, today issues related to land management are subject to the framework of sustainable development policy, including sustainable urban development. Fourth, infrastructure and transport policy at the regional level is also implemented within a broader EU framework.
2. Political challenges

The deepening of cross-border cooperation between Poland and Germany in the field of internal security is the outcome of the will of political decision-makers at both the central and local levels as well as of the degree to which local communities are involved in the political and social life in the two states. The authorities’ support for grassroots initiatives, partnerships between cities, towns, communes, etc., and joint projects for ensuring internal security will contribute to the intensification of bilateral cooperation in this respect; this is not only about political will, but also about allocating adequate funds.

3. Internationalisation and globalisation related challenges for cross-border cooperation between Poland and Germany in the field of internal security

With the transformed international geopolitical situation after the end of the Cold War, states began to define security differently, more broadly (in a dynamic and positive way); the catalogue of subjects to which security applies has also changed – from states to individuals and social groups (local communities), as has the catalogue of threats – from typically military to non-military ones. Furthermore, there was a qualitative change in the perception of internal security – from the security of a state, the protection of its interior and institutions to the safety (protection) of its citizens (social groups and local communities), their rights and freedoms, etc. Due to the opening of state borders, internationalisation, Europeanisation (within the EU) and finally globalisation, the number of threats to internal security expanded. This configuration of processes influenced, in particular, the safety of local communities, especially those living in borderland areas, including the Polish-German borderland. Aside from benefits for local people and businesses, facilitations in crossing borders also give rise to challenges related to ensuring public safety and order faced by local authorities in both Poland and Germany. Petty crime is becoming especially problematic and difficult to combat at the local level, and it has the tendency to (illegally) cross borders; organised international crime, in turn, due to its scale, is the subject of greater interest of police forces at the international level, making it easier to combat. It will therefore be a consid-
erable challenge to clamp down on internationalised petty crime through implementing effective mechanisms in Poland and Germany.

Challenges to cross-border cooperation between Poland and Germany in the field of internal security presented above are by no means exhaustive. It has been the author’s objective to draw attention and to elaborate on the key issues that can have a significant impact on the future format of cross-border cooperation between the two states.

Conclusions

Cross-border cooperation between Poland and Germany in the field of internal security is a critical component in the two states’ overall cooperation. This issue has been gaining particular significance recently, with a dynamically changing international environment, in which both states need to face ever new challenges and threats when it comes to ensuring internal security.

The research conducted for the purpose of this paper leads to a number of conclusions:

First, as regards the legal bases of cross-border cooperation between the two states in the field of internal security, we need to stress the role of the Treaty on Good Neighbourliness and Friendly Cooperation, which initiated the development of this cooperation. On the other hand, the Polish-German Intergovernmental Commission on Regional and Cross-border Cooperation, established at the same time as when the Treaty was signed, constitutes an international forum for this cooperation and facilitates or stimulates various projects in the sphere in question.

Second, cross-border cooperation to date between Poland and Germany in the field of internal security can be divided into two main stages: 1991–2011, that is the first 20 years when the Treaty on Good Neighbourliness and Friendly Cooperation was in force, and the years after 2011 up to the present. Intensification of cooperation can be observed especially in the second stage, when the two states’ authorities signed a number of important agreements on bilateral cooperation in the field of internal security.

Third, we can presently identify a number of challenges to further cross-border cooperation between Poland and Germany in the field of internal security. Those that require specific consideration are the legal challenges, political challenges and challenges related to globalisation at the local level.
The above conclusions confirm the initial assumption, made in the introduction to the paper, namely that the main area of challenges in cross-border cooperation between Poland and Germany is the ensuring of internal security at the level of local communities.

Summary

The paper concerns cross-border cooperation of Poland and Germany in the field of internal security, i.e. at the local level, since the signing of the Treaty on Good Neighbourliness and Friendly Cooperation between Poland and the Federal Republic of Germany of 17 June 1991. Furthermore, the challenges for cross-border cooperation between the two states were presented and analysed. It was assumed that the main challenges in the field of cross-border cooperation between Poland and Germany are related to ensuring internal security at the local community level.

Keywords: cross-border cooperation, Germany, internal security, Poland

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