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Free movement policies and border controls: regional migration governance systems in West and North Africa and Europe, and their interactions

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Abstract: Most States in West and North Africa and in Europe are part of free movement areas. The trend towards lifting intraregional border controls has, however, unfolded in parallel with a trend towards tightening external border controls. This chapter analyses how the two trends have shaped regional and transregional migration governance in West and North Africa and in Europe. It first looks at regional policy structures in West and North Africa, then analyses how these are integrated in wider continental trends and how they interact with free movement policies in Europe. The chapter draws on an analysis of policies of the African Union, the Economic Community of West African States (ECOWAS), the Arab Maghreb Union (AMU) and the European Union. It finds that, even though free movement policies were adopted quite early in ECOWAS and the European Union, and have been discussed for a long time within AMU and the African Union, their implementation remains challenging, due to political and socioeconomic differences between member States, to different migration-related interests and to growing interregional dependencies.

Most States in West and North Africa and in Europe are part of free movement areas. In the Economic Community of West African States (ECOWAS), the Protocol on the Free Movement of Persons, Right of Residence and Establishment was introduced in 1979. In the European Union, free movement of persons was enshrined in the Treaty of Rome, establishing the European Economic Community in 1957, and was consolidated by the Treaty of Maastricht in 1992. In both West Africa and Europe, free movement policies have facilitated intraregional mobility, which is much more prevalent than mobility between regions. Their introduction testifies to a political recognition that this mobility is essential for regional economic integration and development. An ambition to extend free movement policies has also been present in the work of the African Union since its beginnings, and has recently gained momentum with its 2018 Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment.

National borders have, however, not lost in importance. To begin with, the implementation of free movement policies has implied challenges within ECOWAS and the European Union. These challenges have been due to political and socioeconomic differences between member States, as well as differences in migration-related interests, reflecting varying migration and remittances flows, labour market needs and geographical locations. In addition, the implementation of free movement policies has also led to a renegotiation of the role of national borders due to growing interregional

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dependencies. For instance, controls at the European Union external borders and beyond have increased, based on cooperation with several African States. Finally, advancements on the creation of a free movement area in North Africa have been slow (Urso and Hakami, 2018).

This chapter illustrates how these two trends – towards lifting intraregional border controls and tightening external border controls – have shaped regional and transregional migration governance in West and North Africa and in Europe. It first looks at regional policy structures in West and North Africa, then analyses how these are integrated in wider continental trends and interact with free movement policies in Europe.

30.1. Free movement and borders in regional migration governance

30.1.1. Economic Community of West African States²

Intraregional mobility and migration have a long-standing tradition in West Africa. Compared with other world regions, such as Europe, West African modern States are relatively recent, having gained independence from former colonial powers only from the late 1950s. Historically grounded studies in the region have also shown that a space delimitation based on fixed territorial structures was introduced only by colonial administrations (Walther and Retailié, 2008). Before that, space was for a long time organized according to social affiliations, through a “fluid and constantly moving territoriality” (Lima, 2013). Locations that were geographically distant could be controlled by a single authority (see Mbembé, 2005). At the same time, lifestyles and practices based on mobility – such as nomadism, semi-nomadism and shifting cultivations – were frequent, allowing communities and households to adapt to a resource-poor environment. Whereas in recent decades national laws have progressively hindered nomadism (see FAO and IUCN, 2018), cross-border movements remain frequent in the region (Fedorova and Shupert, Chapter 4 of this volume) and entail practices as different as seasonal or more permanent migration, migration for education and trade, and family visits. While its forms have adapted to a changing world, this mobility continues to contribute to development and resilience in the region (Quartey, Addoquaye Tagoe and Boatemaa Setrana, Chapter 21 of this volume). This is increasingly also recognized by national governments through free movement policies, as well as diaspora policies.

An ambition to implement free movement policies has been present in the ECOWAS undertaking since the beginning. The 1975 ECOWAS Treaty foresaw “the abolition between the Member States of obstacles to the free movement of persons, services and capital” as one of the key objectives of the newly created Community (ECOWAS, 1975:article 2d). A few years later, the 1979 Protocol on the Free Movement of Persons, Right of Residence and Establishment was the first protocol to be ratified by its Member States. It provided for a progressive institution of the rights of entry, residence and establishment of ECOWAS citizens within the region, to be completed in three phases within 15 years. In the first phase, a right of entry and stay for up to 90 days, allowing ECOWAS citizens with a valid travel document and an international health certificate to enter the territory of other ECOWAS States without visas and entry permits, was implemented. In the second phase, a right of residence has been rendered possible via the introduction of residence permits. However, advancement on the implementation of the third phase and of a right of establishment has been slower.

² ECOWAS Member States are Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, the Niger, Nigeria, Senegal, Sierra Leone and Togo.

Free movement policies were also reaffirmed and mainstreamed in further policies of the Community, such as the revised ECOWAS Treaty of 1993, which reaffirmed the rights of entry, residence and establishment (ECOWAS, 1993:article 59). The promotion of free movement is one of the eight thematic priorities of the Migration Dialogue in West Africa, established in 2000, as well as one of the main focuses of the ECOWAS Common Approach to Migration, adopted in 2008. The Common Approach also marked a transition towards a more integrated regional migration management. Rather than only focusing on the implementation of free movement within the region, the Approach drafted a structure of how to deal with migration within, from and to the region, through a stronger coordination of national approaches. In addition to free movement, the Approach also contemplated policy harmonization, management of regular and irregular migration, fight against human trafficking, and promotion of the rights of migrants and refugees (ECOWAS, 2008). At the time of writing, the Approach is undergoing a revision.³

Instrumental to the realization of ECOWAS free movement policies has also been the progressive adoption of common travel documents, allowing citizens to move within the region. An ECOWAS travel certificate was introduced in 1985. In 2000, the Abuja Summit led to the adoption of an ECOWAS common passport. However, challenges persist in practice. In fact, approximately 53 per cent of the population of the ECOWAS region is unregistered and does not have proof of legal identity (World Bank, 2018). This hinders access to critical services and the ability to get official travel documents. According to the 1979 Protocol, however, official travel documents are currently required in order to cross borders within the Community.

While free movement policies remain a priority for ECOWAS Member States, national divergences have challenged their full implementation. In fact, the implementation of phase three of the 1979 Protocol – on the right of establishment of ECOWAS citizens in the whole territory of the Community – has yet to be completed. In addition, ECOWAS approaches have not yet been mainstreamed in migration-relevant national policies. For example, Adepoju has noted that national laws and employment codes often continue to restrict the access of foreigners, including ECOWAS citizens, to specific economic sectors, and that in some cases expulsions have also taken place (Adepoju, 2015).

The implementation of the 1979 Protocol is also challenged by political difficulties, institutional and administrative barriers, and practical hindrances. First, political support has sometimes been weak or unstable, funding insufficient and political mandates unclear. Inter-State border disputes have also been challenging. Additional concerns have been linked to disparities in the economic and labour market situations and population sizes of the various Member States. In particular, Nigeria has a higher gross domestic product (GDP) and a significantly larger population than other Member States. Political instability, as well as domestic politics and changing attitudes towards migrants, has also had an impact on the willingness of national governments to engage more in regional approaches and to renounce some national migration policy competencies. In addition, practical and administrative challenges have been related to border controls, sharing of information with citizens and increasing insecurity in the region, among others (Adepoju, 2015; Castillejo, 2019).

Additional national divergences have emerged following an increasing engagement on migration management of the Community and its Member States with European counterparts. According to some authors, this engagement has led some West African governments to dedicate greater policy attention to irregular migration at the national level (Castillejo, 2019; Jegen, 2020). Further national differences may be explained by the presence of bilateral agreements between European Union counterparts and specific ECOWAS Member States, which may not necessarily be aligned with regional priorities.

The negotiation of free movement and migration policies within the region could acquire a new form, in case Morocco joins the Community. In 2017, ECOWAS Member States reacted to Morocco's application with an approval for membership "in principle" and postponed a final decision after the completion of an in-depth study (Al Qays Talha Jebri, 2020). In case of a positive decision, migration-related interests of ECOWAS Member States would become further diversified, and this may increase the complexity of policy negotiations. In addition, if Morocco also

³ Mali, Burkina Faso, Senegal, Côte d'Ivoire, the Niger, Benin, Togo and Guinea-Bissau are also part of the West African Economic and Monetary Union (WAEMU). The WAEMU founding treaty (WAEMU, 1973) sets out the creation of a common market, based inter alia on the free movement of persons, goods, services and capital, and the right of establishment of self-employed or salaried persons. Article 76 of the Amended Treaty (WAEMU, 2003) furthermore contains provisions on freedom of movement, residence and establishment.

signed the 1979 Protocol, the ECOWAS and European Union free movement areas would share a common border, likely leading to intensified European Union efforts to engage with ECOWAS Member States on immigration control.

30.1.2. Arab Maghreb Union⁴

Intraregional migration is less important in North Africa, where more than 90 per cent of emigrants lived outside the continent in 2017, compared with less than 30 per cent of West African migrants (European Commission, Joint Research Centre, 2018). This relatively lower mobility within the region is also reflected in lower advancement with regard to regional free movement policies. In 1989, the Treaty instituting the Arab Maghreb Union (AMU) foresaw that its member States would have worked “gradually towards achieving free movement of persons and transfer of services, goods and capital among them” (AMU, 1989:article 2). It also envisaged achieving a right of establishment. However, in recent decades, the activities of the Union have been hindered by low political support, inter-State disputes and internal crises. Challenges such as insecurity and difficult transport connections also contributed to this outcome. However, Tunisia has granted a right of visa-free entry to citizens of other AMU member States (Urso and Hakami, 2018). According to the United Nations Economic Commission for Africa, further provisions on free movement have been introduced by Morocco and Libya.⁵

30.2. Continental efforts towards free movement policies and the role of regional economic communities

The idea of continent-wide free movement of persons can be traced back to the foundation of the African Union in 1963 as the Organisation of African Unity (OAU) (African Union and IOM, 2018). The first concrete provisions were enshrined in the Lagos Plan of Action for the Economic Development of Africa 1980–2000, which called for States to allow the free movement of labour in the African common market. In 1991, the Abuja Treaty establishing the African Economic Community included a first binding commitment to “adopt, individually, at bilateral or regional levels, the necessary measures, in order to achieve progressively the free movement of persons, and to ensure the enjoyment of the right of residence and the right of establishment of their nationals within the Community” (OAU, 1991:article 43.1). The Treaty also assigned a key role to five regional zones that later became regional economic communities (RECs). After OAU’s transformation into the African Union in 2002, the African Union continued to support the idea of free movement policies on different occasions, such as at the Sirte Council in 2005, where it called for the introduction of an African passport, and where the establishment of a Continental Free Trade Area was decided upon in 2012. The need for free movement of persons as linked to the idea of pan-Africanism and an integrated and united continent was reaffirmed in 2015 in the African Union Agenda 2063 (African Union, 2015:article 73). Agenda 2063 assigned to RECs an important role for the implementation of free movement policies by 2023, and called on States to waive requirements for entry visas for African citizens moving within the continent. In 2018, the African Union finally adopted a Protocol on the Free Movement of Persons, Right of Residence and Establishment, which foresaw a progressive implementation of free movement policies, starting from the REC level. The revised Migration Policy Framework for Africa, adopted the same year, also recommended that States “enhance cooperation and coordination amongst States in subregions and regions with a view to facilitating free movement at bilateral, subregional and regional levels”, and to “harmonise and strengthen implementation of REC free movement provisions related to residence and establishment, in order to aid labour mobility” (African Union, 2018:article 2.2).

⁴ AMU member States are Algeria, Libya, Mauritania, Morocco and Tunisia.

⁵ See www.uneca.org/pages/amu-free-movement-persons (accessed 29 July 2020).

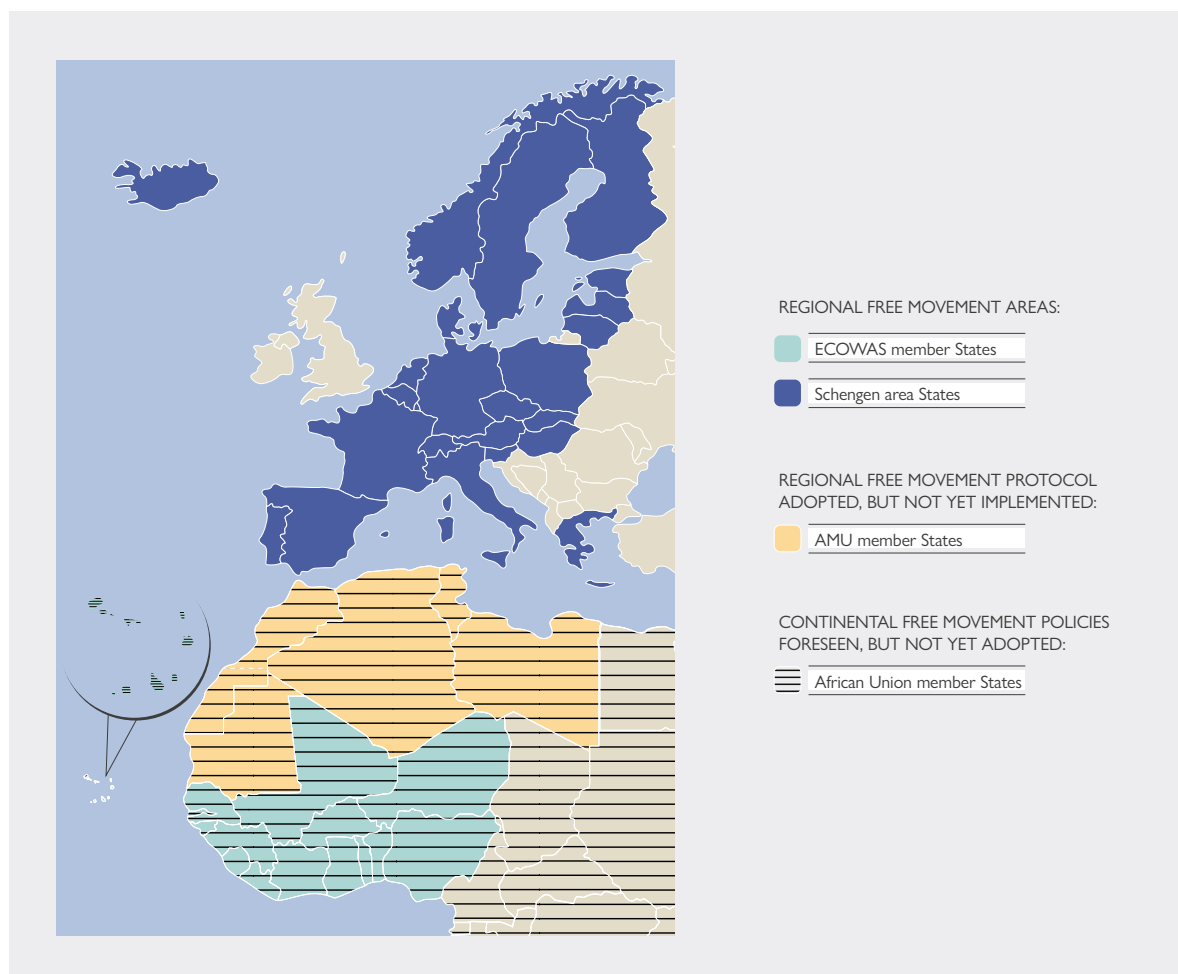
However, national divergences regarding free movement policies exist as related to these continental processes as well, and in addition to those at the regional level mentioned above. These include sociopolitical challenges, such as different sizes of national economies and populations, inter-State conflicts and tensions, varying inflows and outflows of migrants and remittances, different labour market needs, changing public attitudes towards migration and challenges related to national sovereignty and competencies. A low degree of implementation of African Union agreements also hinders more rapid progress towards free movement. Further challenges are related to national capacity and resources – for example, due to national differences in travel and personal documents standards and border management systems. National security and public order concerns, such as transborder crimes and terrorist activities, also need to be mentioned. Finally, there are public health concerns, due to limited transnational health monitoring systems, hampering the implementation of free movement policies and frameworks (see African Union and IOM, 2018).

30.3. Transregional migration governance: interactions between African and European policies

In recent decades, migration governance in West and North Africa has been increasingly linked with the migration governance processes of the European Union. Transregional migration policy negotiations spanning the two continents have taken place and influenced free movement and border control policies in ECOWAS and AMU member States.

Free movement of persons has been present in the European Union since its establishment as the European Economic Community in 1957. That year, the Treaty of Rome established a common market based on free movement of goods, people, services and capital. The Schengen Agreement, signed in 1985 and entered into force in 1995, abolished internal border controls.⁶ In 1992, article 8 of the Treaty on European Union, signed in Maastricht, established European Union citizenship for all nationals of member States, involving a right to freedom of movement and of residence in the territory of all member States. In 1997, the Schengen acquis was transferred into the Treaties through a Protocol to the Amsterdam Treaty. The Amsterdam Treaty also called on member States to adopt measures ensuring the free movement of persons, in conjunction with measures with respect to external border controls, asylum and immigration. In 2004, the Directive 2004/38/EC, on the right of European Union citizens and their family members to move and reside freely within the European Union established further rights and obligations.

⁶ The Schengen Agreement initially involved seven member States and now encompasses most European Union member States, except for Bulgaria, Croatia, Cyprus, Ireland and Romania. However, Bulgaria, Croatia and Romania are currently in the process of joining the Schengen Area. Of non-European Union States, Iceland, Norway, Switzerland and Liechtenstein have joined the Schengen Area.

Figure 30.1. Free movement areas in West and North Africa and in Europe

Note: This map is for illustration purposes only. The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the International Organization for Migration.

In parallel to advancements on free movement of persons, since the late 1990s, European Union member States have started working on the establishment of a common immigration and asylum system. This system was to be based on responsibility sharing between member States and valid in the entire territory of the Union (internal dimension). Negotiations on this common system have been more difficult than foreseen, due to member States' reluctance to renounce national competencies and take up shared responsibilities on migration and asylum, as well as to increasing national divergences in terms of migration realities and wider social and economic situations (Schöfberger, 2019). For example, different European Union member States have different labour market needs and geographical locations, and therefore different migration-related priorities. As a result, a shared system on the internal dimension has yet to be identified, and the new Von der Leyen Commission has been working on a Pact on Migration and Asylum (European Commission, 2020). In order to decrease pressure on the difficult negotiation of the internal dimension of European Union migration management, member States soon after decided that this internal dimension was to be supported by an external dimension of migration policy, to be based on a strengthened engagement with States beyond the external borders of the Union. At the Tampere Summit in 1999, member States recommended increasing cooperation and partnerships with countries of origin and transit of migrants, including West and North African States (European Council, 1999).

As the external dimension was intended to be supportive of the internal dimension, negotiations between European Union member States have always had a strong influence on their engagement with African counterparts. This influence has changed over time. At first, policies such as the 2005 European Union Global Approach to Migration

and the 2006 Joint Africa–European Union Declaration on Migration and Development had diverse objectives. Some of these were related to a stronger control of the European Union external border, and included cooperation with countries of origin and transit on irregular migration and return. Others were related to migration as an opportunity for development in Africa and Europe, and included better integration of migrants and a facilitation of diaspora investment. However, in the following years, the focus of the internal dimension has changed. A combination of processes and factors, including the 2007/2008 financial crisis and increased migrant arrivals to the European Union in 2015, led to greater political divergencies between European Union member States. As a result, agreeing on a common migration and asylum system on the internal dimension has become increasingly difficult. Common concerns about securing the external European Union border have meant it has been relatively easier for the European Union and its member States to agree on strengthening efforts to control immigration into the Union – although national approaches to this have differed.

This has led to a stronger focus on border control in European Union member States' cooperation with African States. Policies such as the revised 2011 European Union Global Approach to Migration and Mobility, the 2015 European Agenda on Migration and the 2015 Valletta Political Declaration and Action Plan, as well as the related allocation of funds, placed a stronger emphasis on border security, on combatting irregular migration and on migrant return. Measures referring to migration as an opportunity for development in countries of origin and destination have decreased. At the same time, policies addressing migration as the result of development failures have gained momentum. They have been accompanied by an increased use of European Union development funds to address irregular migration, for example through the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa, launched at the Valletta Summit in 2015. The European Union Emergency Trust Fund for Africa is largely based on the assumption that supporting development in African countries would reduce irregular emigration and displacement (European Commission, 2015). This has been challenged by theoretical and empirical research arguing that a positive income shock in lower-income countries would initially lead to an increase in emigration rates (see Clemens, 2014; Clemens and Gough, 2019). This strengthening policy linkage between development aid and migration management has also been in line with the increased conditionality of European Union external policies, including development policies, to cooperation in European Union migration management, which was introduced by the 2002 Seville Council Conclusions (European Council, 2002).

An increased focus of the European Union on border controls has been challenging in its policy negotiations with African counterparts. To begin with, ECOWAS member States are increasingly aware of the importance of the diaspora to support development and resilience, and are enhancing efforts to engage with it (Schöfberger, Chapter 33 of this volume). Remittances, which were more resilient than foreign aid and direct investment during the 2008 economic downturn (Gagnon, 2020), and have since been increasing, represent a consistent share of GDP in many countries in the region. In many West and North African countries, public attitudes towards migration tend to be very positive (Borgnäs and Acostamadiedo, Chapter 35 of this volume). Therefore, some governments may be reluctant to engage in measures that could limit the emigration possibilities of their citizens. For this reason, and due to the salience of return and readmission in domestic debates in some West African States, cooperation on forced return and readmission has been challenging (Adam et al., 2020). On the contrary, many West and North African States would like to see more regular migration possibilities for their citizens included in the debate. Issues related to State sovereignty and national competencies on migration, development and security are also intervening in negotiations. At the same time, some authors (*ibid.*) have suggested that African governments operate a mediation between such domestically and internationally driven policy preferences linked to donor support.

The effects of the European Union's increased attention to border controls on regional free movement policies in West Africa are still unclear. As mentioned above, some authors have argued that the European Union's engagement with African States has led some of them to strengthen border controls. However, as illustrated in the previous paragraph, West and North African governments are also, to different extents, reluctant to mainstream the European Union's increasing focus on border controls in their policies. These opposing trends may increase intraregional divergences between African States with different migration-related interests and with different relations with European Union member States. Such divergences may, in turn, hinder advancement on regional free movement agendas.

30.4. Conclusion

Trends towards lifting intraregional border controls and tightening external border controls have shaped regional and transregional migration governance in West and North Africa and in Europe. On the one hand, free movement policies were adopted quite early on in ECOWAS and the European Union, and have been discussed for a long time in AMU and the African Union. Their importance has also been reaffirmed through recent policy developments. On the other hand, their implementation remains challenging, due to the fact that States have different interests with regard to migration, and may be hesitant to engage in regional migration governance structures. Migration-related interest, as well as national sovereignties and identities, are moreover constantly renegotiated, particularly in West and North African States, which are relatively young independent States. Growing interregional dependencies have also contributed to render the implementation of free movement policies challenging.

Social and economic consequences of the COVID-19 pandemic may have an impact on regional and transregional migration governance. In particular, they may reshape national migration-related interests, in parallel with changing labour market needs and employment levels of States that are differently affected by the pandemic. Resulting divergences between European Union member States, in particular, may hamper the ability to find an agreement on internal migration management and lead to an even stronger focus on the Union's external borders.



In the last decade, a stronger focus of the European Union on its external borders has also led it to strengthen its engagement on immigration control with member States of the ECOWAS and AMU. It is still too early to conduct a comprehensive assessment of the effects of this engagement on free movement policies in West and North Africa.

Whereas progress on lifting intraregional border controls has been considerable in both the European Union and ECOWAS, in the European Union it has taken place in parallel with a stronger tightening of external border controls than in ECOWAS. This may be due to the fact that divergences between member States on immigration from other regions are stronger between European than between West African States. The fact that ECOWAS member States are also member States of the African Union and therefore involved in continental efforts towards the establishment of Africa-wide free movement policies may also contribute to this difference. In addition, public attitudes to migration seem to be more positive in West Africa than in Europe (Boragnäs and Acostamadiedo, Chapter 35 of this volume).

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