

ER/IR NETWORK:

EUROPEAN WORKS COUNCIL REFORM IN ACTION:

THE NEW DIRECTIVE





Corporate Research Forum (CRF) is a research-led learning network dedicated to building the capability of HR leaders and their teams to drive organisational performance. Through more than 30 years of research and practical expertise, we have developed a deep understanding of the ways HR can contribute to business outcomes – what works, what doesn't and in what circumstances. We support our network of over 275 organisations through an evolving programme of evidence-based insights: delivering expert led events, facilitated peer exchange, and impactful technology-enabled learning. Our focus enables HR to become a more strategic, future-ready function delivering consistent and measurable value tailored to the needs of your organisation.

Our ER / IR Network supports HR and ER leaders to navigate the current complex ER landscape through exclusive research, peer networking and events, and access to CRF's ER learning programme. Led by John Whelan MBE (former UKHRD BAE Systems) and Nick Dalton (former EVP HR Unilever) the network provides a community for ER and IR leaders to explore the most pressing issues facing their organisations today.

ER/ IR Network membership includes:

- Event attendance at webinars, in-person events and Chatham House dinners
- Network exclusive research papers
- A place at our annual ER/IR Learning Programme
- Advisory support from CRF and ER network members
- Discounted access to Strategic Dimensions' pool of Interim ER/ IR Talent



**EVERSHEDS
SUTHERLAND**

LEONIE MCQUAIDE
PRINCIPAL ASSOCIATE

The EU has agreed a new Directive (the Directive) which significantly amends existing European Works Councils (EWCs) legislation. It will make EWCs “easier to set up, better funded and better protected”.

Member States (MS) must, by 1 January 2028, implement the new Directive. Some changes take effect from 2 January 2028, and others will apply from 2 January 2029.

Employers, both with an existing EWC and those in-scope but without, should risk assess the impact on their businesses and take advice on how to respond. In-scope businesses are those with at least 1,000 employees within the EU or European Economic Area and at least 150 employees in each of two countries. When risk assessing, the following changes should be considered:

When transnational EWC consultation is triggered

EWCs’ rights are limited to “transnational”, as opposed to local, developments, leading to some disputes over scope. A new expanded definition is expected to result in more EWC consultation. For example, it requires both a current and future reasonable assessment of the effects of a development and, significantly, includes indirect cause and effects (where it affects workers in one MS and the consequences can reasonably be expected to affect workers in another).

Information and consultation (I&C) changes

Transnational I&C with an EWC may need to start at an earlier stage, demand more management time and attention and become longer in duration, reflecting the following changes:

- the need for timely information-sharing by management, taking into account any provisions in the EWC agreement for representatives to consult with national bodies (e.g. works councils)
- a new entitlement for EWC representatives to express their opinion, and receive a reasoned written response from management, prior to the adoption of a decision (provided the opinion is given within a reasonable time)
- clarifying the role of EWC members to represent and update workers as a “right”, supported by the means to fulfil that right (which might include facilities and finance)

Confidentiality

Where information is subject to confidentiality restrictions, such restrictions must be in the legitimate interests of the business, according to new objective criteria (to be laid down by MSs), and a justification given. Where information is withheld, the conditions (to be laid down by MSs) are being tightened and a justification should be given.

EWC costs

These are set to increase, for example: expenses relating to negotiating an EWC, including reasonable costs for experts, must be borne by the business; the EWC agreement must clarify funding for the EWC’s use of experts, of trade union advisors and for training; reasonable training costs and expenses must be funded as well as the funding of reasonable legal and associated costs if the EWC enforces its rights. Increased costs under the subsidiary requirement changes (below) are also expected to prompt similar demands, and accompanying costs, for other EWC agreements.

Determining sanctions

The revised Directive requires MSs to ensure that EWCs can enforce their rights, by providing timely and effective procedures and remedies. Penalties should take into consideration the gravity, duration, consequences and the intentional or negligent nature of the offence. MSs should also provide for financial penalties (alongside any other sanctions they make available) for a breach of information and consultation duties - these financial penalties should additionally take into account annual turnover.

Legacy EWCs

Some EWCs, mainly those agreed before the original 1994 Directive was applied, are exempt from EWC laws. The revised Directive deletes their exemption from 2 January 2028, and affected employees may initiate negotiations for a new EWC over a reduced two (not three) year period, after which the default (known as "subsidiary") requirements apply if no agreement is reached. However, there is no requirement to negotiate a new EWC, and it will depend on whether a request is received or the employer initiates the process.

Employers with legacy EWCs should review their arrangements now, including assessing any gaps between legacy terms and those provided for under the revised Directive, alongside a health check of the EWC and the likelihood of a request. Where such requests are made, employers should be cautious in concluding negotiations until such time as they are clear how the Directive is being transposed under the applicable MS's governing law relevant to their EWC agreement.

Also, from 2 January 2028, for those EWCs subject to EU law, transitional arrangements encourage parties to renegotiate their agreements within a two-year period (if requested, or initiated by management and the two years running from the request/initiation), to reflect the revised standards under the new Directive.

Other changes

Other changes include: improving EWC gender balance (parties must aim for at least 40% representation of men and women); strengthening protection for EWC members and other representatives (e.g. from retaliation); increasing EWC rights under the subsidiary requirements (e.g. increasing the number of plenary meetings to two, held in person; expanding the topics for EWC I&C; giving experts, which may come from trade unions, the right to attend meetings with management in an advisory capacity; and removing the single expert funding limitation); and increasing the likelihood of the subsidiary requirements applying if management do not respond sufficiently quickly to a new EWC request.



KEY TAKEAWAYS

01

The reforms are making it harder for organisations to operate an EWC without having consciously decided what it is for.

For years, many arrangements have evolved by default rather than by design, perhaps shaped by legacy agreements or accumulated custom. The reforms are raising minimum expectations around consultation timing, procedural clarity, governance discipline and organisational accountability, increasing pressure on organisations to define their consultation model explicitly and own that position at senior leadership level.

02

Organisations facing broadly similar regulatory pressures are arriving at meaningfully different conclusions, and that's ok.

Differences in operational integration, governance philosophy, workforce profile, the historical relationship between management and employee representatives and the legal expertise available to navigate transnational consultation requirements will all shape where an organisation lands.

03

For organisations with significant UK workforces or existing UK representation, the question of how UK employees fit within the consultation structure is not a standalone post-Brexit technicality.

It is a strategic decision that will actively shape the broader consultation model and how integrated the organisation wants that structure to become. With case law in this area developing at pace and agreement renegotiation increasingly likely, the gap between informal participation and formal legal standing is becoming a risk that organisations can no longer afford to leave unexamined.

04

What distinguishes more considered responses is not the degree of strategic ambition attached to the EWC, but whether the chosen position is deliberate, defensible and owned beyond specialist HR and legal teams.

The most effective responses will be those that reflect a clear-eyed assessment of how the organisation actually operates and what role transnational consultation is genuinely expected to play within it, not those that assume more integration is always the right answer.

INTRODUCTION

The forthcoming reforms to the EWC Directive are prompting organisations to do something many have quietly avoided: decide what their European Works Council is actually for.

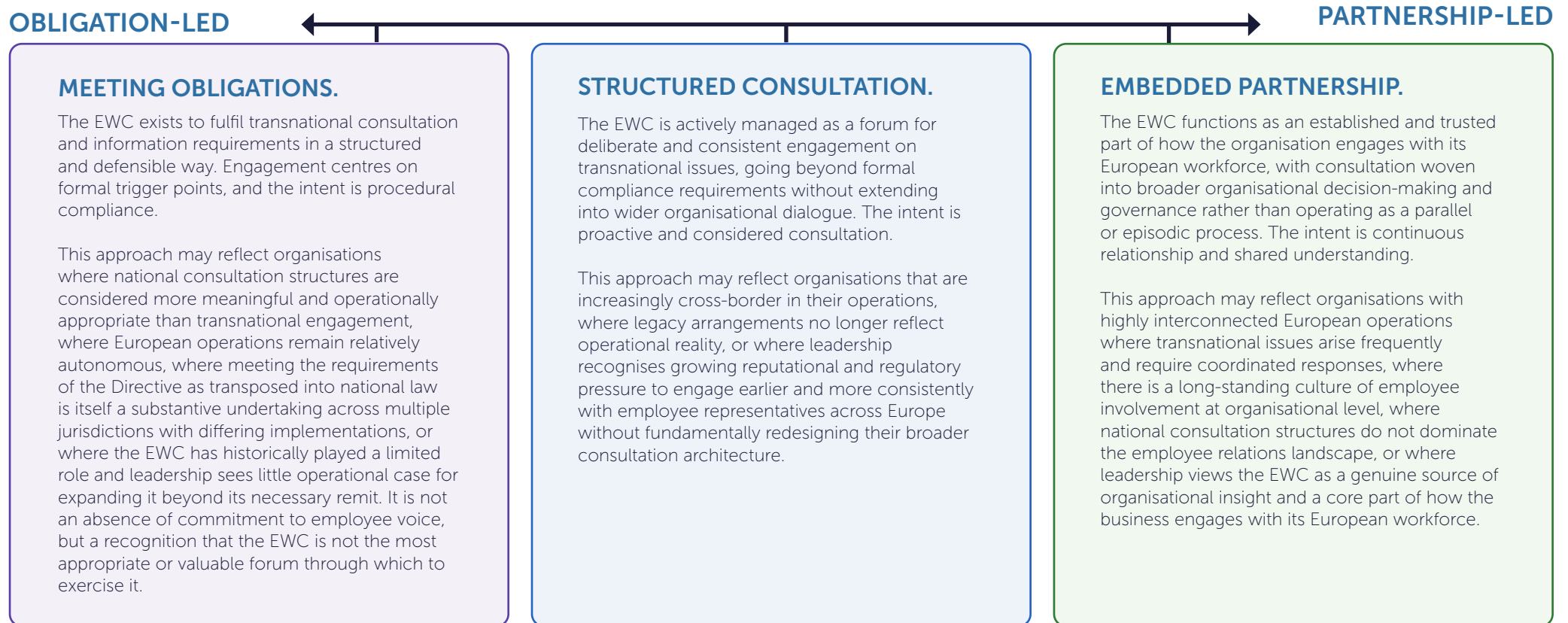
For many, that question has no clear answer. Arrangements have frequently been inherited rather than designed, shaped by historical relationships, legacy agreements and accumulated custom rather than deliberate strategic choice. The reforms are now making that ambiguity harder to sustain.

Drawing on research and interviews with senior HR and ER leaders, this report explores how organisations are responding, what is driving the differences between them and what a deliberate and defensible approach looks like in practice.

FROM DEFAULT TO DELIBERATE: RETHINKING THE ROLE OF THE EWC UNDER REFORM

There is no single correct response to what an EWC should be for. Businesses vary significantly in how integrated their European operations are, how employee voice sits within their broader governance model, what the historical relationship between management and employee representatives looks like and the legal expertise and capacity available to navigate increasingly complex transnational consultation requirements.

The framework below is intended as a starting point for that conversation. Rather than describing how organisations are reacting to the reforms, it sets out three broad consultation models and invites organisations to consider which best reflects their own context and priorities. The reforms can then shape how that chosen position is implemented and sustained in practice.



For organisations with an overwhelmingly significant UK workforce or existing UK representation within their EWC, one further consideration will shape where they want to sit and how that position can be sustained in practice.



THE UK QUESTION:

WHAT IT MEANS FOR YOUR CONSULTATION MODEL

Post-Brexit, many organisations have continued UK participation in their EWC through custom and practice rather than explicit renegotiation. At the same time, TICER, the UK's retained domestic transnational consultation framework, has remained in force alongside the EU regime, creating additional complexity around how UK representation and consultation obligations are structured.

However, with stronger enforcement mechanisms and greater demands for procedural clarity and governance discipline across all arrangements, what was once a low-stakes ambiguity is becoming a decision that needs to be consciously owned.

In practice, three questions are worth working through in sequence before any decisions are made about the future of UK participation.

What rights do UK representatives currently hold within the existing agreement?

Since the UK is no longer an EU member state, UK representatives have no automatic standing under standard EWC agreement wording unless their inclusion is expressly provided for. However, where TICER continues to apply, separate domestic consultation obligations may remain in force regardless of the EU agreement position. The interaction between these two frameworks is likely to shape both the organisation's legal obligations and the level of risk associated with any changes to existing arrangements.

What role should UK representatives play going forward?

Once the current standing of UK representatives is established, the next question is what role they should play under any revised agreement. This decision should reflect the organisation's wider governance philosophy and employee relations priorities rather than UK-specific operational considerations alone.

Organisations with highly integrated UK and European operations, large UK workforce populations or UK-headquartered structures may find that excluding UK representatives creates a structural mismatch between where operational activity sits and where employee voice is formally recognised.

Others may conclude that clearer separation between UK and EU structures is more appropriate, particularly where alternative UK consultation forums already exist, where national industrial relations dynamics risk shaping a forum intended for transnational dialogue, or where the EWC operates primarily as a procedural mechanism with limited strategic weight.

The choice is not binary. Where organisations maintain UK involvement, the more important question is one of role and influence within the forum itself, ranging from full formal membership and voting rights through to observer or advisory participation.

What legal and employee relations risks could arise from changing UK representation arrangements?

Regardless of which direction an organisation chooses, both maintaining and changing existing UK representation arrangements carry risks that are worth understanding before any decisions are made.

These range from unintentionally triggering parallel consultation obligations and locking in long-term structural consequences, to managing the employee relations risk of how any change is sequenced and communicated. Given the pace at which case law in this area is developing, organisations are strongly advised to take specialist legal counsel before making any changes to existing arrangements.

Ultimately, the UK question has no universally correct answer. What matters is that the position reflects a deliberate and defensible organisational decision rather than one that has simply continued by default.

FROM PRINCIPLE TO PRACTICE: HOW FOUR ORGANISATIONS ARE RESPONDING

The following case studies illustrate what different consultation models look like in practice, and why organisations facing broadly similar regulatory pressures are arriving at meaningfully different conclusions about how to respond.

STRENGTHENING AND EMBEDDING EXISTING APPROACHES



Shell's EWC model reflects a long-standing, highly international business whose European operations are closely interconnected, allowing the EWC to operate as an embedded part of broader organisational dialogue and governance. Established around 30 years ago under a negotiated agreement often characterised as Article 13-style, the EWC is rooted in a short, principle-based Memorandum of Understanding (1996) that establishes the core framework while allowing practices to evolve incrementally over time.

Shell's relationship with its EWC is characterised by continuous engagement. Alongside three substantial full-EWC meetings each year involving senior leadership and HR, the select committee meets bi-weekly with management to discuss current business developments, surface emerging issues early and maintain information flow ahead of formal consultation processes.

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Alongside the formal business discussions, the EWC helps build the relationships and trust that allow both management and employee perspectives to be shared more openly.

**MARTA RUSINOWSKA, GLOBAL
HR STRATEGY ADVISOR, SHELL**

As such, Shell largely views itself as already aligned with the direction of the proposed reforms, with any future adjustments expected to be relatively limited rather than fundamentally transformational.



Ricoh's approach to the forthcoming Directive reforms reflects the reality of an increasingly interconnected European business, where leaders are proactively seeking to modernise transnational consultation structures while preserving the flexibility and organisational fit associated with existing voluntary arrangements.

The Ricoh European Forum (REF) was originally established during the mid-1990s under a legacy negotiated arrangement and includes a plenary forum of representatives from across Ricoh's European businesses. Notably, it includes representatives from non-EU markets such as the UK and Switzerland despite there being no legal requirement to do so. This reflects the organisation's broader "one company" philosophy and desire to maintain a more integrated approach to transnational representation.

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The forthcoming reforms are giving us the opportunity to review and update our approach in a way that works for Ricoh while aligning with the evolving direction of the Directive.

**CLAIRE JACOBS, HEAD OF
EMPLOYEE RELATIONS EMEA,
RICOH**

From a European leadership perspective, the REF is viewed as a well-established and effective mechanism for bringing employee voice into the business in a proactive, constructive and collaborative way. It has played an important role in supporting dialogue, building trust and enabling more informed decision-making across markets - demonstrating the value of meaningful transnational engagement beyond minimum regulatory requirements.

While the current arrangement is viewed as constructive and effective, Ricoh increasingly recognises that aspects of the REF have remained comparatively unchanged despite significant organisational evolution, including restructuring, acquisitions, and increasingly cross-border operations. As a result, Ricoh is proactively reassessing its voluntary agreement ahead of the forthcoming reforms, with current areas of focus including greater governance clarity, stronger transnational consultation processes, updated membership structures and revised processes for communicating sensitive business updates while protecting commercially sensitive information. The future direction of the REF is being discussed at both Board and executive level, alongside ongoing engagement with employee representatives themselves.



easyJet's approach to the forthcoming Directive reforms reflects a predominantly UK-led business navigating the practical and governance considerations created by operating parallel UK and EU EWC structures following Brexit. Prior to Brexit, the organisation operated a single UK-based EWC covering its relevant European operations. Following Brexit, easyJet now operates two EWCs simultaneously under subsidiary requirements: a Germany-based EWC operating under EU requirements alongside the retained UK EWC under TICER.

In practice, operating two technically separate EWC structures creates ongoing questions around which body should be consulted on particular issues and which regulatory framework applies in different situations. Although the forthcoming Directive reforms do not automatically require changes to the UK-based EWC, they are prompting the organisation to consider introducing greater procedural clarity around UK and EU consultation processes, including clearer distinctions between the respective responsibilities and remit of the two bodies.

While the organisation recognises broader long-term value in its EWCs as listening forums and pan-European feedback mechanisms, easyJet's current priority is the practical reality of managing parallel UK and EU structures within a predominantly UK-based operating context, where approaches to employee consultation have historically developed differently from more deeply embedded continental European industrial relations environments.

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The Directive gives us an opportunity to create greater clarity around what sits inside and outside the European consultation space, and how those processes are managed.

**KIRSTY LAWRENCE, HR
DIRECTOR OPERATIONS AND
INDUSTRIAL RELATIONS,
EASYJET**



British Airways does not operate its own standalone EWC. Instead, it is represented within a group-level International Airlines Group (IAG) European Works Council, chaired and managed centrally by IAG. BA's role therefore largely involves assessing which business developments fall within the scope of the IAG-level EWC agreement and require transnational engagement, rather than designing, chairing or directly managing the council itself.

Although UK representatives formally left the EWC following Brexit, the BA workforce remains overwhelmingly UK-based. As a result, fully separating UK perspectives from EWC discussions is often neither practical nor operationally realistic. UK union representatives therefore continue attending meetings informally as "experts" under provisions within the agreement allowing representatives to bring expert advisers.

For BA, considering the number of employees impacted, local consultation, trade union engagement and national-level structures are often viewed as more meaningful and operationally appropriate than broader EWC involvement, particularly where UK-centred projects fall outside the EWC's formal scope post-Brexit. BA's response to the forthcoming Directive reforms is therefore largely centred on maintaining a proportionate and operationally focused approach to consultation, while continuing to monitor how any revised definitions and obligations may affect when and how the IAG EWC must be engaged.

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We have good communication with the EWC, but for many operational issues the substantive consultation still happens at local level.

**ELISE LELONG, INTERNATIONAL
EMPLOYEE RELATIONS MANAGER,
BRITISH AIRWAYS**



Taken together, these four organisations illustrate that there is no single correct response to the forthcoming reforms. What differs is less the regulatory pressure they face, but more the organisational context, philosophy and priorities that shape how they are choosing to respond.

PRACTICAL NEXT STEPS

Responding thoughtfully to the forthcoming reforms means ensuring the organisation has a deliberate and sustainable approach to transnational consultation that reflects how the business actually operates and what role the EWC is genuinely expected to play within it.

The following actions are intended as a starting point for that conversation internally.

01

Understand what the reforms mean for your organisation specifically. The impact of the reformed Directive will vary depending on the jurisdictions in which you operate, the type of agreement currently in place and how the Directive is transposed into national law across your key operating countries. Before assessing your current arrangements or making any positioning decisions, it is worth establishing what the reforms require of your organisation in practice. This is an area where specialist legal counsel will be essential, as the obligations and timelines are likely to differ significantly across organisational contexts.

02

Decide where you want to sit and why. With a clearer picture of what the reforms require, the next internal question is what kind of EWC relationship makes sense for your organisation. The three consultation models outlined in this report are a starting point for that conversation, not a hierarchy. The right position will reflect your operational reality, governance philosophy and employee relations priorities, not an assumption that more integration is always better or that the status quo is always defensible.

03

Assess whether your current agreement and governance structures reflect that position. Once the external requirements are understood and the desired consultation model is clear, the practical question is whether existing agreements, governance definitions and consultation processes are actually aligned with both. Many organisations are operating arrangements that were designed for a different organisational context and that gap is not always visible until it is explicitly examined. This review is an essential early step and one that will also surface where legal advice is needed.

04

Establish whether senior leadership has sufficient visibility and ownership of the current approach. In many organisations, detailed understanding of EWC governance remains concentrated within specialist HR, ER or legal teams. As regulatory expectations continue to rise, senior leadership will increasingly need a clear and explicit understanding of the organisation's chosen consultation model, the rationale behind it and the governance and employee relations implications attached to that position. If that ownership does not currently exist, creating it is as important as any technical redesign of the agreement itself.

05

Resolve the UK question as part of the broader review, not separately. For organisations with significant UK workforces or existing UK representation, the question of how UK employees fit within the consultation structure should be considered alongside any broader agreement review or renegotiation rather than as a standalone decision. The two processes are likely to be interdependent and decisions made in isolation risk creating unintended structural consequences that are difficult to reverse. Given the pace at which case law in this area is developing, taking specialist legal counsel before making any changes to existing arrangements is strongly advised.

06

Be deliberate about sequencing and communication Whatever position an organisation chooses, how that decision is communicated and handled with existing representatives will be a significant determinant of the employee relations risk attached to any change. It is also worth recognising that any changes to existing agreements will likely require negotiation with employee representatives themselves, meaning the framing and timing of that conversation is as strategically important as the internal decision that precedes it. Maintaining a clear record of how the process has been managed will become increasingly important as enforcement expectations rise.

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