

COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

COUNCIL RECOMMENDATION

**concerning Negotiations on a Convention and
a Recommendation on the Prevention of
Major Industrial Accidents
at the
International Labour Conference**

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

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- 1) The Commission submitted to the Council on 12 May 1992 a Recommendation for a Decision of the Council concerning negotiations on a Convention and a Recommendation on the Prevention of Major Industrial Accidents at the International Labour Conference (SEC (92) 709). To date, the Council has not been yet taken a decision on this matter.
- 2) In June 1992, the ILO report concerning the prevention of industrial disasters was discussed during the 79th Session of International Labour Conference. The Community actively participated in the discussions.

On 22 June 1992, the International Labour Conference adopted a resolution approving as a general conclusion proposals for a Convention and a Recommendation concerning the prevention of industrial disasters.

The Office prepared on basis of the adopted conclusions a Report IV (1) "Prevention of Major Industrial Accidents", which is to be reflected on not later than 30 November 1992.

This is to be discussed and concluded in Geneva in June 1993.

- 3) It is for to the Community to reply to the Report. The Community reply will be forwarded to the ILO by the Commission. It goes without saying that the reply will take account of the results of consultations with the two sides of industry, in accordance to Convention to 144 on the tripartite consultations concerning international labour standards. The consultations will be carried out by the Member States and the results passed on to the Commission. These results may be enclosed with the reply sent to the ILO.

(*) previously entitled "Prevention of industrial disasters"

- 4) Because the matter is urgent, the Council is asked to rapidly take a Decision on the Recommendation of 12 May 1992, taking into account that Annex 1 of the Negotiating Directives has to be replaced by a new Annex 1, hereby enclosed.

**ANNEXE I
2985**

**PROPOSED MODIFICATIONS
to a
proposed text for an ILO Convention and Recommendation
on
"Prevention of major industrial accidents"
Report IV(1), 1992**

The proposed text reflects very well results of the discussions which took place in Geneva in June 1992 during the 79th Session of the International Labour Conference.

The following general comments can be made to the text:

1. The title of the proposed Convention and Recommendation has been changed from "Prevention of Industrial Disasters" to "Prevention of Major Industrial Accidents". There are no objections to this amendment.
2. As an ILO instrument, the proposed texts should refer in a substantial way to the aspects related to the workplace and health and safety of the workers. There should be a clear reference to the target group in the preamble to the Convention and the words "in particular to protect workers" should be added to paragraph 5 at the end of items (b) and (c).

To avoid giving the impression that the ILO would be over-stepping its powers, detailed references to public health or environment should only be included in the Recommendation. Specific proposals should be made during the Conference after consultation with Member States in Geneva.

3. References to "near misses" as a defined event should be deleted from the Convention and replaced by a more general reference to lessons learned from the operation as it relates to major accident prevention.

Inclusion of an obligatory reporting system for events which did not quite take place would be difficult to enforce by Member States in legislation.

However, given the importance of being able to learn from such incidents the incorporation of the principles in the Recommendation would lead to greater cooperation and exchange of information.

Therefore, there is no objection in principle to including a paragraph on near-misses in the Recommendation in order to reinforce the importance of this issue in taking practical measures. A proposal for this paragraph could be drawn up by the ILO (see paragraph 4 below). This paragraph could also include a definition of a near-miss. However, it is preferable that the text of this definition is one which already has been agreed internationally (e.g. the definition of the OECD).

In conclusion, the Convention should be modified as follows :

Delete Article 1 (f), which is the definition of the term 'near-miss'; and

Article 13 on Accident Reporting should read -

- "1 Employer shall inform the competent authority and other bodies designated for this purpose as soon as a major accident occurs.
 - "2. Employers shall keep records, which must be made available to the competent authority on request, of lessons learned from the operation of the installation as it relates to incidents which could have led to major accidents. Such reports should have been previously discussed with workers and their representatives.
4. The Office proposal to prepare an alternative text for the Recommendation which would extract appropriate provisions from the Code and replace the present text is supported.

In this way the difficulties with the updating of the Code and its legal implications could be overcome.

However, this alternative text would need to be approved by the Conference.

5. The present text of Article 6 of the Convention only foresees one situation in which information may remain confidential, that is for information "whose disclosure to a competitor would be liable to cause harm to an employer's business".

However, other situation may arise where information should remain confidential.

Therefore, it is proposed to modify Article 6 of the proposed Convention as follows:

"The competent authority, after consulting the representative organisations of employers and workers concerned, shall make special provision to protect confidential information transmitted or made available to it in accordance with Articles 8, 11, 13 or 14, so long as this provision does not lead to serious risk to the workers, the public or the environment. Confidential information in this Article refers to information having commercial and industrial confidentiality, including intellectual property, as well as the other types of information which must be clearly defined by the competent authority."

It is proposed to introduce into the Recommendation, a list of situations for which certain information may be confidential.

The additional text proposed for inclusion in the Recommendation is as follows:

"The competent authority may consider that the following defined situations justify that certain information is confidential where it affects:

- the confidentiality of the proceedings of public authorities, international relations and national defence,
- public security,
- matters which are, or have been, *sub judice*, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings,
- the confidentiality of personal data and/or files,
- material, the disclosure of which would make it more likely that the environment to which such material related would be damaged."

6. The export of hazardous Substances is adequately covered by Convention 170 on the "Safe use of Chemicals" and does not need to be repeated in this Convention. The principle of giving information to importing countries about technology and processes prohibited for reasons of safety is accepted. Its inclusion in a binding form in this Convention, particularly as a duty of the exporting State, is not practicable as the States do not have mechanisms for knowing what technology or process is exported, or how it will be used in all circumstances. If this concept is moved into the Recommendation, other means should be found for its application.

Attention is drawn to the difficulties which arose during the discussion relating to this subject during the ILO Conference in 1990 on the preparation of Convention 170 on 'Safe use of Chemicals', as well as the interpretation given by the ILO in paragraphs 287 through 292 of the "Provisional Record of the Seventy-Seventh Session of the Internal Labour Conference, Geneva, 1990".

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Report IV (1)

Prevention of major
industrial accidents

Fourth item on the agenda

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INTRODUCTION

On 22 June 1992 the International Labour Conference, meeting in Geneva at its 79th Session, adopted the following resolution:

The General Conference of the International Labour Organisation,

Having adopted the report of the Committee appointed to consider the fifth item on the agenda,

Having in particular approved as general conclusions, with a view to the consultation of governments, proposals for a Convention and a Recommendation concerning prevention of industrial disasters,

Decides that an item entitled "Prevention of major industrial accidents" shall be included in the agenda of its next ordinary session for second discussion with a view to the adoption of a Convention and a Recommendation.

By virtue of this resolution and in accordance with article 39, paragraph 6, of the Standing Orders of the Conference, the Office is required to prepare, on the basis of the first discussion by the Conference, the texts of a proposed Convention and Recommendation and to communicate them to governments so as to reach them not later than two months from the closing of the 79th Session of the Conference, asking them to state within three months, after consulting the most representative organisations of employers and workers, whether they have any amendments to suggest or comments to make.

The purpose of the present report is to transmit to governments the texts of the proposed Convention and Recommendation based on the Conclusions adopted by the Conference at its 79th Session.

In accordance with the Standing Orders of the Conference, any amendments or comments with regard to the proposed texts should be submitted as soon as possible and in any case so as to reach the Office in Geneva not later than 30 November 1992. Governments which have no amendments or comments to put forward are asked to inform the Office by the same date whether they consider that the proposed texts are a satisfactory basis for discussion by the Conference at its 80th Session.

In accordance with article 39, paragraph 6, of the Standing Orders, governments are requested to consult the most representative organisations of employers and workers before they finalise their replies and to indicate which organisations they have consulted. This is also required by Article 5 (1) (a) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), for countries which have ratified this Convention. The results of the consultation should be reflected in the governments' replies.

PROPOSED TEXTS

The texts of a proposed Convention and Recommendation concerning the prevention of major industrial accidents are given below. These texts are based on the Conclusions adopted by the International Labour Conference following the first discussion at its 79th Session.

In accordance with the practice established in 1988, the report of the Committee appointed by the Conference to consider this item is being communicated to member States in its entirety, together with the record of the discussion in plenary session (see *Provisional Record* Nos. 24 and 30, attached).

Some drafting changes have been made to the Conclusions adopted by the Conference in the interest of greater clarity, to bring the various official languages into line with one another or to harmonise certain provisions. The major changes are commented on below.

The Office also wishes to draw the attention of member States to several legal problems that might arise in applying some of the provisions adopted during the discussion at the 79th Session of the Conference. The Drafting Committee of the Committee on the Prevention of Industrial Disasters decided to limit changes to these provisions to bringing the English and French versions of the instruments into line with each other as it felt that its mandate did not empower it to change the substantive provisions which had been agreed upon by the Conference Committee. The Office therefore considers it particularly important to mention these points so that Members can reflect on them as soon as possible and submit their comments for inclusion in Report IV (2), which the Office is required to prepare in accordance with article 39, paragraph 7, of the Standing Orders of the Conference. The Members' replies will also be very useful for the second discussion of the item by the Conference.

The legal problems concern Articles 1, 19 and 20 of the proposed Convention and Paragraphs 3 and 4 of the proposed Recommendation.

Proposed Convention

Article 1

Subparagraphs (c) and (d) (of Point 6 of the Conclusions adopted by the Conference): the terms "major hazard installation" and "threshold quantity" are defined without reference to a specific, limited physical area where the said quantity of the hazardous substance is retained. This could create a legal problem since an entire country might be construed as a major hazard installation. The Office would suggest the following formulation for the definition of "threshold quantity":

the term "threshold quantity" means for a given hazardous substance or category of substances that quantity, prescribed in national laws or regulations by reference to specific conditions, which if exceeded identifies a major hazard installation

The Office would also suggest inverting the order of subparagraphs (c) and (d). This would resolve the definition problem for "major hazard installation" as the two definitions are interrelated.

Subparagraph (f): the definition of the term "near-miss" was taken from a document published by the Organisation for Economic Co-operation and Development (OECD). It differs in wording from the corresponding parts of the definition of "major accident". The definition of "near-miss" is intended to refer to the same sort of event, which was, however, stopped in time. To achieve the alignment of these two definitions, the Office suggests the following formulation:

the term "near-miss" means an unexpected, sudden occurrence involving one or more hazardous substances, which but for the mitigating effects of safety systems or procedures would have constituted a major accident.

Article 5

Article 5, paragraph 1 (based on Point 10 (1) of the Conclusions), has been restructured for a better and simpler formulation without changing the substance of the text.

Article 8

The order of Articles 8 and 9 (corresponding to Points 14 and 13 respectively) has been changed as notification is an action to be taken after identification. The words "in the case of new installations" have been inserted after the word "operation" to make the requirement clear and the formulation has been harmonised with that of Article 10.

Article 19

Subparagraph (b) (of Point 24) has been reworded to bring the English text into line with the French. Subparagraph (e) has been incorporated into subparagraph (d) since the two provisions are closely related.

The term "control" has been used in conjunction with the words "major accident prevention" in subparagraph (c) as well as in Article 20 and Paragraph 4 of the proposed Recommendation. What was intended by the introduction of this term was to cover all the steps of procedures designed to keep under control any development likely to lead to a major accident. The current use of the term "control", however, does not convey this intention clearly but rather overlaps with emergency procedures.

The Office would therefore suggest introducing the phrase "the prevention of major accidents and the control of developments likely to lead to a major accident". Subparagraph (c) would consequently read: "be regularly instructed and trained in the practices and procedures for the prevention of major accidents and the control of developments likely to lead to a major accident and in the emergency procedures to be followed in the event of a major accident".

Article 20

See the comment on Article 19 above.

Proposed Recommendation

Paragraph 3

In response to the question in Report V (I) as to whether the Recommendation should provide that the national laws or regulations to give effect to the policy for the prevention of industrial disasters, provided for in the Convention, "be based, as far as possible", on the ILO *Code of practice on the prevention of major industrial accidents*, the publication of which was approved by the Governing Body of the ILO in November 1990, all replies but one were in the affirmative. Paragraph 3 of the proposed Recommendation (which corresponds to Point 29 of the Conclusions) retains this provision with the words "be based" replaced by the words "be guided" in response to the replies received, and as amended by the Committee. The amendments introduced replace the words "as far as possible" by the words "as appropriate" and add further wording to make reference to versions of the Code of Practice "reviewed, revised and updated in accordance with ILO practice". This reference to "reviewed, revised and updated" versions of the Code of Practice raises serious problems of principle as it would mean, in effect, that the guidance to be followed in accordance with the Recommendation can be revised without involving the Conference, since the procedure for revising such a code would be through a meeting of experts. The Employers' Vice-Chairman of the Committee, speaking in the plenary of the Conference (*Provisional Record* No. 30, 1992, p. 30/10), observed that "Reference to a revised or updated code, the text of which is not yet known, is impractical". The Workers' Vice-Chairman of the Committee, likewise addressing the plenary of the Conference, believed that it would be wise to expand the reference to the Code and to enumerate some of its pertinent points that could be incorporated in the Recommendation (*Provisional Record*, *idem*). It is also recalled that the Chairman of the Employers' group of the Conference made a statement (*Provisional Record* No. 30, pp. 30/12 and 13) wherein he stressed the importance that should be given to ILO Recommendations.

As this matter will certainly need clarification at the next Conference discussion, the Office intends to prepare an alternative text which would extract appropriate provisions from the Code. Members are requested to indicate if they agree to this alternative approach. If so, Members may wish to propose several provisions for inclusion. Members may also wish to consider whether, within the framework of this alternative, a reference to the Code of Practice in the preamble to the Recommendation is acceptable. However, should such an alternative approach be considered inappropriate, it would be necessary at least to eliminate the reference to subsequent revisions so as to avoid the legal problems raised.

Paragraph 4

See the comment on page 3 under Article 19 of the proposed Convention.

Proposed Convention concerning the Prevention of Major Industrial Accidents

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 80th Session on 2 June 1993, and

Noting the relevant international labour Conventions and Recommendations and, in particular, the Occupational Safety and Health Convention and Recommendation, 1981, and the Chemicals Convention and Recommendation, 1990, and stressing the need for a comprehensive and coherent approach, and

Noting also the ILO *Code of practice on the prevention of major industrial accidents*, published in 1991, and

Having regard to the need to ensure that all appropriate measures are taken to:

- (a) prevent major accidents;
- (b) minimise the risks of major accidents;
- (c) minimise the effects of such major accidents, and

Considering the causes of such accidents including organisational errors, the human factor, component failures, deviation from normal operational conditions, outside interference and natural forces, and

Having regard to the need for cooperation within the International Programme on Chemical Safety between the International Labour Organisation, the United Nations Environmental Programme and the World Health Organization, as well as with other relevant intergovernmental organisations, and

Having decided upon the adoption of certain proposals with regard to the prevention of major industrial accidents, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this day of June of the year one thousand nine hundred and ninety-three the following Convention, which may be cited as the Prevention of Major Industrial Accidents Convention, 1993.

PART I. DEFINITIONS AND SCOPE

Article 1

1. For the purpose of this Convention —

- (a) the term "hazardous substance" means a substance or mixture which by virtue of chemical, physical or toxicological properties, either singly or in combination, constitutes a hazard;

- (b) the term "major accident" means an unexpected, sudden occurrence — such as a major emission, fire or explosion — in the course of an activity within a major hazard installation, involving one or more hazardous substances and leading to a serious danger to workers, the public or the environment, whether immediate or delayed;
- (c) the term "major hazard installation" means one which processes, produces, disposes of, handles, uses or stores, either permanently or temporarily, one or more hazardous substances or categories of substances in quantities which exceed the threshold quantity;¹
- (d) the term "threshold quantity" means that quantity, prescribed in national laws or regulations, of a hazardous substance or categories of substances, which if exceeded identifies a major hazard installation;¹
- (e) the term "safety report" means a written presentation of the technical, management and operational information covering the hazards of a major hazard installation and their control and providing justification for the measures taken for the safety of the installation;
- (f) the term "near-miss" means any unplanned, sudden event involving one or more hazardous substances, which but for the mitigating effects of safety systems or procedures could have caused serious injury to workers or the public, or serious damage to plant equipment or the environment, or could have involved a loss of containment possibly giving rise to significant adverse effects.¹

Article 2

1. The Convention does not apply to —
- (a) nuclear installations and plants processing radioactive substances except for facilities handling non-radioactive substances at these installations;
 - (b) military installations;
 - (c) transport outside the site of an installation other than by pipeline.

2. A Member ratifying this Convention may, after consulting the representative organisations of employers and workers concerned and other interested parties who may be affected, exclude from the application of the Convention installations or branches of economic activity for which equivalent protection is provided.

Article 3

Where special problems of a substantial nature arise so that it is not immediately possible to implement all the preventive and protective measures provided for in the Convention, a Member shall draw up plans, in consultation with the most representative organisations of employers and workers, for the progressive implementation of the said measures within a fixed time-frame.

¹ See Office comment on pp. 2 and 3.

PART II. GENERAL PRINCIPLES

Article 4

1. In the light of national laws and regulations, conditions and practices, and in consultation with the most representative organisations of employers and workers and with other interested parties who may be affected, each Member shall formulate, implement and periodically review a coherent national policy concerning the protection of workers against the risk of major accidents, taking account of their effects on the public and the environment.

2. This policy shall be implemented through preventive and protective measures for major hazard installations and, where practicable, shall promote the use of the best available safety technologies.

Article 5

1. The competent authority, or a body approved or recognised by the competent authority, shall, after consulting the most representative organisations of employers and workers, draw up a system for the identification of major hazard installations as defined in Article 1(c), based on a list of hazardous substances or categories of hazardous substances or both, together with their respective threshold quantities, in accordance with national laws and regulations or international standards.¹

2. The system mentioned in paragraph 1 above shall be regularly reviewed and updated.

Article 6

The competent authority, after consulting the representative organisations of employers and workers concerned, shall make special provision to protect confidential information transmitted or made available to it in accordance with Articles 8, 11, 13 or 14, whose disclosure to a competitor would be liable to cause harm to an employer's business, so long as this provision does not lead to serious risk to the workers, the public or the environment.

PART III. RESPONSIBILITIES OF EMPLOYERS

IDENTIFICATION

Article 7

Employers shall identify any major hazard installation within their control on the basis of the system referred to in Article 5.

¹ See Office comment on p. 3.

NOTIFICATION

Article 8

Employers shall notify the competent authority of any major hazard installation which they have identified either within a fixed time-frame for existing installations or before it is put into operation in the case of new installations.¹

ARRANGEMENTS AT THE LEVEL OF THE INSTALLATION

Article 9

In respect of each major hazard installation employers shall establish and maintain a documented system of major hazard control which includes provision for —

- (a) the identification and analysis of hazards and the assessment of risks including consideration of possible interactions between substances;
- (b) technical measures, including design, construction, choice of chemicals, operation, maintenance and systematic inspection of the installation;
- (c) organisational measures, including training and instruction of personnel, the provision of equipment in order to ensure their safety, staffing levels, hours of work, definition of responsibilities, and controls on independent contractors and temporary workers on the site;
- (d) emergency plans and procedures, including —
 - (i) the preparation of effective site emergency plans and procedures to be applied in the case of major accidents or threat thereof, with periodic testing and evaluation of the effectiveness of such site emergency plans and procedures and revision as necessary;
 - (ii) the provision of information on potential accidents and site emergency plans to authorities and bodies responsible for the preparation of emergency plans and procedures for the protection of the public and the environment outside the site of the installation;
 - (iii) any necessary consultation with such authorities and bodies;
- (e) measures to limit the consequences of a major accident;
- (f) consultation with workers and their representatives.

SAFETY REPORT

Article 10

1. Employers shall prepare a safety report based on the requirements of Article 9.
2. The report shall be prepared —
 - (a) in the case of existing major hazard installations, within such a period after notification as is prescribed by national laws or regulations;
 - (b) in the case of any new major hazard installation, before it is put into operation.

¹ See Office comment on p. 3.

Article 11

Employers shall transmit or make available to the competent authority the safety report referred to in Article 10.

Article 12

Employers shall review, update and amend a safety report —

- (a) in the event of a modification, which has a significant influence on the level of safety, in the installation or its processes or in the quantities of hazardous substances present;
- (b) when developments in technical knowledge or the assessment of hazards make this appropriate;
- (c) at such intervals as are prescribed by national laws or regulations;
- (d) at the request of the competent authority.

ACCIDENT REPORTING

Article 13

Employers shall inform the competent authority and other bodies designated for this purpose as soon as a major accident occurs and make available to the competent authority the lessons, previously discussed with workers and their representatives, which have been drawn from near-misses.

Article 14

1. Employers shall, within a fixed time-frame after a major accident, present a detailed report to the competent authority containing an analysis of the causes of the accident and describing any steps taken to mitigate its effects.
2. The report shall include recommendations detailing steps to be taken to prevent a recurrence.

PART IV. RESPONSIBILITIES OF COMPETENT AUTHORITIES

OFF-SITE EMERGENCY PREPAREDNESS

Article 15

Taking into account the information provided by the employer, the competent authority shall ensure that emergency plans and procedures containing provisions for the protection of the public and the environment outside the site of each major hazard installation are established, updated at appropriate intervals and coordinated with the relevant authorities and bodies.

Article 16

The competent authority shall ensure that —

- (a) information on safety measures and the correct behaviour to adopt in the case of a major accident is disseminated to members of the public liable to

- be affected by a major accident without their having to request it and that such information is updated and redisseminated at appropriate intervals;
- (b) warning is given as soon as possible in the case of a major accident;
 - (c) cooperation and coordination arrangements are instituted among the States concerned where a major accident could have transboundary effects.

SITING OF MAJOR HAZARD INSTALLATIONS

Article 17

The competent authority shall establish a comprehensive siting policy arranging for the appropriate separation of existing or proposed major hazard installations from working and residential areas and public facilities. Such a policy shall reflect the General Principles set out in Part II of the Convention.

INSPECTION

Article 18

The competent authority shall have properly qualified and trained staff with the appropriate skills, and sufficient technical and professional support, to inspect, investigate, assess, or advise on the matters dealt with in this Convention and to ensure compliance with national laws and regulations.

PART V. RIGHTS AND DUTIES OF WORKERS AND THEIR REPRESENTATIVES

Article 19

The workers and their representatives at a major hazard installation shall be consulted through cooperative mechanisms in order to ensure a safe system of work. In particular, the workers and their representatives shall —

- (a) be adequately and suitably informed of the hazards associated with the major hazard installation and their likely consequences;
- (b) be consulted in the preparation of, and have access to, the following documents —
 - (i) the safety report;
 - (ii) emergency plans and procedures;
 - (iii) accident reports;
- (c) be regularly instructed and trained in the practices and control procedures for major accident prevention and in the emergency procedures to be followed in the event of a major accident;
- (d) within the scope of their job, and without being placed at any disadvantage, take corrective action and if necessary interrupt the activity where they have reasonable justification, based on their training and experience, to believe that there is an imminent danger of a major accident, and notify their supervisor or raise the alarm, as appropriate, before or as soon as possible after taking such action.¹

¹ See Office comment on p. 3.

(d) technologies and processes that are prohibited for reasons of safety and health.

(2) Members should, as far as possible, communicate information on the matters listed in subparagraph (1) above to the International Labour Office.

3. The national policy provided for in the Convention and the national laws and regulations or other measures to implement it should, as appropriate, be guided by the ILO *Code of practice on the prevention of major industrial accidents*, published in 1991 or as reviewed, revised and updated in accordance with ILO practice.¹

4. In accordance with the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the ILO, a national or multinational enterprise with more than one establishment should provide safety measures relating to the prevention and control of, and protection against major accidents, without discrimination, to the workers in all its establishments, regardless of the place or country in which they are situated.¹

¹ See Office comment on p. 4.

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