Project is implemented by
International Labour Organization

Project is funded
by European Union

EU-ILO Project
"Towards safe, healthy and declared work in Ukraine"

Draft Law No. 5161-1
"On Amending Some Legislative Acts of Ukraine to Regulate Some Non-standard Forms of Employment"

submitted to VRU by the People's Deputies of Ukraine
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EU-ILO project technical recommendations on its better alignment with International and European Labour Standards and best practices

March, 2021

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EXECUTIVE SUMMARY

The draft Law of Ukraine "On Amending Some Legislative Acts of Ukraine to Regulate Some Non-standard Forms of Employment" (Reg. No. 5161-1) was submitted to the consideration of Verkhovna Rada of Ukraine (VRU) by the People's Deputies of Ukraine N.Yu. Korolevska, Yu.V. Solod, V.S. Hnatenko and V.V. Moroz, on 16 March 2021..

These technical advice and recommendations to this draft law are provided within the scope of the EU-ILO Project "Towards safe, healthy and declared work in Ukraine", under the activity 1.4.5 (of Output 1.4).

They follow closely the technical recommendations provided by EU-ILO Project, on 9 March 2021, to the Ministry of Development of Economy, Trade and Agriculture (ME) draft Law of Ukraine "On Amending Some Legislative Acts of Ukraine to Regulate Some Non-standard Forms of Employment" (Reg. No. 5161), submitted by the Cabinet of Ministers of Ukraine (CMU) to the consideration of VRU, on of 25.02.2021.[1]

They also follow the two on-line trainings on the "Employment Relationship" an on the "Employers' obligations to inform workers and to ensure transparent and predictable working conditions" provided by the EU-ILO Project in the summer of 2020.[2]

The present technical advice and recommendations are also based on some technical recommendations provided by the EU-ILO Project, on March 2020, regarding the better alignment of the CMU draft Law "On Labour" No. 2708 with the main applicable International and European Labour Standards on the employment relationship and on the employers' obligations to inform workers, to ensure transparent and predictable working conditions and to safeguard employees' rights in the event of transfers of undertakings or businesses.

They are intended to promote a better alignment of the draft Law "On Amending Some Legislative Acts of Ukraine to Regulate Some Non-standard Forms of Employment" with the main applicable International[3] and European[4] labour standards and best practices, in particular, with the ones concerning the termination of employment and the employers' obligations to inform employees

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[1] The EU-ILO Project technical recommendations to the ME draft Law of Ukraine "On Amending Some Legislative Acts of Ukraine to Regulate Some Non-standard Forms of Employment" (Reg. No. 5161) are accessible at: https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/WCMS_775063/lang--en/index.htm.

[2] Integrated in the "Summer Marathon of Online Trainings on International and European Labour Standards and best practices", these sessions were carried out, respectively, on 25th June and 2nd July, and were attended, respectively, by 416 and 300 experts from the government, parliament, trade unions, employers' organizations, research institutions and academia. The video records and supporting materials of each of these online training sessions can be retrieved by clicking, for the concerned training module, in the following corresponding hyperlink: employment relationship; employers' obligations to inform workers and to ensure transparent and predictable working conditions.

[3] Namely with the Termination of Employment Convention, 1982 (No. 158).

[4] In particular, with Council Directive 91/533/EEC, of 14 October 1991, on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship; Directive (EU) 2019/1152 of the European Parliament and of the Council, of 20 June 2019, on transparent and predictable working conditions in the European Union; and Council Directive No. 89/391/EEC, of 12 June 1989, concerning the introduction of measures to encourage improvements in the safety and health of workers at work.

of the conditions applicable to the contract or employment relationship (including on Occupational Safety and Health) and to ensure transparent and predictable working conditions.

They should not be seen as official comments of the ILO or as a replacement of the positions of the supervisory bodies of the ILO.

Moreover, the expert technical opinions expressed therein neither reflect the official opinion of the European Union nor its responsibility can be attributed to the European Union.

The technical analysis of this bill, in the light of the aforesaid Labour Standards and best practices, highlights some positive aspects and allows the identification of some parts that need to be further improved in order to better align it with the aforementioned standards and best practices.

They can be summarized as follows:

Main positive aspects

1. Establishment of a specific type of labour agreement ("with non-fixed working time"), aimed at accommodating employer's increased need for flexibility in the context of the labour market changing landscape, while securing worker's[5] employment relationship and ensuring more transparent and predictable working conditions.
2. The specification of some aspects of the employment relationship regarding which employers have the obligation to provide information to workers in the labour agreement.
3. The establishment of a maximum limit (on the number or percentage) of this type of contracts that employers may conclude with their workers.
4. The possibility given to workers to refuse a work assignment, when employer violates the minimum notice period to which the worker is entitled before the start of a work assignment.
5. The establishment of a guarantee of a minimum amount of paid hours.
6. The recognition of the right of the workers to have parallel employment relationships with other employers.
7. The provision of sanctions for the infringement of these legal provisions.

[5] Especially in what concerns particular vulnerable group of workers, who have no guaranteed working time and whose employment relationship is particularly unpredictable, such as on-demand, digital platforms or similar employment relationships (including zero-hour contracts).

Main aspects to improve

1. Some terms should be changed (such as replacing “with non-fixed working time” by “with variable work schedule”) and some others need to be introduced and/or defined (e.g., work schedule, reference hours and days and work pattern), in order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152. In addition, in order to improve clarity and consistency with the ME Draft Law “On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence”, VRU draft Law “On Amending the Code of Labour Laws of Ukraine Concerning the Regulation of Some Matters of Employment Relationship”, and ME draft Law “On Occupational Safety and Health of Workers”, it is recommended to replace the terms “owner or a body authorized thereby”, “enterprise” and “legal persons, individual entrepreneurs using hired labour”, by the more adequate term “employers”. The advised replacement ensures a better consistency and alignment with the term “employer” used in the International and European labour standards, as well as with the term already defined in the proposed fourth part of Article 21 of the Code of Labour Laws, as amended by both the ME Draft Law “On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence” and the VRU draft Law “On Amending the Code of Labour Laws of Ukraine Concerning the Regulation of Some Matters of Employment Relationship”, as also defined in the subparagraph 30) of paragraph 1 of Article 1 of the ME Draft Law “On Occupational Safety and Health of Workers”, aimed at transposing, to the national legal framework, the EU Council framework Council Directive 89/391/EEC, of 12 June 1989, concerning the introduction of measures to encourage improvements in the safety and health of workers at work.
2. The labour agreement “with non-fixed working time” (which we propose to define as “with variable work schedule”) needs to be better defined, in order to be better align the draft law with Directive 2019/1152. Indeed, the fact that “the work pattern is entirely or mostly unpredictable”, does not mean that this type of labour agreement “do not pre-set a specific time for performance of the work”. In fact, and notwithstanding the unpredictability of the work pattern, the employer shall have the obligation to inform workers, inter alia, about the reference hours and days within which the worker may be required to work and the minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation.
3. As for the proposed content of the labour agreement and for the timing and means for employers to provide information to workers (on the main aspects of this employment relationship), they should be amended, as recommended, in order to be better align with Articles 3 to 6 of Directive (EU) 2019/1152 and with Articles 8(2) and 10 of Directive 89/391/EEC.

4. The right of the work to refuse a work assignment should be amended, in order to better align this provision with Articles 10(1) and 10(2) of Directive (EU) 2019/1152.
5. As for the provided disciplinary liability of the worker for refusing a work assignment, it should be amended as well, in order to also include, as an exception, the situation where the worker is notified of the work assignment by the employer in violation of the minimum notice period to which the worker is entitled before the start of a work assignment specified by the labour agreement, as foreseen in Articles 10(1) and 10(2) of Directive (EU) 2019/1152.
6. It should be inserted a new paragraph foreseeing the employer's obligation to pay a compensation to the worker if the employer cancels a work assignment previously agreed with the worker after the deadline for cancellation established in the labour agreement, in order to better align with Article 10(3) of Directive (EU) 2019/1152.
7. In what regards the right of the worker to conclude parallel labour agreements with other employers, it should be changed, to better align with Article 9(1) of Directive 2019/1152, by:
    a. Establishing that the employer may not prohibit or obstruct that right when such other labour agreements are outside the work schedule established with that employer; and
    b. Establishing that the employer also may not subject a worker to adverse treatment for concluding other labour agreements with other employers outside the work schedule established with that employer.
8. The provision foreseeing that the "labour agreement with non-fixed working time may establish additional grounds for its termination.", as well the ones that reword paragraph 8 of the first part of Article 36 (of the Code of Labor Laws) as follows "8) grounds prescribed by a labour agreement with non-fixed working time, or a contract;", should be deleted, because these provisions are contradictory with the International and European best practices and with the spirit of the Directive 2019/1152. In fact, and instead of providing a special protection to this particular vulnerable group of workers (who have no guaranteed working time and whose employment relationship is particularly unpredictable) and ensuring that effective measures to prevent their abuse are in place (as mentioned in Points 12 and 35 of the Preamble of Directive 2019/1152), these provisions negatively discriminates these workers, allowing the establishment, in the labour agreement, of additional grounds (other than the ones specifically foreseen in the law) for the termination of the employment relationship. In this respect, it is important to note that Article 1 of the Termination of Employment Convention, 1982 (No. 158), establishes that the provisions concerning termination of employment, where not provided for by collective agreements or prescribed by arbitration awards or court decisions, shall be given effect by laws or regulations, and not by individual labour agreements. It should also be noted, in this connection, that according to Article 2(3) of ILO C158, adequate safeguards shall be provided against recourse to contracts of

employment for a specified period of time the aim of which is to avoid the protection resulting from the Convention.

9. The proposed tenth part of Article 21^{1} of the draft, which foresees that “The labour agreement with non-fixed working time defines (…) or other remuneration conditions agreed upon by the worker and the owner or the body authorized thereby”, should be amended, as recommended, in order to prevent that the provisions regarding remuneration, agreed within an individual labour agreement, may be contradictory with the provisions of the applicable collective agreement or with the law (establishing, for example, a lower wage than the one foreseen in the applicable collective agreement, providing for a wage lower than the minimum wage, etc.).

10. Some important minimum requirements relating to working conditions, aimed at improving the transparency and predictability of this type of employment relationship, foreseen in Articles 12, 13 and 14 of Directive 2019/1152, are missing or need to be revised. They refer to the promotion of the transition to more predictable forms of employment, the mandatory training of workers and to the important role of collective agreements in the improvement of working conditions. As such, and in order to ensure a better alignment of this draft law with Articles 12, 13 and 14 of Directive 2019/1152, it is recommended to insert the proposed new Articles 21^{2}, 21^{3} and 21^{4}, as well as to amend, as recommended, the proposed eighteenth part of Article 21^{1} of this draft.

11. As for the text “whereas a warning shall be applied to legal persons and individual entrepreneurs using hired labour and being single tax payers of groups 1-3;”, proposed for rewording the second subparagraph of the second part of Article 265 of the Code of the labour Laws, it should be deleted, because of the following reasons:

    a. It takes out from the labour inspection activity, as well as from the infringement proceedings, the effect of general prevention, i.e., the fact that the subjects of legal provisions tend to comply with legal provisions in order to avoid being sanctioned. This legal provision is likely to disincentive employers (in particular "legal persons and individual entrepreneurs using hired labour and being single tax payers of groups 1-3") from complying with the legislation from the outset, because they know that if their infractions are detected, they will always have the opportunity to correct them without being sanctioned. In fact, instead of complying with the legal provisions, they will be just waiting for the labour inspectors to detect them and, if and when they do detect them, they will have the time to correct the infringements without any penalization. Meanwhile, they will be doing unfair competition to the employers that, differently, will have to comply with the legislation from the outset.

    b. This provision contradicts:

        i. Article 17(2) of ILO Convention 81 and Article 22(2) of ILO Convention 129, according to which "It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings";

ii. Article 18 of ILO C081 and Article 24 of ILO C129, according to which "adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced"; and

iii. Article 4(2) of EU Directive 89/391/EEC, according to which the states "shall ensure adequate controls and supervision".

In the next section, we present the detailed recommendations on the rewording of the provisions of the draft law that should be amended in the light of the main applicable International and European Labor Standards and best practices with the indication of the respective rationale.

It is our expectation that these recommendations may contribute to an improved and more aligned draft law that can effectively promote decent working conditions in Ukraine.

Kyiv, 26 March 2021

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EU-ILO PROJECT DETAILED RECOMMENDATIONS

CMU draft law provision's wording	Recommended wording	Rationale
LAW OF UKRAINE On Amending Some Legislative Acts of Ukraine to Regulate Some Non-standard Forms of Employment		
I. Amend the following legislative acts of Ukraine:		
1) In the Code of Labour Laws of Ukraine (Vidomosti Verkhovnoi Rady URSR, 1971, Annex to No. 50, p. 375, as subsequently amended):		
add Article 21[1] as follows:		
Article 21[1]. Labour agreement with non-fixed working time	**Article 21[1]. Labour agreement with variable work schedule**	In order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule". In addition, the expression "A labour agreement with (…) do not pre-set a specific time for performance of the work" is contrary to Directive (EU) 2019/1152 because, according to Article 4 of this Directive, where "the work pattern is entirely or mostly unpredictable", which is the case, the employer shall have the obligation to inform the workers about: the fact that the work schedule is variable; the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours; the reference hours and days within which the worker may be required to work; and the minimum notice period to which the worker is entitled before the start of
A labour agreement with non-fixed working time shall be a specific labour agreement form the terms of which do not pre-set a specific time for performance of the work for which the worker's obligation to perform shall arise solely provided that the owner or a body authorized thereby provides the work stipulated by the labour agreement without any guarantee that the work will be provided permanently.	A labour agreement with **variable work schedule** shall be a specific labour agreement **within which the employer has the flexibility of calling the worker to work as and when needed according to the conditions of the labour agreement and the provisions of the applicable collective agreement and of this law**.	

CMU draft law provision's wording	Recommended wording	Rationale
		a work assignment and, where applicable, the deadline for cancellation. Moreover, the expression "(…) the worker's obligation to perform shall arise (…) without any guarantee that the work will be provided permanently" should be deleted, because it is misleading, as the duration of the labour agreement with variable work schedule (i.e., if it is open-ended/permanent or fixed-term) should not necessarily depend of other conditions, in particular, of its work schedule. Finally, to improve clarity and consistency with the ME Draft Law "On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence", VRU draft Law "On Amending the Code of Labour Laws of Ukraine Concerning the Regulation of Some Matters of Employment Relationship", and ME draft Law "On Occupational Safety and Health of Workers", it is recommended to replace the term "owner or a body authorized thereby" by the more adequate term "employer". The advised replacement ensures the necessary consistency with the term "employer" used in the International and European labour standards and also with the term already defined in the proposed fourth part of Article 21 of the Code of Labour Laws, as amended by both the ME Draft Law "On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment

CMU draft law provision's wording	Recommended wording	Rationale
		relationship and the indicators of its existence" and the VRU draft Law "On Amending the Code of Labour Laws of Ukraine Concerning the Regulation of Some Matters of Employment Relationship", as also defined in the subparagraph 30) of paragraph 1 of Article 1 of the ME Draft Law "On Occupational Safety and Health of Workers", aimed at transposing, to the national legal framework, the EU Council framework Council Directive 89/391/EEC, of 12 June 1989, concerning the introduction of measures to encourage improvements in the safety and health of workers at work.
	The terms herein shall have the following meanings: **1) work schedule - shall mean the schedule determining the hours and days on which performance of work starts and ends;** **2) reference hours and days - shall mean time slots in specified days during which work can take place at the request of the employer;** **3) work pattern - shall mean the form of organisation of the working time and its distribution according to a certain pattern determined by the employer.**	In order to better align the present draft law with Article 2 of Directive (EU) 2019/1152 (on transparent and predictable working conditions in the European Union) and, in particular, to allow the subsequent use of the defined terms in better framing the regulation of this non-standard from of employment relationship, that integrates, *inter alia*, on-demand or similar employment relationships (including zero-hour contracts) within which the employer has the flexibility of calling the worker to work as and when needed, being therefore particularly unpredictable for the worker and mostly characterized by having a variable work schedule.
The owner or a body authorized thereby shall independently determine the need and time for engaging the worker in the work and the scope of the work, and shall agree upon with the worker, within a time limit stipulated by the labour agreement, the working schedule and	The **employer** shall **agree with the worker the reference hours and days within which the worker may be required to work, the minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation,**	To better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152 and specify some of the foreseen employers' obligations.

CMU draft law provision's wording	Recommended wording	Rationale
duration of the working time necessary to perform the respective work. Therewith, the legislative requirements concerning the working time and rest time must be complied with.	**as well as the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours**. Therewith, the legislative requirements concerning the working time and rest time must be complied with.	In addition, to improve clarity and consistency with the ME Draft Law "On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence", VRU draft Law "On Amending the Code of Labour Laws of Ukraine Concerning the Regulation of Some Matters of Employment Relationship", and ME draft Law "On Occupational Safety and Health of Workers", it is recommended to replace the term "owner or a body authorized thereby" by the more adequate term "employer". The advised replacement ensures the necessary consistency with the term "employer" used in the International and European labour standards and also with the term already defined in the proposed fourth part of Article 21 of the Code of Labour Laws, as amended by both the ME Draft Law "On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence" and the VRU draft Law "On Amending the Code of Labour Laws of Ukraine Concerning the Regulation of Some Matters of Employment Relationship", as also defined in the subparagraph 30) of paragraph 1 of Article 1 of the ME Draft Law "On Occupational Safety and Health of Workers", aimed at transposing, to the national legal framework, the EU Council framework Council Directive 89/391/EEC, of 12 June 1989, concerning the introduction of measures to encourage improvements in the safety and health of workers at work.

CMU draft law provision’s wording	Recommended wording	Rationale
The number of labour agreements with non-fixed working time with one owner or a body authorized thereby may not be greater than 10 percent of the total number of labour agreements to which that owner or a body authorized thereby is a party.	The number of labour agreements **with variable work schedule** with one **employer** may not be greater than 10 percent of the total number of labour agreements to which that **employer** thereby is a party.	In order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing “with non-fixed working time” by “with variable work schedule”. Also, to improve clarity and consistency with the ME Draft Law “On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence”, VRU draft Law “On Amending the Code of Labour Laws of Ukraine Concerning the Regulation of Some Matters of Employment Relationship”, and ME draft Law “On Occupational Safety and Health of Workers”, it is recommended to replace the terms “owner or a body authorized thereby” and “legal persons, individual entrepreneurs using hired labour” by the more adequate term “employers”. The advised replacement ensures the necessary consistency with the term “employer” used in the International and European labour standards and also with the term already defined in the proposed fourth part of Article 21 of the Code of Labour Laws, as amended by both the ME Draft Law “On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence” and the VRU draft Law “On Amending the Code of Labour Laws of Ukraine Concerning the Regulation of Some Matters of Employment Relationship”, as also defined in the
The above restrictions shall not apply to legal persons, individual entrepreneurs using hired labour of less than 10 workers who may conclude at most two labour agreements with non-fixed working time.	The above restrictions shall not apply to **employers** with less than 10 workers who may conclude at most one labour agreement **with variable work schedule**.	

CMU draft law provision's wording	Recommended wording	Rationale
		subparagraph 30) of paragraph 1 of Article 1 of the ME Draft Law "On Occupational Safety and Health of Workers", aimed at transposing, to the national legal framework, the EU Council framework Council Directive 89/391/EEC, of 12 June 1989, concerning the introduction of measures to encourage improvements in the safety and health of workers at work.
The labour agreement with non-fixed working time must contain, inter alia, information about:	The labour agreement with **variable work schedule** must contain, inter alia, information about:	In order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule".
full name of the worker, and the name of the owner or the body authorized thereby;	**1) The identities of the parties to the employment relationship;**	• To delete the term "owner or a body authorized thereby", which should be replaced by the more adequate term "employers" (for the reasons already explained above) or to just refer, as proposed, to the identification of both parties to the employment relationship (i.e., the identification of the worker and the identification of the employer); • Also to better align with Article 4(2)(a) of Directive (EU) 2019/1152.
place of work;	**2) The place of work; where there is no fixed or main place of work, that the worker is employed at various places or is free to determine his or her place of work, and the registered place of business or, where appropriate, the domicile of the employer;**	To better align with Article 4(2)(b) of Directive (EU) 2019/1152.
nature of work performed;	**3) The title, grade, nature or category of work for which the worker is employed or a brief specification or description of the work;**	To better align with Article 4(2)(c) of Directive (EU) 2019/1152.

CMU draft law provision’s wording	Recommended wording	Rationale
starting date and ending date (if a fixed-term employment relationship is established), and duration of a probationary period, if any;	**4) The date of commencement of the employment relationship or, in the case of a fixed-term employment relationship, the end date or the expected duration thereof;**	To better align with Articles 4(2)(d) and 4(2)(e) of Directive (EU) 2019/1152.
	5) The duration and conditions of the probationary period, if any;	To better align with Article 4(2)(g) of Directive (EU) 2019/1152.
	6) The training entitlement, provided by the employer;	To better align with Article 4(2)(h) of Directive (EU) 2019/1152.
	7) The procedure to be observed by the employer and the worker, including the formal requirements and the notice periods, where their employment relationship is terminated or, where the length of the notice periods cannot be indicated when the information is given, the method for determining such notice periods;	To better align with Article 4(2)(j) of Directive (EU) 2019/1152.
labour remuneration conditions;	**8) The remuneration including the initial basic amount, any other component elements, if applicable, indicated separately and the frequency and method of payment;**	To better align with Article 4(2)(k) of Directive (EU) 2019/1152.
rest time, particularly duration of annual leave;	**9) The amount of paid leave to which the worker is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;**	To better align with Article 4(2)(i) of Directive (EU) 2019/1152.
labour protection conditions;	**10) The safety and health risks and protective and preventive measures and activities in respect of both the undertaking and/or establishment in general and the employee’s job in particular;**	To better align with Article 4 of Directive (EU) 2019/1152 and with Article 10 of Directive 89/391/EEC.

CMU draft law provision's wording	Recommended wording	Rationale
	11) Where applicable, the measures taken for first aid, fire-fighting and evacuation of workers, including the identification of the workers designated to implement them.	To better align with Article 4 of Directive (EU) 2019/1152 and with Articles 8(2) and 10(1) of Directive 89/391/EEC.
	12) That the work schedule is variable with the specification of the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours;	To better align with Article 4(2)(m)(i) of Directive (EU) 2019/1152.
the way of, and the minimum time limit for, notifying the worker of commencement of the work;	**13) The minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation and the amount of compensation to which the worker is entitled in case of cancelation of a previously agreed assignment.**	To better align with Articles 4(2)(m)(iii) and 10(3) of Directive (EU) 2019/1152.
the way of, and the maximum time limit for, the worker's notifying of their availability to work or refusing to perform it in cases provided for by the seventh part of this Article;	**14)** the maximum time limit for the worker's notifying of their availability to work or refusing to perform it in cases provided for by the **sixteenth** part of this Article;	To delete "the way", because the form and timing of the information to be provided is defined below, in accordance with Articles 3 to 6 of Directive (EU) 2019/1152. Also to change the referred part, from seventh to sixteenth, due to the 9 new parts inserted before the draft's seventh part of this Article.
intervals in which the worker may be required to work (reference hours and days).	**15) The reference hours and days within which the worker may be required to work;**	For terminology consistency and to better alignment with Articles 3 and 4(2)(m)(ii) of Directive (EU) 2019/1152.
	16) Any collective agreements governing the worker's conditions of work or in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of such bodies or institutions within which the agreements were concluded;	To better align with Article 4(2)(n) of Directive (EU) 2019/1152.

CMU draft law provision's wording	Recommended wording	Rationale
	17) Where it is the responsibility of the employer, the identity of the social security institutions receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer;	To better align with Article 4(2)(o) of Directive (EU) 2019/1152.
	The information referred to in the preceding points 5 to 9 and 17 of the sixth part of this Article may be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those points.	To better align with Article 4(3) of Directive (EU) 2019/1152.
	Where not previously provided, the information referred to in the points 1 to 5 and 8 to 15 of the sixth part of this Article, shall be provided individually to the worker during a period starting on the first working day and ending no later than the seventh calendar day.	To better align with Article 5(1) of Directive (EU) 2019/1152.
	Where not previously provided, the information referred to in the points 6, 7, 16 and 17 of the sixth part of this Article, shall be provided individually to the worker in the form of a document within one month of the first working day.	
	The employer shall ensure that any change in the essential aspects of the employment relationship referred to in this Article shall be provided in the form of a written document by the employer to the worker at the earliest opportunity and at the latest on the day on which it takes effect.	To better align with Article 6(1) of Directive (EU) 2019/1152.
	The preceding part shall not apply to changes that merely reflect a change in the laws,	To better align with Article 6(2) of Directive (EU) 2019/1152.

CMU draft law provision's wording	Recommended wording	Rationale
	regulations and administrative or statutory provisions or collective agreements cited in the information previously provided.	
	The employer shall provide each worker with the information required pursuant to this Article in writing and transmitted on paper.	To better align with Article 3 of Directive (EU) 2019/1152.
	The employer may transmit to each worker the written information required pursuant to this Article in electronic form, provided that:	
	1) The information is accessible to the worker;	
	2) That it can be stored and printed; and	
	3) That the employer retains proof of transmission or receipt.	
The model form of the labour agreement with non-fixed working time shall be approved by the central executive authority that ensures the formulation of the state policy on employment relationship.	The model form of the labour agreement with **variable work schedule** shall be approved by the central executive authority that ensures the formulation of the state policy on employment relationship.	In order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule".
……………………………………………………………………		
The worker shall have the right to refuse to perform work if the employer requires performance of work outside reference days and hours, or if the worker was informed of availability of the work in violation of the minimum time limits specified by the labour agreement with non-fixed working time.	The worker shall have the right to refuse to perform work if the employer requires performance of work **without adverse consequences** outside **the agreed** reference days and hours, or if the worker was informed of availability of the work in violation of the **minimum notice period to which the worker is entitled before the start of a work assignment** specified by the labour agreement with **variable work schedule**.	Should be changed to better align with Articles 10(1) and 10(2) of Directive (EU) 2019/1152.
The worker's refusal to perform work in reference days and hours shall be a ground for	The worker's refusal to perform work in reference days and hours shall be a ground for	Should be changed in order to:

CMU draft law provision's wording	Recommended wording	Rationale
holding them disciplinarily liable except when the refusal was connected with temporary incapacity for work or with performance of state or public duties as well as with notification of the worker by the owner or a body authorized thereby of availability of the work in violation of the minimum time limits specified by the labour agreement with non-fixed working time.	holding them disciplinarily liable except when the refusal was connected with temporary incapacity for work or with performance of state or public duties, as well as with notification of the worker by the **employer** of availability of the work in violation of the **the agreed** reference days and hours, **or of the minimum notice period to which the worker is entitled before the start of a work assignment** specified by the labour agreement with **variable work schedule**.	• Better align with Articles 10(1) and 10(2) of Directive (EU) 2019/1152; • Improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule"; and • Replace the terms "owner or a body authorized thereby" by the term "employer", defined in the proposed fourth part of Article 21 of the Code of Labour Laws, as amended by the Draft Law "On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence".
The labour agreement with non-fixed working time defines the labour remuneration conditions which can provide for payment of wage for the hours actually worked, for the task specifically performed, for the unit of production made, under a piece-rate labour remuneration system, or other remuneration conditions agreed upon by the worker and the owner or the body authorized thereby.	The labour agreement with **variable work schedule** defines the labour remuneration conditions which can provide for payment of wage for the hours actually worked, for the task specifically performed, for the unit of production made, under a piece-rate labour remuneration system, or other remuneration conditions agreed upon by the worker and the **employer**, **if they do not contradict the provisions of applicable collective agreements or the law**.	Should be changed, in order to: • Improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule" • Prevent that the provisions regarding remuneration, agreed within an individual labour agreement, may be contradictory with the provisions of the applicable collective agreement or with the law (establishing, for example, a lower wage than the one foreseen in the applicable collective agreement, providing for a wage lower than the minimum wage, etc.)

CMU draft law provision's wording	Recommended wording	Rationale
In case of a piece-rate labour remuneration system, wage shall be paid to the worker for the work actually done according to the piece rates set in the labour agreement with non-fixed working time.	In case of a piece-rate labour remuneration system, wage shall be paid to the worker for the work actually done according to the piece rates set in the labour agreement with **variable work schedule.**	In order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule".
Minimum working time duration for the worker performing work pursuant to the labour agreement with non-fixed working time shall be 32 hours per calendar month. If the worker performed work for less than 32 hours during a calendar month, they shall be paid wage for no less than 32 hours of working time according to the labour remuneration terms specified by the labour agreement.	Minimum working time duration for the worker performing work pursuant to the labour agreement with **variable work schedule** shall be **10 hours per working week**. If the worker performed work for less than **10** hours during a **week**, they shall be paid wage for no less than **the amount corresponding to 10** hours per week according to the labour remuneration terms specified by the labour agreement.	In order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule". Also to establish, as the amount and reference period of the minimum amount of guaranteed paid hours, 10 hours per week, in order to better align this provision with the best International and European practices and with Articles 4(2)(m)(i) and 11(b) and of Directive (EU) 2019/1152.
If the owner or a body authorized thereby does not provide work to the worker performing work pursuant to the labour agreement with non-fixed working time, wage under the piece-rate labour remuneration system during a calendar month must be paid to the worker in the amount not less than the wage of a worker of respective qualification whose labour is remunerated under the hourly wage system, - for 32 hours of working time.	If the **employer** does not provide work to the worker performing work pursuant to the labour agreement with **variable work schedule**, wage under the piece-rate labour remuneration system during a calendar month must be paid to the worker in the amount not less than the wage of a worker of respective qualification whose labour is remunerated under the hourly wage system, - for 32 hours of working time.	Should be changed in order to: • Improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule"; and • Replace the terms "owner or a body authorized thereby" by the term "employer", defined in the proposed fourth part of Article 21 of the Code of Labour Laws, as amended by the Draft Law "On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence".

CMU draft law provision’s wording	Recommended wording	Rationale
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	If the employer cancels a work assignment previously agreed with the worker after the deadline for cancellation established in the labour agreement with variable work schedule, the worker is entitled to the compensation foreseen in the labour agreement, which amount, in any case, shall not be less than the remuneration for its performance.	This new part should be inserted, in order to better align with Article 10(3) of Directive (EU) 2019/1152.
The procedure for calculation of wage for workers working under the labour agreement with non-fixed working time for the period of annual leave and of compensation for unused leave shall be set forth by the Cabinet of Ministers of Ukraine.	The procedure for calculation of wage for workers working under the labour agreement with **variable work schedule** for the period of annual leave and of compensation for unused leave shall be set forth by the Cabinet of Ministers of Ukraine.	In order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing “with non-fixed working time” by “with variable work schedule”.
The owner or a body authorized thereby may not prohibit or obstruct the worker performing work under the labour agreement with non-fixed working time to perform work under other labour agreements. Performance of work under the labour agreement with non-fixed working time shall not entail any restrictions of the scope of workers’ labour rights.	The **employer** may not prohibit or obstruct the worker performing work under the labour agreement with **variable work schedule** to perform work under other labour agreements **outside the work schedule established with that employer nor subject a worker to adverse treatment for doing so**. Performance of work under the labour agreement with **variable work schedule** shall not entail any restrictions of the scope of workers’ labour rights.	Should be changed, in order to: • Replace the terms “owner or a body authorized thereby” by the term “employer”, defined in the proposed fourth part of Article 21 of the Code of Labour Laws, as amended by the Draft Law “On amending the Code of Labour Laws of Ukraine concerning the definition of the concept of employment relationship and the indicators of its existence”; • Improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing “with non-fixed working time” by “with variable work schedule”; and • Better align with Article 9(1) of Directive (EU) 2019/1152.

CMU draft law provision’s wording	Recommended wording	Rationale
The labour agreement with non-fixed working time may establish additional grounds for its termination.”;	**Should be deleted.**	This provision should be deleted because it is contradictory with the International and European best practices and with the spirit of the Directive 2019/1152. In fact, and instead of providing a special protection to this particular vulnerable group of workers (who have no guaranteed working time and whose employment relationship is particularly unpredictable) and ensuring that effective measures to prevent their abuse are in place (as mentioned in Points 12 and 35 of the Preamble of Directive 2019/1152), this provision negatively discriminates these workers, allowing the establishment, in the labour agreement, of additional grounds (other than the ones specifically foreseen in the law) for the termination of the employment relationship. In this respect, it is important to note that Article 1 of the Termination of Employment Convention, 1982 (No. 158), establishes that the provisions concerning termination of employment, where not provided for by collective agreements or prescribed by arbitration awards or court decisions, shall be given effect by laws or regulations, and not by individual labour agreements. It should also be noted, in this connection, that according to Article 2(3) of ILO C158, adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Convention.

CMU draft law provision's wording	Recommended wording	Rationale
	add new Articles 21^2, 21^3, and 21^4 as follows:	These three Articles should be inserted, in order to align with Articles 12, 13 and 14 of Directive 2019/1152.
The worker working under the labour agreement with non-fixed working time for at least six months shall have the right to demand that the owner or the body authorized thereby conclude a full-time labour agreement or an open-ended labour agreement.”;	**Article 21^2. Transition to another form of employment of workers with variable work schedule** **The worker working under a labour agreement with variable work schedule for at least six months, who has completed his or her probationary period, if any, may request employer a form of employment with more predictable and secure working conditions where available and receive a reasoned written reply within one month or, where the employer is a natural person, within three months.**	It should be changed, in order to: • Better align with Article 12 of Directive 2019/1152, whereas the worker is not entitled to ”demand” the conclusion of a full-time labour agreement or an open-ended labour agreement, but only to “request” it and to receive a reasoned answer within a reasonable time. • Replace the term "owner or a body authorized thereby" by the more adequate term "employer", for the reasons already expended above.
	Article 21^3. Mandatory training of workers with variable work schedule	To ensure the equality and non-discrimination of workers working under labour agreement with variable work schedule and align with Article 13 of Directive 2019/1152.
	Workers under a labour agreement with variable work schedule are entitled to training to carry out their work, which shall be provided by the employer free of cost, shall count as working time and, where possible, shall take place during working hours.	
	Article 21^4. Collective agreements on working conditions of workers with variable work schedule	To align with Article 14 of Directive 2019/1152.
	Collective agreements may establish arrangements concerning the working conditions of workers with variable work schedule which, while respecting the overall protection of workers, differ from those referred to in Articles 21^1, 21^2, 21^3 and 21^4.	
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CMU draft law provision's wording	Recommended wording	Rationale
"6^{2}) when concluding a labour agreement with non-fixed working time;";	"6^{2}) when concluding a labour agreement with **variable work schedule**;";	In order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule".
reword paragraph 8 of the first part of Article 36 as follows: "8) grounds prescribed by a labour agreement with non-fixed working time, or a contract;";	**Should be both deleted.**	As already mentioned above, these two provisions should be deleted because they are contradictory with the International and European best practices and with the spirit of the Directive 2019/1152. In fact, and instead of providing a special protection to this particular vulnerable group of workers (who have no guaranteed working time and whose employment relationship is particularly unpredictable) and ensuring that effective measures to prevent their abuse are in place (as mentioned in Points 12 and 35 of the Preamble of Directive 2019/1152), these provisions negatively discriminates these workers, allowing the establishment, in the labour agreement, of additional grounds (other than the ones specifically foreseen in the law) for the termination of the employment relationship. In this respect, it is important to note that Article 1 of the Termination of Employment Convention, 1982 (No. 158), establishes that the provisions concerning termination of employment, where not provided for by collective agreements or prescribed by arbitration awards or court decisions, shall be given effect by laws or regulations, and not by individual labour agreements. It should also be noted, in this connection, that according to Article 2(3) of ILO

CMU draft law provision's wording	Recommended wording	Rationale
		C158, adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Convention.
in Article 265:		
in the second part:		
reword the second subparagraph as follows:		
"actual admission of a worker to work without conclusion of a labour agreement (contract), formalization of a worker on the part-time basis or under a labour agreement with non-fixed working time despite actual performance of work during the entire working time set at the enterprise, and payment of wage (remuneration) without charging and paying the single contribution for compulsory state social insurance and taxes, – in the amount of ten minimum wages established by law as of the moment the violation was found, for every worker concerning whom the violation was committed; whereas a warning shall be applied to legal persons and individual entrepreneurs using hired labour and being single tax payers of groups 1-3;";	"actual admission of a worker to work without conclusion of a labour agreement (contract), formalization of a worker on the part-time basis or under a labour agreement **with variable work schedule** despite actual performance of work during the entire working time set at the **employer**, and payment of wage (remuneration) without charging and paying the single contribution for compulsory state social insurance and taxes, – in the amount of ten minimum wages established by law as of the moment the violation was found, for every worker concerning whom the violation was committed; ~~whereas a warning shall be applied to legal persons and individual entrepreneurs using hired labour and being single tax payers of groups 1-3~~;";	Should be amended, in order to: • Improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule"; • Replace "enterprise" by "employer", because the employ may not be an "enterprise", but other type of organization or even a self-employed with workers. The last part of the paragraph ("whereas a warning shall be applied to legal persons and individual entrepreneurs using hired labour and being single tax payers of groups 1-3") **should be deleted, because:** **1. It takes out from the labour inspection activity, as well as from the infringement proceedings, the effect of general prevention, i.e., the fact that the subjects of legal provisions tend to comply with legal provisions in order to avoid being sanctioned. This legal provision is likely to disincentive employers (in particular "legal**

CMU draft law provision's wording	Recommended wording	Rationale
		persons and individual entrepreneurs using hired labour and being single tax payers of groups 1-3") from complying with the legislation from the outset, because they know that if their infractions are detected, they will always have the opportunity to correct them without being sanctioned. In fact, instead of complying with the legal provisions, they will be just waiting for the labour inspectors to detect them and, if and when they do detect them, they will have the time to correct the infringements without any penalization. Meanwhile, they will be doing unfair competition to the employers that, differently, will have to comply with the legislation from the outset. **2. This provision contradicts:** a. **Article 17(2) of ILO Convention 81 and Article 22(2) of ILO Convention 129, according to which "It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings";** b. **Article 18 of ILO C081 and Article 24 of ILO C129, according to which "adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced"; and**

CMU draft law provision's wording	Recommended wording	Rationale
		c. **Article 4(2) of EU Directive 89/391/EEC, according to which the states "shall ensure adequate controls and supervision".**
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"exceeding the admissible number of labour agreements with non-fixed working time set by Article 21[1] hereof, or keeping inaccurate records of working time of the worker working under the labour agreement with non-fixed working time concerning the work actually performed by the worker, - in the amount of three minimum wages established by law as of the moment the violation was found, for every worker concerning whom the violation was committed;	"exceeding the admissible number of labour agreements **with variable work schedule** set by Article 21[1] hereof, or keeping inaccurate records of working time of the worker working under the labour agreement **with variable work schedule** concerning the work actually performed by the worker, - in the amount of three minimum wages established by law as of the moment the violation was found, for every worker concerning whom the violation was committed;	Should be changed, in order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule".
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reword the eighth part as follows:		
"The fines mentioned in the second subparagraph of the second part of this Article may be imposed by the central executive authority mentioned in the fourth part of this Article, without implementing a state supervision (control) measure, pursuant to a court decision on formalization of employment relationship with the worker who performed work without an labour agreement concluded, and on determination of the period of such work or part-time work or work under the labour agreement with non-fixed working time if the work was actually performed during the entire	"The fines mentioned in the second subparagraph of the second part of this Article may be imposed by the central executive authority mentioned in the fourth part of this Article, without implementing a state supervision (control) measure, pursuant to a court decision on formalization of employment relationship with the worker who performed work without an labour agreement concluded, and on determination of the period of such work or part-time work or work under the labour agreement with **variable work schedule** if the work was actually performed during the entire	Should be changed, in order to improve terminology consistency and to better align the typology and nature of this non-standard form of employment with the provisions of Directive (EU) 2019/1152, by replacing "with non-fixed working time" by "with variable work schedule".

CMU draft law provision’s wording	Recommended wording	Rationale
working time set at/in the enterprise, institution or organization.”;	working time set at/in the enterprise, institution or organization.”;	
2) …………………………………………………………………		
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II. Final provisions		
1. ……………………………………………………………………		
2. ……………………………………………………………………		
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SOME EXAMPLES FROM OTHER COUNTRIES[6]

Germany

On-call contracts must specify the number of daily and weekly hours of work. In the absence of such provisions, a working week of ten hours will be implied to have been agreed and three hours must be paid per shift, irrespective of the number of hours actually worked.

Employees are required to respond to a call only if it is made with a minimum of four days' notice.

Collective agreements may modify these rules, even to the detriment of employees, on condition that they regulate daily and weekly hours of work, as well as the notice period.

Ireland

"Zero-hours working practices" are seen as the ones within which workers undertake to make themselves available to work for an employer either for a certain number of hours or when required, or both.

Workers have no minimum guaranteed working hours, but they are entitled to be paid for at least 25 per cent of the contract hours or for 15 hours, which-ever is less, even if they have not performed any work during a given week.

However, these provisions do not apply to casual employees or to workers who are not contractually required to remain available for work (the so-called "if and when" contracts).

Italy

Intermittent workers (*lavoratori intermittenti*) are not guaranteed with a minimum amount of working days or hours, even when they undertake to accept all calls from the employer. However, for periods in which they do not work, employers pay them a so-called "availability indemnity".

Payment of the indemnity is suspended during any period in which workers might not be able to accept work (e.g. sickness), and workers must report any reason that would prevent them from working.

Unjustified refusals to accept calls may constitute grounds for dismissal.

[6] *In* ILO (2016), Non-standard employment around the world: Understanding challenges, shaping prospects. Geneva: International Labour Office.

Employers need to give notice of any call at least one working day in advance. For other types of contract, though, intermittent workers do not undertake to accept the employer's calls and are therefore not entitled to the "availability indemnity".

Netherlands

If contractual hours are below 15 hours per week and work schedules are not fixed, or if the number of working hours is not clearly determined, workers must be paid at least three hours for each shift regardless of the actual hours worked.

After three months, contractual hours under on-call contracts are normally deemed to correspond to average hours effectively worked during the three preceding months.

New Zealand

The employment contracts or collective agreements must specify, *inter alia*, the number of guaranteed hours of work – if any. If a number of guaranteed hours has not been set, the worker cannot be required to remain at the employer's disposal and can refuse hours of work that are offered.

Moreover, an availability provision cannot be included in an employment contract unless the employer has genuine reasons for including it, based on reasonable grounds, and the employee is entitled to payment of reasonable compensation for making himself or herself available to perform work.

Employees are entitled to refuse to perform work in addition to any guaranteed hours if the employment contract does not provide for the payment of reasonable compensation, and an employer must not retaliate against an employee for refusing to perform work on that ground.

The employer cannot cancel shifts unless the contract contains a provision specifying a reasonable notice period and reasonable compensation to be paid in the event of cancellation, if notice is not given.

Turkey

If parties to a "part-time employment contract based on work on-call" do not agree otherwise, the weekly working time is considered to have been fixed at 20 hours.

A notice of at least four days is required for each call unless otherwise provided, and a minimum of four hours of work is to be provided per call unless different daily hours are set out in the employment contract.

United Kingdom

The Employment Rights Act was amended in 2015 to render unenforceable any exclusivity clauses preventing zero-hours workers from working for another employer without their employer's consent. Implementing regulations were adopted later that year to protect zero-hours workers against unfair dismissal or detrimental measures for a reason relating to a breach of an exclusivity clause.

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