

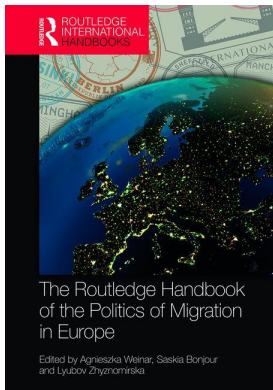
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THE EU'S VISA LIBERALISATION POLICY

What kind of transformative power in neighbouring regions?

Laure Delcour

Introduction

Over the past two decades, the European Union (EU)'s common visa policy has emerged as a major instrument to regulate the entry of non-EU visitors into the territory of the EU. The EU's visa policy includes common lists of countries whose citizens are required to hold a visa when travelling to the Schengen area and countries whose citizens are exempted from this requirement (Council of the European Union, 2001). It also sets out a common format and common procedures for issuing short-term visas, including a common sticker (Council of the European Union, 1995, 2002; European Parliament and Council of the European Union, 2009).

In recent years, visa liberalisation (in other words, the EU's decision to remove a country from the 'black' list, thereby lifting the obligation of Schengen visa for its nationals) has become a cornerstone of the EU's policies in adjacent countries – whether the Western Balkans, Eastern Partnership (EaP)¹ countries, the Russian Federation or Turkey. This increasing importance of visa policy in the EU's external relations is due to two intertwined factors. First, a visa-free regime with the EU is a strong expectation of the partner countries, be it at the political or societal level. For Western Balkans, Eastern European and South Caucasus countries in particular, a visa-free regime with the EU is both a hallmark of their close relationship with the Union and a strong expectation of their citizens. Second, in the absence of a membership perspective (be it the result of the EU's limited absorption capacities or of partner countries' lack of interest), the elimination of the Schengen visa obligation appears as the most tangible incentive that the EU can offer to the partner countries.

While in the 1990s-early 2000s the EU's visa policy for Central and Eastern European candidate countries developed as an ad hoc process, over the past decade the EU has gradually designed a policy framework for visa liberalisation in neighbouring countries and regions. This framework codifies the processes through which, and the conditions under which, the EU decides to lift the obligation of Schengen visas. It highlights both an increased reliance upon conditionality and a significant expansion of the scope of EU requirements as compared to the toolbox used for visa liberalisation in the 1990s.

This chapter analyses the evolution of the EU's visa policy towards candidate and neighbouring countries through the prism of the academic literature. It examines how scholarly research

has accounted for the instruments and outcomes of the EU's visa policy. Given the diffusion of the EU's visa liberalisation framework from candidate to neighbouring countries, much of the literature originates from the analysis of the EU's external governance (Lavenex, 2004). This research has predominantly focused on the mechanisms used by the EU to promote domestic change beyond its borders and their effectiveness. Another strand of literature, inspired by the conceptualisation of the EU as a normative power (Manners, 2002), has examined the rationale behind the EU's framework for visa liberalisation. In particular, it has looked at the balance between interests and values in the EU's policy. This chapter gauges the key arguments and findings of the academic literature against the implementation of the EU's visa liberalisation framework, focusing on Eastern Partnership countries.

The chapter starts by examining the rationale behind the expansion of norms diffused by the EU as part of its visa liberalisation framework. It asks whether (as argued in the external governance literature) visa policy has served as a driver of democratic reforms in the partner countries or whether it has rather promoted the EU's security interests. The chapter then scrutinises EU policy mechanisms for visa liberalisation and points to an increasing use of policy-specific conditionality as a substitute to enlargement conditionality. Finally, based upon the case of Eastern Partnership countries, the chapter examines the extent to which the EU has been able to promote domestic change through its visa liberalisation offer.

Towards an all-encompassing policy: visa liberalisation as a driver of reforms and democratisation?

In the 1990s, the EU's initial visa policy was both tightly interwoven with its enlargement process and limited in terms of the scope of norms diffused. While Central and Eastern European candidate countries had to accept the full Schengen *acquis*, this *acquis* was then nascent and hence restricted. Importantly, the visa liberalisation process that the EU has gradually set up since the early 2000s highlights significant shifts in, and in fact a major expansion of, the reforms required from the partner countries before the EU can agree to a visa-free regime. What has prompted the expansion of EU requirements over the past 15 years and what kind of norms do the EU diffuse as part of its visa policy? The literature has shown that the EU's external migration policy is driven by two different – and potentially conflicting (Leonard, 2009) – agendas: a security agenda, geared towards protecting the EU from potential threats, and a value-based agenda, reflecting the EU's distinctiveness in the international arena as a normative actor (Manners, 2002). Focusing on the values–security nexus in the EU's neighbourhood, scholars contend that the EU's action is fraught with contradictions deriving from competing (normative and security) objectives, which undermine the EU's credibility in the region (Bosse, 2009). What objective has prevailed in the EU's visa policy vis-à-vis candidate and neighbouring countries? Has the EU sought to promote democratic principles and human rights, thereby fostering democratisation in the partner countries? Or has it prioritised security-related standards, in line with its own interests?

For those scholars inspired by the external governance approach, EU demands in the area of external migration entail the transfer of democratic governance provisions into domestic legislation, thus indirectly encouraging democratic developments (Freyburg *et al.*, 2011). While mostly originating in international conventions (Hernández i Sagraera and Korneev, 2012), the conditions spelt out by the EU as part of the visa liberalisation framework reflect 'a human rights-oriented approach (...), largely resting on democratic governance provisions' (Freyburg *et al.*, 2011: 1036). As part of the visa liberalisation process with candidate countries in the late 1990s, the EU only formulated broad conditions pertaining to the effective functioning of the

rule of law and judicial institutions. However, these demands were both specified and expanded throughout the 2000s. The EU visa liberalisation framework with Eastern Partnership countries (structured around four blocks of conditions)² includes a broad set of demands related to human rights and the rule of law, including procedures for asylum, the protection of personal data, the fight against corruption and anti-discrimination. For instance, partner countries are required to adopt ethical codes and to conduct training programmes on anti-corruption for officials dealing with passports, and on respect for human rights and asylum procedures for border guards and customs officers. The EU also demands that partner countries consolidate their legal and institutional framework for asylum policy, including subsidiary protection and effective access to fair procedures for status determination, as well as rights protection. Moreover, in recent years the EU has strengthened the monitoring of conditions related to human rights. For instance, the fourth block of the visa liberalisation framework (which includes the major EU demands related to fundamental rights) was not included in the assessment missions conducted in the Western Balkans (Trauner and Manigrassi, 2014). However, this changed starting with Kosovo. Block 4 is also included in the assessment missions conducted in Eastern Partnership countries. The greater emphasis placed on block 4 reflects the Commission's enhanced efforts to reduce discrimination against marginalised groups (Trauner and Manigrassi, 2014). This increased attention to fundamental rights suggests that the EU has channelled the diffusion of democratic principles through its visa policy.

Moreover, through developing functional cooperation visa policy indirectly contributes to promoting democratic governance (Lavenex and Schimmelfennig, 2011: 896) in Eastern Partnership and Western Balkan countries. Democratic sectoral governance refers to 'the incorporation of democratic principles into administrative rules and practices even within a non-democratic polity' (Freyburg *et al.*, 2011: 1028). Freyburg *et al.* (2011) identify three dimensions of democratic governance: transparency, accountability and participation. All three dimensions are indirectly emphasised in the Visa Liberalisation Action Plans (VLAPs) with Eastern Partnership countries. For instance, the benchmarks for reform implementation³ and the clarification of institutional competences (as well as the institutional reforms) requested by the EU as part of the VLAPs foster accountability. The EU also promotes transparency, for instance on party financing, as part of the fight against corruption. Likewise, it encourages the participation of non-governmental organisations (NGOs) in the policy process,⁴ e.g. by favouring the presentation of draft laws to, and discussion with NGOs.⁵

However, the literature has also demonstrated that the EU's key concern in cooperation with neighbouring countries is to 'protect [its] internal security from outside threats' (Wolff, Mounier and Wichmann, 2009: 12). As a consequence, security-related requirements have largely prevailed in the EU's visa policy vis-à-vis neighbouring regions. Closer scrutiny of the VLAPs with Eastern Partnership countries, for instance, highlights the predominance of measures meant to ensure that the mobility offered to neighbours takes place 'in a secure environment' (European Commission, 2008). These EU demands include an effective implementation of readmission agreements concluded with the EU, the issuance of biometric travel documents, the adoption and enactment of a legal framework complying with EU standards on migration policy and border management, as well as the establishment of high-standards border management procedures at partner countries' external borders. Overall, the EU's external migration and visa policy 'has emphasised migration control measures despite attempts to stress preventive elements in the EU's global approach to migration' (Wunderlich, 2012: 1421). In fact, the provisions related to migration under EU-neighbours visa agreements and policy documents 'externalise migration control functions' and reflect 'an extension of the EU migration regime outside of the Union' (Lavenex and Uçarer, 2002: 216) As a result, the EU's wider neighbourhood has clearly

emerged as a buffer zone playing a crucial role in keeping irregular migrants outside the EU's borders. Neighbouring countries act both as a filter and as a dumping ground to which EU member states extradite irregular migrants who have crossed the EU's borders (Delcour, 2013).

In addition to prioritising security-related measures, when monitoring the application of the readmission agreements, VLAPs and roadmaps, scholars have demonstrated that the EU has given preference to security and sidelined values (Trauner, Kruse and Zielinger, 2013). Therefore, in the practice of EU visa policy conditions related to security outweigh by far the provisions introducing human rights norms which, as denounced by the European Parliament in the case of Russia (European Parliament, 2007), are neither comprehensive nor precise enough to induce substantial progress in partner countries.

Admittedly, it is extremely complex to disentangle security and normative objectives, which are often interwoven in practice (Noutcheva, Pomorska and Bosse, 2013). In fact, in the visa liberalisation framework the EU has used provisions related to democratic governance and the rule of law instrumentally (Burluyuk, 2014: 41), as a means to achieve other ends – in this case, to ensure the protection and effective management of the EU's external borders and, beyond them, of partner countries' borders with their own neighbours, which (for some of them) are regarded in Brussels as sources of irregular migration.

Policy-specific conditionality and gate-keeping as substitutes to enlargement conditionality?

Like accession policy, the EU's visa policy (and more broadly justice and home affairs) operates through dynamics of inclusion and exclusion, whereby compliance with the standards diffused by the EU (whether its own or not) is seen as a prerequisite to inclusion while non-compliance generates exclusion (Monar, 2000: 12). Visa liberalisation has thus emerged as a key leverage for the EU to influence domestic change in those countries seeking a closer relationship with the Union, whether candidate or neighbouring countries.

Therefore, other strands of literature have paid specific attention to the policy mechanisms designed by the EU to eliminate the obligation of Schengen visas for the Western Balkans and Eastern Partnership countries. Such a focus is premised on the assumption that policy instruments 'are not neutral devices: they produce specific effects, independently of the objective pursued', and therefore 'structure public policy according to their own logic' (Lascoumes and Le Galès, 2007: 4). In the case of visa liberalisation, closer scrutiny of the evolution of the EU's toolbox since the end of the 1990s highlights an increasing reliance upon conditionality, monitoring and gate-keeping. As argued in the literature, these instruments are meant to ensure the adoption of EU-demanded soft law and standards in policy areas with limited *acquis*, thereby strengthening the EU's leverage over the partner countries.

While conditionality and monitoring were present from the outset of the EU's visa policy, EU requirements and benchmarks measuring progress towards visa liberalisation were not formalised in any policy document. At the end of the 1990s, prior to joining the EU, Central and Eastern European countries had to accept both the full Schengen *acquis* and subsequent measures taken by the institutions within its scope.⁶ This obligation implied major legal, policy and administrative reforms on the part of candidate countries at a time when the Schengen *acquis* was rapidly expanding. At a time when frontier controls came to be seen as Europe's first line of defence against external threats (Grabbe, 2000: 3), the EU's emphasis on compliance with the *acquis* was primarily meant to address the growing security concerns within the EU over the applicants' ability to protect the Schengen area from external threats (such as organised crime or

irregular migration flows through their territories). In practice, these concerns triggered the definition of specific EU conditions as well as a tighter monitoring of their application by candidate countries. Alongside with general conditions pertaining to the effective functioning of the rule of law and judicial institutions, the EU introduced requirements focusing on border controls and the fight against irregular migration (Grabbe, 2000: 13). In addition, EU security concerns also prompted an increased attention to enforcement of the *acquis*, as reflected in the creation of specific monitoring mechanisms such as the Collective Evaluation Group, responsible for assessing the implementation of the Schengen *acquis* in candidate countries (Monar, 2000: 18). The increased focus on implementation eventually resulted in a differentiation between candidate countries (with visa requirements being lifted in 1999 for all applicants except Bulgaria and Romania, whose citizens needed a visa until the early 2000s) and in a disjuncture between accession to the EU and to the Schengen area, as accession to the Schengen area was delayed for those countries failing to enact the Schengen *acquis*.

Conditionality was then substantially reinforced in the visa liberalisation process set up for the Western Balkans in the 2000s. Given the reported number of overstays beyond the maximum duration of 90 days, the experience of EU visa liberalisation with Romania and Bulgaria reinforced EU member states' security concerns (Trauner, 2007: 15), and therefore their reluctance to offer a visa-free regime to other countries. This prompted the EU to design a 'phased strategy' (Trauner, 2008) with a view to strictly monitoring the access of Western Balkan countries to subsequent stages of the visa liberalisation process. This framework was then replicated with Eastern Partnership countries and Turkey. As part of the visa liberalisation framework, partner countries are first expected to sign visa facilitation and readmission agreements with the EU. As a result of a successful linkage first operated by Russia when negotiating with the EU and then replicated with Western Balkans and Eastern Partnership countries, in the EU's policy toolbox readmission agreements are combined with visa facilitation schemes (Trauner and Kruse, 2008: 11). EU incentives offered under visa facilitation agreements include simplified procedures and shorter delays for obtaining EU visas, reduced visa fees for short-stay visas (€35 instead of €60), as well as simplified criteria for multiple-entry visas for certain categories of persons. Readmission agreements are the key policy tool to curb irregular migration originating from, or transiting through, partner countries (Trauner and Kruse, 2008). They set out clear obligations and procedures for the authorities of partner countries as to when and how to take back people who are illegally residing in EU territory, be they citizens of their country, third country nationals or stateless persons. An effective implementation of the readmission agreement is a prerequisite to further progress towards visa liberalisation.

The next steps of the visa liberalisation process involve the launch of a visa dialogue with a view to determining the conditions to be fulfilled to have the Schengen visa requirement lifted. These conditions are spelt out in a Roadmap handed over by the European Commission. The EU monitors the fulfilment of benchmarks included in the roadmaps in all four blocks of conditions through evaluation missions. These missions involve experts from EU member states accompanied by officials of the Commission services and the External Action Service. The decision to introduce a visa-free regime should then be made by the Council and the European Parliament, based upon a recommendation of the European Commission. The EU granted visa-free travel to the Schengen area to citizens of the Former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia in December 2009, and Albania as well as Bosnia and Herzegovina in November 2010. In May 2016, the European Commission recommended that the Schengen visa obligation be lifted for citizens of Kosovo.

While the visa liberalisation scheme designed for the Western Balkans then served as a template for other countries and regions (e.g. Turkey, Eastern Europe and the South Caucasus),

conditionality was again strengthened for Eastern Partnership countries. Under the Eastern Partnership, the EU identifies the requirements that need to be achieved by the partner countries in a specific document, the VLAP. VLAPs are divided into two phases: an adoption phase, during which partner countries have to approximate their legal framework with the EU's requirements and an implementation phase which requires approximated legislation to be properly enforced. Accession to the second phase of the VLAP is then conditional upon a positive assessment of the benchmarks identified for the first phase by the European Commission. Therefore, the distinction between an adoption and an implementation phase only reinforces the EU's control over the visa liberalisation process, as it introduces additional steps requiring both EU monitoring and approval of reforms introduced by the partner countries. In line with this framework, despite the concerns voiced by some EU member states which were reluctant to offer a visa-free regime to additional countries,⁷ the EU considered that Moldova had fulfilled all benchmarks for visa liberalisation and therefore lifted Schengen visa requirements for Moldovan citizens in April 2014.

However, prior to granting a visa-free regime to other Eastern Partnership countries, the EU introduced new policy mechanisms meant to enhance its control over the post-compliance phase. The example of Georgia offers an illustration of how EU member states have tightened their grip over the visa liberalisation decision-making process. On 9 March 2016, considering that the country had met all benchmarks in all four blocks of conditions, the European Commission recommended lifting the visa obligation for Georgian citizens holding a biometric passport. However, the process was marred because of the resistance of some EU member states (in this case, Germany,⁸ backed by France and Italy), fuelled by the refugee crisis and the general environment around migration in the EU. The Council of ministers therefore demanded the introduction of a suspension mechanism (allowing the temporary suspension of the visa-free regime in the event of abuse or breaches to the conditions set by the EU) prior to granting visa liberalisation. However, this demand triggered disagreements with the European Parliament, which co-decides with the Council yet holds more liberal views on visa-free travel with neighbouring countries. The member states and the Parliament finally agreed on the simultaneous entry into force of both mechanisms on 13 December 2016, which paved the way for the decision to lift the obligation of Schengen requirements for Georgian citizens in March 2017. A similar process took place with Ukraine, whose citizens have been exempted from Schengen visas as of June 2017.

Overall, the EU's policy instruments for visa liberalisation draw heavily on the enlargement toolbox designed in the 1990s for Central and Eastern European countries. Gate-keeping, in particular, was identified as the EU's 'most powerful conditionality tool' during the enlargement process (Grabbe, 2003: 316). However, as pointed out in the literature, the context in which visa liberalisation unfolds is drastically different. Even though in the early 2000s the Western Balkans were granted the status of candidate or potential candidate countries, the credibility of the EU's membership promise seemed much more uncertain, and the time horizon for accession much more remote, than during the previous rounds of enlargement (Trauner, 2007: 12). In the case of Eastern Partnership countries, no membership perspective is offered despite the strong expectations voiced by Georgia, Moldova and Ukraine. Therefore, in a context in which visa policy (instead of accession) appears as the main potential driver of inclusion and integration with the EU, visa-specific conditionality and gate-keeping serve as substitutes to the EU's accession conditionality.

The EU's influence on domestic change: achievements and limitations of the EU's visa policy in Eastern Partnership countries

As the chapter has argued, in a context where EU accession is (at best) a remote prospect, the EU has increasingly used visa policy as a chief instrument to diffuse a broad set of norms and thereby exert influence on domestic change in the partner countries. However, closer scrutiny of reforms undertaken by Eastern Partnership countries reveals a selective implementation of EU demands.

In both Armenia and Moldova (two countries facing major emigration flows since the collapse of the USSR), the authorities embraced the EU's demands for a tighter regulation of migration and a more effective management of population data (Ademmer and Delcour, 2016; Delcour, 2017). This is also because the adoption of EU-compliant standards (even if only symbolically) also confers legitimacy on EaP countries' governments (Makaryan and Chobanyan, 2014).

However, in both countries EU requirements related to the fight against corruption and anti-discrimination emerged as examples of low resonance of EU norms and non-compliance with EU demands. For instance, Moldova belatedly complied with EU requirements related to the fight against corruption, as these went against the vested interests of oligarchs linked to the ruling elite. Despite the adoption of a National Anti-Corruption Strategy in 2011, the implementation of many measures of the related Action Plan was delayed. In addition, some areas emerged as persisting causes for concerns, such as public procurement or lenience in cases of high-level corruption (Ademmer and Delcour, 2016; Delcour, 2017). Likewise, in Ukraine reforms have been conducted only selectively prior to 2014. While substantial reforms were launched to comply with EU requirements on migration and border management (the second block of the visa liberalisation process), the country has been slow in meeting EU demands on biometric passports, anti-discrimination and anti-corruption. This resulted from the contestation of domestic veto players, inter-institutional struggles, vested interests and rent-seeking practices. In addition, in all Eastern Partnership countries the adoption of a law on anti-discrimination in line with EU requirements stumbled against a strong societal reluctance to specifically combat discrimination on the basis of sexual orientation. In all countries, Churches strongly mobilised against the law and media campaigns (allegedly organised with Russian support) harshly criticised the EU's attempts to promote values that go against Eastern Partnership countries' traditions. While (as a result of the EU's strict conditionality) anti-discrimination laws were adopted in Georgia, Moldova and Ukraine,⁹ their effective implementation remains to be ascertained.

Yet nowhere has the EU's approach to visa liberalisation been so openly questioned as in Georgia. This is due to the sharp dissonance between EU requirements and the Georgian governmental preferences in the migration area during the Saakashvili presidency. While visa liberalisation has long been a declared priority for Georgia, the then Georgian authorities fiercely resisted the adoption of norms regulating the entry and residence of foreigners in the country. This is because the government's approach to migration was underpinned by a very liberal approach to economic reforms and the absence of state intervention. Migration was considered a pillar of the authorities' economic strategy, which primarily sought to attract foreign investment. In this context, an open-door policy was considered a prerequisite to creating a favourable business environment. If anything, the fact that the new authorities finally maintained this policy shows how deeply entrenched the liberal approach to migration is in Georgia (Ademmer and Delcour, 2016).

Therefore, despite strong expectations regarding a visa-free regime the implementation of EU requirements is highly sensitive to governmental and societal preferences and the interpenetration of economic and political interests in Eastern Partnership countries.

Conclusions

This chapter has shed light on the gradual construction of an EU policy framework for visa liberalisation. As highlighted in the literature this framework is fraught with a series of tensions. In the absence (or, at best, the remoteness) of a membership perspective for countries targeted by its visa liberalisation policy, the EU has used policy-specific conditionality as a leverage to foster reforms in the partner countries. It has also tightened its monitoring of reforms conducted by the partner countries as a consequence of lesson-drawing processes in other regions (for instance, as a result of lessons learnt in the Western Balkans for Eastern Partnership countries). This enhanced EU control over the visa liberalisation process is closely intertwined with the broader migration context in and around the EU. Increased migration pressure (in particular, the surge in asylum requests resulting from the war in Syria) has strengthened EU member states' sensitivity to any measure facilitating the movement of people, thereby resulting in a prioritisation of migration control demands in the visa liberalisation process. Nevertheless, the EU's visa policy remains a powerful transformative instrument. This is due to the fact that it represents the most tangible incentive that the EU can offer, in particular to its Eastern neighbours.

However, both the nature and scope of the transformations brought about by EU visa policy deserve further investigation. First, the extent to which EU visa liberalisation process actually fosters democratic governance and the degree to which these principles are effectively embedded in the practice of decision-making need to be further ascertained. Second, little is known about the societal impact of EU visa policy in terms of changing perceptions, beliefs and practices within the partner countries. In particular, the issue of social remittances deserves to be further explored. Third, the transnational and transregional implications of the EU's visa policy (for instance, their effects on the links between the partner countries and their neighbours) call for further investigation. Additional research is especially needed as the EU's visa policy is in a state of flux and evolves in response to its application by the partner countries and the changing context of migration.

Notes

- 1 The Eastern Partnership was launched in 2009. It includes Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.
- 2 The four blocks are: (1) Document security, including biometrics; (2) Integrated border management, migration, asylum; (3) Public order and security; (4) External relations and fundamental rights. Each block spells out a series of benchmarks that should be met by the partner countries before the Schengen visa obligation can be lifted. These conditions apply both to the adoption of policy and legal templates and to their effective implementation.
- 3 These benchmarks are part of the various Action Plans in those areas covered by the VLAPs, e.g. for fighting corruption and organised crime, or for preventing traffics of human beings.
- 4 Cf. 'Some of the provisions relating to the equality body to be established should be further consolidated in order to allow third-party interventions, i.e. give civil rights groups and NGOs to the right to appear before the body on behalf or in support of individual victims of discrimination' (European Commission/High Representative, 2012: 25).
- 5 Author's interviews, Civil Registry Agency, Tbilisi, March 2013; Ministry of Foreign Affairs, Chisinau, May 2012 and May 2014.
- 6 Article 8, Protocol integrating the Schengen acquis into the framework of the European Union, Treaty on the European Union (1997) OJ C224.
- 7 This also came as a result of the rise in asylum applications lodged by citizens from the Western Balkans in some EU member states in the wake of the visa liberalisation process.
- 8 Germany's move was reportedly triggered by an increase in the activities of Georgian criminal groups on its territory.

- 9 Armenia, Azerbaijan and Belarus will only be required to adopt a comprehensive anti-discrimination legislation (including discrimination against sexual minorities) as part of the visa liberalisation process that has not yet started.

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