

Legal Bulletin

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Administrative Law

1 Regulation of payment services

Name of the enactment	Framework Law on the Unitary Remuneration of Staff receiving Payment from Public Funds No. 330/2009 (“ Law No. 330/2009 ”)
Publication	Official Gazette of Romania, Part I, No. 762 of 9 November 2009
Entry into force	1 January 2010, except for several provisions which shall come into force on 12 November 2009
Main provisions	Law No. 330/2009 inserted a unitary remuneration system for the budgetary staff receiving payment from the State general consolidated budget. This system regulates the remuneration of the staff working in the budgetary sector as per their work, quantity and quality thereof, social importance, actual conditions and results of the work. A unitary remuneration system will be implemented throughout 2010 – 2015, in several stages.

Amongst the most important provisions of the new enactment:

- **Scope**

Law No. 330/2009 shall apply to the following categories of staff working in the budgetary sector:

- Staff working with public authorities and institutions (Parliament, Presidential Administration, courts, Government, ministries, other authorities of the central public administration, other public authorities, autonomous administrative authorities, institutions subordinated thereto, fully financed by the State budget, local budgets, State social security budget, budgets of special funds);
- Staff working with public authorities and institutions financed by own income and grants from the State budget, local budgets, State social security budget, budgets of special funds;
- Staff working with public authorities and institutions fully financed by own income.

On the other hand, the scope of Law No. 330/2009 excludes the staff working with the National Bank of Romania, National Securities Commission, Insurance

Supervisory Commission and the Private Pension System Supervisory Commission.

According to the provisions of the new enactment, the staff category working with the budgetary sector includes the staff employed with individual employment agreement, staff holding public offices and assimilated thereto, and the staff enjoying a special status, including public clerks.

- **Principles on which the unitary remuneration system is based**

According to the provisions of Law No. 330/2009, the principles of adopting the unitary system for the remuneration of the staff receiving payment from public funds are the following: (i) unitary nature; (ii) law supremacy; (iii) consideration of bonuses, salary increments, increases, general or special allowances, and of other salary-related rights; (iv) equity and coherence (v) financial sustainability.

The ratio set by the new enactment between the minimum and the maximum basic salary in the budgetary sector shall be 1:12.

- **Elements of the Unitary Remuneration System**

The new enactment sets as elements of the unitary remuneration system the base salaries, payments for the base positions and monthly employment allowances, increases, premiums, incentives and other rights, as per each category of personnel working in the budgetary sector.

Furthermore, the appendixes of the enactment at issue provide the hierarchical coefficients based on which the salary rights of the personnel enjoying the provisions of Law No. 330/2009 and working in the budgetary sector are calculated.

The value of hierarchical coefficient 1,00 for 2010 is RON 705, and the increase in hierarchical coefficient 1,00 subsequent to 2010 shall be conditioned upon the decrease in the number of employees, required to achieve the annual targets regarding the share of the personnel expenses in the gross domestic product, in order to reach a 1,00 hierarchical coefficient of RON 1,100 in 2015.

- **Amendments brought to Law No. 161/2003 on certain measures to secure transparency in the exercise of public offices, public positions and in the business environment, prevent and punish corruption (“Law No. 161/2003”)**

Law No. 330/2009 has brought certain amendments to Law No. 161/2003, in direct connection with public clerks. Thus, the new provisions have eliminated the incompatibility between the capacity as public clerk and the holding of a position

or exercise of paid and unpaid activities with private companies, family businesses or as a self-employed individual.

In addition, Law No. 330/2009 also provides that public clerks may hold positions or exercise activities in the fields of education, scientific research and literary and artistic creation and in other private activity fields, which are not connected directly or indirectly with the duties exercised as a public clerk, according to the job description.

- **Other provisions**

Furthermore, according to the provisions of the new enactment, within 3 days as of the publication of the law in the Official Gazette of Romania, Part I, the following additional salary rights established under legal enactments to the benefit of public authorities and institutions shall cease: (i) position incentive and remuneration stage incentive; (ii) mobility bonus.

In addition, Law No. 330/2009 repealed a series of enactments and legal provisions in the field of the remuneration of the personnel working in the budgetary sector.

As to the constitutionality of the enactment subject to analysis, the Constitutional Court issued Decision No. 1415/4 November 2009 holding that Framework Law on the Unitary Remuneration of the personnel receiving payment from public funds is constitutional insofar as the provisions of Art. 41 para. (2) letter e) of the law, criticized by the unconstitutionality objection, do not refer to the cases in which the Constitution of Romania expressly agrees to the double-dipping. A separate opinion in support of the unconstitutionality of Law No. 330/2009 was expressed in relation to the decision of the Constitutional Court.

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2 Law concerning aspects related to public administration

Name of the enactment

Law No. 329/2009 on the reorganization of certain public authorities and institutions, allowance of public expenses, support of the business environment and compliance with the framework agreements concluded with the European Union and International Monetary Fund ("**Law No. 329/2009**")

Publication

Official Gazette of Romania, Part I, No. 761 of 9 November 2009

Entry into force

12 November 2009, except for certain provisions which shall come into force on 1 January 2010

Connections with other enactments

- Law No. 571/2003 on the Fiscal Code, as further amended and supplemented (the “**Fiscal Code**”);
- Government Emergency Ordinance No. 217/2008 on the resumption in 2009 of the Program for the Stimulation of the National Automobile Fleet Renewal, as further amended and supplemented (“**GEO No. 217/2008**”);
- Government Emergency Ordinance No. 196/2005 on the Environment Fund, as further amended and supplemented (“**GEO No. 196/2005**”);
- Government Emergency Ordinance No. 50/2008 instituting the pollution tax for automobiles, as further amended and supplemented (“**GEO No. 50/2008**”).

Main provisions

Given the economic crisis, Law No. 329/2009 establishes a set of measures required to mitigate the effects of the economic crisis and to fulfill the obligations arising from the Memorandum of Understanding concluded between the European Community and Romania in Bucharest and Brussels on 23 June 2009, and from Stand-By Agreement concluded between Romania and the International Monetary Fund, as follows:

- **Reorganization of certain public authorities and institutions**

Appendixes 1 and 2 to Law No. 329/2009 expressly mention the public authorities and institutions subject to reorganization, and the actual reorganization method (e.g. closure further to the amalgamation by merger; change in the financing regime; staff reduction followed or not by a change in the financing regime).

Termination of employment/job relations due to the reorganization of the public authorities and institutions shall be accomplished in compliance with the legal procedures applicable to the relevant staff category and with the legal procedures on social security. Such termination shall be implemented on the basis of the criteria set by the management of such public authorities and institutions and the representatives of the employees or, as the case may be, of trade unions; in the absence of certain criteria set in accordance with the above provisions, the minimal criteria provided by the Law No. 329/2009 shall be applied.

As a result of the reorganization operations mentioned above, a series of enactments regulating or including specific provisions regarding the organization, operation and competencies of public institutions and authorities underwent amendments, supplementations or, as the case may be, were repealed (in this

respect, please see, Chapter IX of Law No. 329/2009 – Final Provisions).

- **Cut in the expenses with the staff working in the budgetary system**

According to the provisions of Law No. 329/2009, throughout October-December 2009, the managers of the public authorities and institutions, irrespective of the financing method, shall have to reduce staff expenses – subject to preserving continuous public interest services – by an average of 15.5% per month, by applying one of the following measures :

- To give its staff, irrespective of status, days off without payment for a business period of up to 10 business days (14 calendar days to the military staff working with the national defense, public order and national safety institutions);
- To reduce the working hours;
- To order a measure combining the above alternatives;
- To order any measure having equivalent effect.

Furthermore, Law No. 329/2009 also provides a temporary cut in the allowances payable to certain staff categories based on specific enactments.

- **Regime of pension and salary income double-dipping**

Beneficiaries of the pension rights belonging to both the public pension system, and to systems not integrated into the public pension system, making salary income or, as the case may be, income assimilated to salaries by performing an activity based on individual employment agreement, job relation or, as the case may be, act of appointment in public central or local authorities and institutions, irrespective of the financing and subordination method, may cumulate the net pension with the income thus obtained only if the level thereof does not exceed the level of the gross average salary at the level of economy used to substantiate the State social security budget, and approved by the law of State social security. The above rules shall also be applicable to the beneficiaries of the pension rights making salary income or, as the case may be, income assimilated to salaries obtained by performing an activity in a *regie autonome*, national companies and business entities whose full or majority share capital is held by the State or a territorial administrative unit.

Note that, according to Law No. 329/2009, employers shall have to identify the situations, which trigger the incidence of specific regulations on the pension and salary income double-dipping; failure to comply with such obligation shall be

deemed a misdemeanor and shall be punished by a fine ranging from RON 2,500 to RON 5,000.

- **Measures regarding the financial and budgetary discipline at the level of economic operators**

According to Law No. 329/2009, the State budget law shall have to include the objectives of a salary nature to be applied by the following undertakings: State-owned or controlled *regies autonomes*, national companies and business entities whereby the State and the territorial administrative units hold sole or majority shareholding, and the subsidiaries thereof.

In addition, the above undertakings shall have the obligation to submit the income and expenses budget for approval to central or local public administration authorities under whose subordination, coordination or authority they operate, or in whose portfolio they are, within 10 days from the approval of the State budget, according to the legal provisions; however, such obligation shall not be incumbent upon State-controlled undertakings or upon undertakings belonging to territorial administrative units whose shares are dealt on a regulated market.

In addition, the above measures shall not apply to financial and banking, and insurance companies and to "Fondul Proprietatea" SA.

- **Measures in support of the business environment to overcome financial gridlocks and to turn the commercial circuit around**

Such measures consist in not taxing the reinvested profit; thus, Law No. 329/2009 amended the Fiscal Code in the sense that, in the period 1 October 2009 through 31 December 2010, the profit reinvested in the production and/or purchase of new technological equipment (work machinery, equipment and installations) used to obtain taxable income shall not be taxed.

An important issue is that the taxpayers benefiting from the above exemption shall have to keep the ownership of such assets at least for a period equaling half of their normal operation period. Failure to comply with this obligation shall trigger recalculation of the tax on profit for such amounts and payment of related delay increases, calculated as of the application of the facility.

The transfer of assets during reorganization operations when the assignee takes over the exempted tax reserve, thus undertaking the rights and obligations of the assignor, and the transfer of the assets during the liquidation/bankruptcy

proceedings shall not be deemed a breach of the above obligation.

In addition, Law No. 329/2009 includes several provisions concerning measures purported to facilitate the renewal of National Automobile Fleet, including those intended for agricultural operations, respectively to facilitate the access to financing granted to the beneficiaries in the agricultural and food sectors.

Repealed enactments

Law no. 10/2008 implementing the Program intended to stimulate the National Tractor Fleet Renewal, published in Official Gazette of Romania, Part I, No. 29 of 15 January 2008 (starting from 1 January 2010)

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Banking Law

Name of the enactment

National Authority for Consumer Protection Order No. 570/2009 approving the Norms for the enforcement of Law No. 289/2004 on the legal regime of consumer credit agreements for natural persons ("**ANPC Norms**")

Publication

Official Gazette of Romania, Part I, No. 750 of 4 November 2009

Entry into force

4 December 2009

Connections with other enactments

Law no. 289/2004 on the legal regime of consumer credit agreements for natural persons, as republished ("**Law No. 289/2004**").

Main provisions

ANPC Norms detail certain provisions of Law No. 289/2004, the most important provisions referring to:

- The computation of the actual percentage interest (APR) shall also include the consumer costs related to insurance against the risk of failure to pay in case of decease, invalidity, sickness or unemployment of the consumer, to the extent the credit granting is conditioned by the conclusion of such insurance;
- In the case of publicly promoted products, information of APR/any other costs of the credit must reflect certain conditions, such as: a) the commercial purpose of such information must be clearly provided, using a common language, b) they must not contain technical wording or financial and banking specific wording, etc. ;
- *Fair reduction of the credit's cost* (if the consumer prepays its contractual debts) provides for the creditor's obligation to perform a fair and objective analysis of its advantages of having available cash in relation to the disadvantages arising from the management of

prepayments and from capital reinvestment;

- Creditor's impossibility of using the securities established in its favor, until the fulfillment of its contractual obligations.

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Labor Law

Name of the enactment

Law No. 331/2009 amending Art. 276 para. (1) letter e) of Law No. 53/2003 — Labor Code (“**Law No. 331/2009**”)

Publication

Official Gazette of Romania, Part I, No. 779 of 13 November 2009

Entry into force

16 November 2009

Connections with other enactments

Law No. 53/2003 – Labor Code (“**Labor Code**”)

Main provisions

Law No. 331/2009 amended Art. 276 para. (1) letter e) of the Labor Code, by increasing the amount of the fine charged to legal entities employing persons without an individual employment agreement. Thus, according to the new regulation, employing persons without an individual employment agreement represents a misdemeanor and shall be punished by a fine ranging from RON 3,000 to RON 4,000 for each person employed as such, without exceeding a cumulated value of RON 100,000.

Until the adoption of Law No. 331/2009, the amount of the fine charged to legal entities employing persons without concluding an individual employment agreement was ranging from RON 1,500 to RON 2,000, for each person found.

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Media

Name of the enactment

Law No. 333/2009 on the approval of the Government Emergency Ordinance No. 181/2008 concerning the amendment and supplementation of the Audiovisual Law No. 504/2002 (the “**Law No. 333/2009**”)

Publication

Official Gazette of Romania, Part I, No. 790 of 19 November 2009

Entry into force

22 November 2009

Connections with other enactments

- Audiovisual Law No. 504/2002 (“**Audiovisual Law**”)
- Government Emergency Ordinance No. 181/2008 amending and supplementing Audiovisual Law No. 504/2002 (“**GEO No. 181/2008**”)

Connections with the

Directive 2007/65/EC of the European Parliament and of the Council dated

community legislation

11 December 2007 amending Directive 89/552/EEC of the Council on the coordination of certain Member States' enactments and administrative acts regarding the performance of television broadcasting activities

Main provisions

Law No. 333/2009 clarifies and extends the provisions of GEO No.181/2008, especially with respect to the legal framework of audiovisual broadcasting in digital terrestrial system. New defined terms are thus introduced, such as the *digital terrestrial system* and *license to use radio frequencies in digital terrestrial system*.

The digital terrestrial system is defined as such radio and/or television broadcasting system in which signals are sent from the broadcasting stations to end users under a multiplex form, according to an audio/video digital radio/television broadcasting standard.

The license to use the radio frequencies in a terrestrial digital system refers to such administrative act giving an individual or legal entity, authorized according to law by the National Authority for Management and Regulation in Communications (the "**Authority**") to provide electronic communication networks and services to the public, the right to use radio frequencies in digital terrestrial system for a limited period.

In addition, Law No. 333/2009 expressly mentions that the provision by radio terrestrial means of public radio and television broadcasting in digital terrestrial system services shall be performed by a provider of electronic services communication networks and services, based on the license to use radio frequencies in digital terrestrial system granted to it by the Authority. Such license shall be granted according to special selection procedures. The method to hold such procedures, conditions for granting the licenses to use radio frequencies in digital terrestrial system, and the amount of the license fee shall be established by a subsequent Government Decision.

The validity term of the licenses to use the radio frequencies in digital terrestrial system shall be 10 years, subject to renewal.

Furthermore, Law No. 333/2009 inserts new provisions regulating the cases of withdrawal of the digital audiovisual licenses and the cases of withdrawal of the license to use radio frequencies in digital terrestrial system. The latter may be withdrawn: (a) if the obligations provided under the license are breached; (b) if the holder fails to pay the fee for the use of the spectrum and the default interest within 45 days as of the due date; (b) upon holder's request; (c) further to the

withdrawal of the general licensing regime; or (d) if the holder fails to provide the Authority within 6 months from the application of a fine with evidence attesting to the payment thereof.

Other relevant amendments brought by Law No. 333/2009 include, *inter alia*:

- The obligation to submit the tax certificate of the company holding the license in the case of the assignment of an audiovisual analogical or digital license;
- The director's or author's relieve from liability, as the case may be, for the contents of the broadcasted programs;
- Elimination of the time limit dedicated to teleshopping (the former regulation set a limit of 8 hours per day and an aggregate maximum duration of 3 hours per day for the teleshopping windows);
- Increase of the amount of the misdemeanor related fines and insertion of new facts constituting misdemeanors, especially with respect to the broadcast in digital terrestrial system;
- Insertion of the punishment of imprisonment from 3 months to one year or a criminal fine ranging from RON 5.000 RON to RON 100.000 RON in the case of television/radio broadcasting of program services without broadcasting license or license to use radio frequencies in terrestrial digital system, if the fact constitutes a threat to national safety, public order or public health or may create economic or operational problems to other providers of electronic communication networks or services or to users.

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Natural Gas

Name of the enactment

Law No. 332/2009 approving Government Emergency Ordinance No. 54/2009 on the establishment of certain temporary measures in the field of natural gas ("Law No. 332/2009")

Publication

Official Gazette of Romania, Part I, No. 778 of 13 November 2009

Entry into force

16 November 2009

Connections with other enactments

- Government Emergency Ordinance No. 54/2009 establishing certain temporary measures in the field of natural gas ("GEO No. 54/2009");
- Gas Law No. 351/2004, as further amended and supplemented ("Gas

	Law”);
	<ul style="list-style-type: none"> - Joint Order of the Ministry of Economy and Commerce and of the presidents of the National Natural Gas Regulatory Authority and of the National Mineral Resources Agency No. 102136/530/97/2006 on the capitalization of the natural gas quantities on the domestic market and measures to consolidate discipline in the natural gas field, as further amended and supplemented.
Connections with the community legislation	Directive 2004/67/CE of the Council dated 26 April 2004 on the measures to secure the safe supply of natural gas
Rectifications	On 16 June 2009, the Official Gazette of Romania published a rectification of the contents of GEO. No. 54/2009 with respect to the scope of the temporary measures provided in this enactment, <i>i.e.</i> the concerned consumers are not only the economic operators in the chemical industry, and electricity and heat producers, but all economic operators enjoying a non-interruptible status.
Main provisions	<p>On the one hand, Law No. 332/2009 clarifies the notion “<i>interruptible consumer</i>” and the conditions in which one may decide to opt for such status and, on the other hand, an extension of the term of application of the facility for the supply of gas exclusively from the domestic production to interruptible consumers.</p> <p>Thus, the interruptible consumer shall be the consumer which may contribute to the maintenance of the safe operation of the national transportation system, and of the natural gas distribution systems, by accepting a reduction of the consumption down to shut-off, for the purpose of securing the supply to domestic consumers in the following situations:</p> <ul style="list-style-type: none"> - Partial interruption of the natural gas supply for a period to be established according to national conditions; - Extremely low temperatures in a peak period determined at a national scale; and - Coldest climatic periods, established on a statistic basis every 20 years, when demand of gas is extremely high. <p>To be able to opt for the status of interruptible consumer, the eligible consumer shall have to cumulatively meet the following conditions:</p> <ul style="list-style-type: none"> - Has a minimum hourly constant consumption of 5,000 m³ during October through March; and

- It may be operatively interrupted within maximum 24 hours without affecting the technical safety of its plants and equipment in this way.

In addition, while GEO No. 54/2009 provided a period comprised between June and October 2009 for the application of this facility, the Law No. 332/2009 extends such period until October 2010 and, at the same time, expressly provides an equal treatment for all interruptible consumers as to their supply with natural gas from domestic production.

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Real Estate

Name of the enactment

Law No. 368/2009 approving Emergency Ordinance No. 60/2009 on certain measures for the implementation of "Prima Casă" Program ("**Law No. 368/2009**")

Publication

Official Gazette of Romania, Part I, No. 816 of 27 November 2009

Entry into force

30 November 2009

Connections with other enactments

Emergency Ordinance No. 60/2009 on certain measures for the implementation of "Prima Casă" Program ("**GEO No. 60/2009**")

Main provisions

A first supplementation brought to GEO No. 60/2009 is the extension of governmental program "Prima Casă" (the "**Program**") from facilitating the access of individuals to the purchase of a housing by contracting credits and the hypothesis of the individual's access to the construction of such housing.

Law No. 368/2009 also inserts a definition of the term "housing" for the purpose of the Program, such housing representing "any immovable asset intended as housing, consisting of one or more inhabitable rooms, together with the land, access ways, annexes, facilities, appurtenances, equipment and utilities related thereto, satisfying the habitation requirements of a person or family".

The new regulation circumstantiates even further the beneficiaries of the Program, *i.e.* individuals which, upon the entry into force of the regulation, hold no housing (as provided by GEO No. 60/2009), as well as individuals which did not hold a housing in joint ownership or individually in the past, irrespective of the acquisition method, nor did they purchase a housing subsequent to such date, irrespective of the acquisition method. Law No 368/2009 provides an exception from such rule in the case of individuals holding interests in housings acquired by inheritance, such individuals being entitled to benefit from the facilities of the

Program.

In addition, Law No. 368/2009 renders the agreements whereby the National Fund for Small and Medium-Sized Enterprises Credit Guarantee (the “**National Fund**”) offers guarantees in the name and on behalf of the State to the banks giving credits to individuals for the purchase of a dwelling by means of the Program as authentic writs.

An important novelty brought by Law No. 368/2009 is the insertion of the interdiction to encumber real estates acquired by means of the Program throughout the full term of the credit. In addition, as to the condition of the mortgage right’s rank to be established in favor of the State, it is mentioned that this shall have to be fulfilled before the submission of the application for the guarantee’s payment by the credit grantor. Should the credit grantor receive a rejection of the application for the guarantee’s payment from the National Fund, as per the guarantee agreement, the credit grantor shall be entitled to register its privilege with the land book at the same time with the deregistration from the land book of the legal mortgage established in favor of the State.

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Taxation

Name of the enactment

Law No. 363/2009 on the approval of Government Emergency Ordinance No. 92/2009 on the payment deferral for fiscal obligations which are outstanding because of the effects of the economic and financial crisis (the “**Law No. 363/2009**”)

Publication

Official Gazette of Romania, Part I, No. 800 of 24 November 2009

Entry into force

27 November 2009

Connections with other enactments

Government Ordinance No. 92/2003 on the Fiscal Procedure Code, as republished, as further amended and supplemented

Main provisions

Law No. 363/2009 brings certain changes as regards the payment deferral of fiscal obligations. The most significant changes are as follows:

- One of the conditions which had to be met by taxpayers in order to obtain the payment deferral, i.e. *not to have outstanding fiscal obligations on 30 September 2008* has been eliminated. We remind you that until the date when the Law No. 363/2009 was passed, the payment deferral of fiscal obligations was conditional on the cumulative compliance by the taxpayer of the following conditions:

- (i) it does not have outstanding payment obligations on 30 September 2008; (ii) it submitted all fiscal statements; (iii) it has a clear fiscal record; (iv) no liability was engaged under Law No. 85/2006 on the insolvency procedure and/or joint liability under the provisions of art. 27 and 28 of the Fiscal Procedure Code for the outstanding payment obligations of the debtor which was declared insolvent;
- The securities established and/or the goods provided by the taxpayer in view of establishing interlocutory measures shall amount to (a) 20% of the deferred amount and the interests owed for the payment deferral period, if the deferral is granted for up to 3 months inclusively, and (b) 40% of the deferred amount plus interests owed during the payment deferral period, if the deferral is granted for more than 3 months;
 - Payment deferrals are no longer valid if the taxpayer does not pay, within no more than 30 days as of the due date, its fiscal obligations having payment terms as of the date when the payment deferral decision is issued. If the 30 day-term lapses after 20 December, the fiscal obligations shall be paid until such date;
 - As an exception to the provisions of the Fiscal Procedure Code, the taxpayer owes interests during the validity period of the payment deferral. The interest level is of 0.05% per each day of the payment deferral period, as of the date when the decision is issued and until: (a) the date when the deferral term is met, or, as the case may be (b) the date when the validity of the facility ceases;
 - If, at the expiry of the payment term of the deferred payment obligations the taxpayer does not pay these obligations, it shall owe delay increases as per the provisions of the Fiscal Procedure Code, throughout the entire deferral period.

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