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EUROPEAN BANKING UNION: NECESSARY, BUT NOT ENOUGH TO FIX THE EURO CRISIS

FRITZ BREUSS*

A short history of the European Banking Union

The Lehman Brothers collapse on 15 September 2008, which triggered the global financial and economic crisis (GFC) in 2009, marks a watershed in financial market liberalization and deregulation. Before the GFC in the United States and also in Europe (especially in the context of the Single Market programme), the prevailing philosophy was that greater financial market liberalization improves efficiency, and hence economic growth and welfare.

In 1999, President Bill Clinton abolished the separation of commercial and investment banking, introduced after the Great Depression in 1933 with the Glass-Steagall Act. Many commentators tied the GFC to the Glass-Steagall repeal because it allowed ‘super banks’ (i.e. banks which are ‘too big to fail’) to emerge and changed the culture of commercial banking so that the ‘bigger risk’ culture of investment banking ‘came out on top’ (Stiglitz 2009). Since the GFC the Obama administration and Congress are eager to find a substitute for the Glass-Steagall Act. The Dood-Frank Wall Street Reform and Consumer Protection Act of 2010 included the so-called Volcker-Rule (a ‘Glass-Steagall lite’ version, or proprietary trading ban preventing commercial banks and their affiliates from acquiring non-governmental securities with the intention of selling those securities for a profit in the ‘near term’) and, hence re-enacted a kind of separation of commercial from investment banking.

In Europe the struggle to reform the banking sector after the GFC of 2009 was aggravated by the fact that the eurozone – after the breakout of the Greek crisis in

early 2010 – drifted into a veritable euro (public debt) crisis that split the eurozone into a North (core) group and into a South (periphery) group of member states. The euro crisis also separated the EU27 into the ‘ins’ and ‘outs’ of the eurozone. Whereas the 17 euro area countries are pressing ahead with considerable reforms concerning ‘new economic governance’ (Six Pack, Fiscal Pact, Euro-Plus Pact etc.) and are doing deals to reform the financial sector, non-euro area countries are either sidelined or making their own reform efforts. Britain belongs to the latter group. The UK’s Independent Commission on Banking (ICB) has proposed to ‘ring fence’ retail and small business commercial banking from investment banking. This proposal resembles the Glass-Steagall separation of commercial and investment banking. Although there were concerns whether this proposal would violate the Single Market standards of the EU, an ‘expert commission’ was recently appointed to study the ‘ring fence’ issue for the whole EU Single Market.

After the GFC of 2009 the European Commission made a U-turn in its Single Market liberalisation philosophy and switched from deregulation to reregulation of the financial sector. Early suggestions to create a European Banking Union (EBU) by the European Commission met with little approval. Therefore, an intermediate step was taken with the founding of the European system of financial supervisors (ESFS), consisting of three *European Supervisory Authorities* – a European Banking Authority (EBA in London), a European Securities and Markets Authority (ESMA in Paris), and a European Insurance and Occupational Pensions Authority (EIOPA in Frankfurt). The three European supervisory authorities (ESAs) and a European Systemic Risk Board (ESRB, attached to the ECB) were established as of January 2011 to replace the former supervisory committees.

In May 2012, as part of a longer term vision for economic and fiscal integration, the European Commission (2012b) firstly called for a banking union to restore confidence in banks and the euro. On 12 September 2012, as a first step towards a genuine banking union, the Commission proposed a *Single*

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Supervisory Mechanism (SSM) for banks led by the European Central Bank (ECB) in order to strengthen Economic and Monetary Union. The set of proposals should constitute a first step towards an integrated banking union, which includes additional components such as a single rulebook, common deposit protection and a single bank resolution mechanism (see European Commission 2012f).

The early proposal by the European Commission and the statement by the heads of states or governments of the euro area at their summit on 29 June 2012 (Euro Area 2012) of their intention to embark upon a banking union sparked a storm of protest. These protests initially came from 172 German economists (FAZ 2012) who fear that an EBU with common deposit protection would act like a transfer of private savings from the North to the South. Lastly, they argue that any EBU would only support Wall Street and the City of London. This protest was countered by another group of 7 prominent German economists (Handelsblatt 2012) who underline the need for an EBU in order to stabilize the banking sector in Europe (see also INET 2012; Ökonomenstimme 2012).

With the proposals by the European Commission as of 12 September 2012 and the decisions of the European Council as of 19 October 2012, the foundation has now been laid for a EBU.¹ The European Council agreed to implement the legislative framework of a Single Supervisory Mechanism (SSM) by 1 January 2013, which should be implemented operationally in the course of 2013. This would then allow the ESM direct bank recapitalization as part of a broader strategy of completing the architecture of the EMU. Anyway, the EU (the eurozone) has embarked – step by step as always with EU reforms – on an EBU and in the first round only on the SSM. The two other components of a genuine EBU (i.e. common deposit protection and a single bank resolution mechanism) will follow when politically accepted only later.

In addition to regional efforts (in the United States, the EU or Britain) to fix the financial sector and prevent future ‘Lehman Brothers’ cases on a global basis, in the wake of GFC of 2009 the G20 (see G20 2012) and the Basel Committee on Banking Supervision² quickly started to make suggestions on how to re-regulate and better protect the financial sector from the risk of repeating past failures. However, even after

several G20 meetings since the GFC progress with financial regulatory reforms to definitively stabilize the international financial sectors has only been modest (see FSB 2012a).

The Liikanen-Report (2012) makes new proposals to regulate the banking sector that are somewhat similar to ‘Glass-Steagall lite’, but that do not break with the long-standing universal banking model in Europe. In addition to a recovery and resolution plan as proposed in the Commission’s Bank Recovery and Resolution Directive (BRR) consisting of bail-in instruments and minimum capital standards (like Basel III), the High-level Group recommended a separation of banking business as follows: proprietary trading and other significant trading activities should be assigned to a separate legal entity if the activities to be separated amount to a significant share of a bank’s business. So trading activities should be carried out on a stand-alone basis. Switzerland has already implemented measures like those proposed by the Liikanen-Report in the case of its too-big-to-fail banks like UBS and Credit Swiss (see Krahen 2012).

The EBU is only one building block of a sustainable EMU

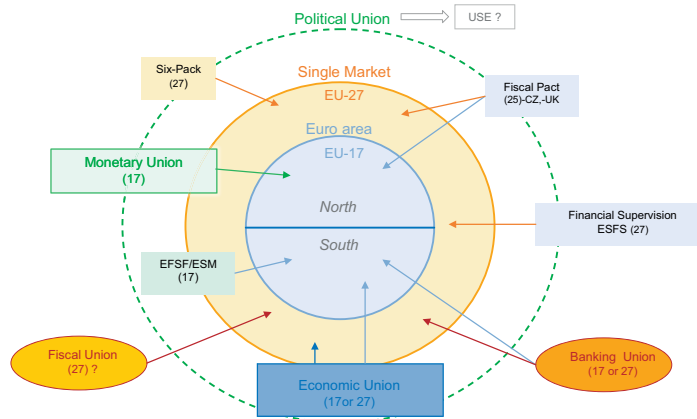
The concept of a European Banking Union is developed by the European Commission (2012f) under the agenda of completing the Single Market. However, it is only one building block in the endeavour to improve the economic governance of EMU (see Figure 1).

Since the breakout of the euro crisis in early 2010, starting with the Greek crisis, the European Union has taken important and far-reaching steps to overcome the crisis and improve the governance of the EMU. Most of these steps were implemented on an intergovernmental basis (e.g. the Fiscal Pact or ‘Fiscal Treaty’ – Treaty on Stability, Coordination and Governance in the EMU – only 25 out of 27 EU member states participate), some on a community basis (e.g. the Six Pack, reforming and strengthening the Stability and Growth Pact (SGP); and the ‘Two Pack’ – further strengthening budget coordination) and implementing a new Macro-economic Imbalances Procedures (MIP); covering all 27 EU countries) and they have created the danger of disintegration in parts of the EU27 and the euro area. Firstly,

¹ The insurance (single) market will be regulated by the new *Solvency II Directive* – a recast of several directives. It is likely to be applicable from 1 January 2014 (see http://ec.europa.eu/internal_market/insurance/solvency/future/index_en.htm).

² The Basel III, starting in 2013 and ending in 2019, requires banks to maintain higher levels of capital, increasing from 2 to 7 percent of risk weighted assets – see Byres (2012).

Figure 1
EUROPEAN BANKING UNION – ONE BUILDING OF A GENUINE EMU



ESFS = European System of Financial Supervisors
 EFSF = European Financial Stabilisation Mechanism
 ESM = European Stability Mechanism

Source: Author's conception.

the euro crisis has split the euro area into a relatively prosperous North and an endangered South – due to lack of competitiveness and excessively high public debts. The euro crisis inflicted further damage in terms of political collateral. On the one hand, many governments were overthrown and in some countries substituted by an expert government (Greece, Italy). More dangerously for the coherence of the European Union, however, was the split into euro-ins and outs, as the latter have been reduced to the status of mere onlookers in terms of events in the euro area. Many new measures/instruments of the new economic governance of EMU developed since 2010 are only applicable to a subset of members of the EU27. All of the new measures are part of the tool kit to correct the construction failures of EMU. The EU or some of its members have created instruments to supervise the financial markets (ESFS covering all 27 countries) and bail-out instruments (EFSF/ESM) that are only applied to the 17 euro area member states.

All of these new governance ingredients have the target, namely to establish a genuine Economic and Monetary Union (EMU), which has to date existed practically only as a Monetary Union (with monetary policy centralized at the ECB). The banking union – although it remains open whether the union only applies to the 17 euro area countries or to all 27 EU member states – will help to complete the second pillar of EMU, namely economic union. According to the far-reaching proposals to create a ‘genuine’ EMU by van Rompuy (2012a; 2012b), an EMU must consist of an integrated financial framework (‘EBU’; at least

SSM) and an integrated budgetary framework (‘Fiscal Union’; fiscal capacity, i.e. own budget for EMU).

The European Commission (2012d) is already referring to a fiscal union when summing up all hitherto new measures/instruments to improve the coordination/centralization of the budgetary policy of member states. This package consists of the European Semester (i.e. stronger economic governance and coordination), Six Pack laws plus (in the pipeline is the Two Pack), the Fiscal Treaty, the Commission’s proposal for Stability Bonds (Eurobonds). The informal Euro-

Plus Pact can also be added to this list. Further steps to complete European Integration would be a ‘political union’ (whatever this means politically in detail), and far in the future, the creation of a ‘United States of Europe’ (USE; see Figure 1) analogous to the United States of America (USA).

A road map towards EBU – between wishful-thinking and reality

Contrary to early ambitious plans, the EBU can only be realised on a step by step basis: the first step is the installation of SSM; which may subsequently be followed by other measures (such as deposit insurance and bank resolution). On the one hand, the slow pace of any change is due to technical problems (“how rapidly can the ECB recruit hundreds or thousands of supervisory experts?”) and, on the other hand, to asymmetric political preferences: the euro periphery countries would be eager to have EBU implemented as quickly as possible in its final form, while the Northern countries are reluctant to be involved in another possible transfer procedure on top of existing fiscal transfer actions in the context of bail-out measures.³ Of course, one may wish for and propose a

³ According to European Commission estimates (2012c, 2), the costs for the EU member states of rescuing the banks during the GFC of 2008/09 were considerable. Between October 2008 and October 2011, the Commission approved 4.5 trillion euros (equivalent to 37 percent of EU GDP) in state aid measures to financial institutions, of which 1.6 trillion euros (equivalent to 13 percent of EU GDP) was used in 2008–2010. Guarantees and liquidity measures account for 1.2 trillion euros, or roughly 9.8 percent of EU GDP. The remainder went towards recapitalisation and impaired assets measures amounting to 409 billion euros (3.3 percent of EU GDP).

Figure 2

A ROAD MAP TOWARDS A EUROPEAN BANKING UNION – FROM SSM TO A GENUINE EBU

	Single Supervisory Mechanism (SSM)	Common Deposit Protection (CDP)	Single Bank Resolution Mechanism (SBRM)
Implementation	2013/14	2015 + ?	2015 + ?
European (euro area) level	<p>ECB</p> <p>ultimate responsibility for euro area bank supervision cooperation with EBA coverage: euro area banks (6.000) Non-euro area banks ?</p>	<p>CDP</p> <p>Common (Single) Deposit Guarantee at EU (euro area) level is future project</p> <p>Political opposition in Nordic countries of euro area strong support in euro area periphery</p>	<p>SBRM</p> <p>European Authority (ECB ?)</p> <p>is future project</p> <p>EBA</p> <p>cooperation with MS in DR-06/2012</p>
National level	<p>National supervisory authorities</p> <p>in cooperation with ECB</p>	<p>DR-7/2010</p> <p>National Deposit Protection since end of 2010: € 100.000 in all EU MS (applies to all aggregated accounts of one account holder at the same bank)</p>	<p>DR-06/2012</p> <p>financed by Resolution Funds (RFs) and Deposit Guarantee Schemes (DGS) optimal target size for DGS and RFs at least 1% of covered deposits held by EU banks</p>
Legal provisions	<p>CRD IV Package</p> <p>bank capitalisation into effect '01/01/2013</p> <p>SSM</p> <p>into effect '01/01/2013 (2014 ?)</p>	<p>DR-7/2010</p> <p>New deposit guarantee schemes (DGS) (European harmonisation)</p> <p>proposal by the Commission 10/07/2010</p>	<p>DR-06/2012</p> <p>for the recovery and resolution of credit institutions and investment firms</p> <p>proposal by the Commission 06/06/2012</p>

Note: DR = Directive; RE = Regulation; CRD = Capital Requirements Directive (DR + 1 RE); SSM= Single Supervisory Mechanism (1 RE ECB; 1 RE EBA-ECB).

Source: Author's conception.

time plan for a full-fledged EBU like the German Council of Economic Experts (2012; also Bofinger *et al.* 2012) did, but the political reality is that EBU is complex and has various aspects and external effects, which are hard to grasp from the outset (see Beck 2012).

The state heads who attended the European Council meeting in October 2012 expressed their wishes to move towards an integrated financial framework open to all the member states that are willing to join it. The European Council (2012, 7) “invites the legislators to proceed with work on the legislative proposals on the Single Supervisory Mechanism (SSM) as a matter of priority, with the objective of agreeing on the legislative framework by 1 January 2013. Work on operational implementation will take place in the course of 2013. In this respect, fully respecting the integrity of the Single Market is crucial”.

SSM

The aim of a better coordinated banking supervision at euro area level is “to break the link between sovereign debt and bank debt and the vicious circle which has led to over 4.5 trillion euros of taxpayers' money being used to rescue banks in the EU” (European Commission 2012e, 3). Pooled monetary responsibili-

ties have spurred close economic and financial integration and increased the possibility of cross-border spill-over effects in the event of bank crises (for the analysis of the risks of cross-border banking in Europe for financial stability, see Allen *et al.* 2011).

The European Commission (2012e) in its road map towards a SSM estimates that from the first day, the ECB will be empowered to take over the supervision of any bank in the euro area if it so decides, particularly if the bank is receiving public support. For all other banks, ECB supervision will be phased in automatically: on 1 July 2013 for the most significant European systemically important banks, and on 1 January 2014 for all other banks. Therefore, by 1 January 2014 all banks in the euro area will come under European supervision.

The roadmap with a timetable of the realization of the EBU project – from the SSM to a genuine EBU – is compiled in Figure 2. The first realization will be the SSM as of 2013/14. The other components of a genuine banking union (common deposit protection and single bank resolution mechanism)⁴ at the EU or

⁴ The German Council of Economic Experts (2012; also Bofinger *et al.* 2012) warn against introducing a Europe-wide deposit insurance (CDP of Figure 2) before establishing a European bank resolution authority (SBRM in Figures 2). The latter should be funded by a bank levy.

euro area level are projects for the future. For the time being there are national schemes for deposits and new Commission proposals for the national recovery and resolution of banks.

On 12 September 2012 the Commission proposed a single supervisory mechanism (SSM) for banks led by the European Central Bank (ECB) in order to strengthen the Economic and Monetary Union.⁵ The set of proposals constitutes a first step towards an integrated banking union, which includes further components such as a single rulebook, common deposit protection and a single bank resolution mechanism. The proposals concern:

- A Council *Regulation* (RE ECB) conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (based on Article 127 (6) TFEU);
- A *Regulation* (RE EBA-ECB) of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority, EBA) as regards its interaction with Council Regulation (EU) No.../... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions; and
- A *Roadmap towards a Banking Union* (Communication).

As the Commission (2012e, 4) stresses in its roadmap, “the creation of the banking union must not compromise the unity and integrity of the single market, which remains one of the greatest achievements of European integration. Indeed, the banking union rests on the completion of the programme of substantive regulatory reform underway for the single market (the single rulebook)”. In view of the fear of a further splitting element in the project EBU and SSM among the euro area members and the non-euro members, the Commission (2012e, 7) also proposes a mechanism that will allow “member states which have not adopted the euro, but would like to participate in the single supervisory mechanism, to cooperate closely with the ECB”.

So far we will embark into an incomplete EBU, but it is better than the present situation of a fragmented (and partly non-transparent) financial market within the Single Market. It is also another step towards

completing the realisation of a Single (Financial) Market.

Divergent interests within the euro area

As already discussed in the context of Figure 1, the GFC of 2009 and the subsequent euro crisis have endangered the European integration project by contributing to political splits at various levels. Accordingly, the interest of donors in the process of bail-out operations *via* the EFSF/ESM during the debt crisis also diverges in the euro area. The installation of SSM as a precondition for direct bank recapitalisation *via* the ESM has also aggravated the divergence of interests in the SSM. Spain in particular (and maybe Ireland), with its huge banking problems, is eager to profit from this arrangement as soon as possible.

This conditionality had been expressed by euro area heads of states or government at the Euro Area Summit of 29 June 2012 (see Euro Area 2012): “when an effective single supervisory mechanism is established, involving the ECB, for banks in the euro area the ESM could, following a regular decision, have the possibility to recapitalize banks directly. This would rely on appropriate conditionality, including compliance with state aid rules, which should be institution-specific, sector-specific or economy-wide and would be formalised in a Memorandum of Understanding. The Eurogroup will examine the situation of the Irish financial sector with the view of further improving the sustainability of the well-performing adjustment programme. Similar cases will be treated equally”.

Open questions on the way towards a genuine EBU

The new project of SSM is only a first step towards a genuine EBU. It is therefore only natural that many questions remain unanswered. Here only some issues are raised either in connection with the realisation of SSM or in the context of future steps towards EBU.

Shadow banking

The European Commission (2012a) has already addressed this problem as well as the need to supervise this sector. On a global scale the Financial Stability Board (FSB) is dealing with the collection of data and is giving policy recommendations to the G20 group. The problems with this sector can probably be best dealt with globally. As they do not belong to the

⁵ See the relevant proposals for two regulations in European Commission (2012f).

ordinary banking sector, the ‘shadow banks’ are outside banking rules and supervision. Alternative ways to bring more transparency and applying rules to this sector are discussed below.

At an EU level the Directive on Alternative Investment Fund Managers (AIFMD)⁶, which takes effect in April 2013, should help to bring more transparency to the AIFM. An AIFM is a manager of an alternative investment fund. The term alternative investment fund encompasses a wide range of investment funds that are not already regulated at European level by the UCITS (Undertakings for Collective Investment in Transferable Securities) Directive. They include ‘hedge funds’, private equity funds, real estate funds and a wide range of other types of institutional fund. The AIFMD is therefore much more than a ‘hedge fund directive’.

According to the second Global Shadow Banking Monitoring Report 2012 (FSB 2012b)⁷ the sector of shadow banking (defined as ‘credit intermediation involving entities and activities outside the regular banking system’ like e.g. hedge funds) grew rapidly before the crisis, rising from 26 trillion US dollars in 2002 to 62 trillion US dollars in 2007. The size of the total system declined slightly in 2008, but increased subsequently to reach 67 trillion US dollars in 2011 (equivalent to 111 percent of the aggregated GDP of all jurisdictions). Compared to last year’s estimate, expanding the coverage of the monitoring exercise has increased the estimated global size of the shadow banking system by some 5 to 6 trillion US dollars. The United States has the largest shadow banking system, with assets of 23 trillion US dollars in 2011 (35 percent of world total), followed by the euro area (22 trillion euros; 33 percent) and Britain (9 trillion US dollars; 13 percent). However, the US share of the global shadow banking system has declined from 44 percent in 2005 to 35 percent in 2011. This decline has been mirrored mostly by an increase in the shares of Britain and the euro area.

SSM only for euro area members?

According to the Commission (2012f, memo FAQ, 2), the SSM should cover all (approximately 6,000) banks

in the euro area. Some member states advocate only the supervision of the systemic banks, the banks ‘too big to fail’. However, relatively smaller banks can also pose a threat to financial stability. Therefore the Commission stresses the necessity for the supervisory tasks conferred on the ECB to be exercised over all banks.

Although the centralisation of the SSM at the ECB is only thought to cover banks in the euro area, the European Commission (2012e, 7) already proposed that EU member states that have not adopted the euro can also participate in the SSM. The exact mechanism for that provision has yet to be worked out. Otherwise a new area of flexible integration may be created or the Single Market of EU27 may be split. In the proposed Regulation concerning the ECB within the SSM (see European Commission 2012f, 6) the Commission explicitly discusses the mechanism and conditions whereby non-euro area member states could participate. These mechanisms and conditions could be similarly to the case of the EBA participation.

Anyway, many euro area countries with strong banking involvements in the new EU member states in Eastern Europe (like Austria) are eager not only for their own banks to take part in the SSM, but also for their subsidiaries in Eastern Europe to do so. The same fears are expressed by the European Bank for Reconstruction and Development in London (EBRD 2012): if not all risks or spill-over risks are covered by the SSM, it is incomplete and open to new crises.

Legal questions surrounding SSM and EBU

One big concern is the possible conflict of competences in the ECB. The Commission (2012f, 7) is therefore eager to stress that monetary policy tasks will be strictly separated from supervisory tasks to eliminate potential conflicts of interest between the objectives of monetary policy and prudential supervision. Consequently, it is necessary to ensure that all preparatory and executing activities within the ECB will be carried out by bodies and administrative divisions separated from those responsible for monetary policy. In order to avoid such potential conflicts of interests the German Council of Economic Experts (2012; also Bodinger *et al.* 2012) recommends delegating banking supervision at the EU level to a European institution outside the ECB. This would also make it easier for non-euro area countries to participate fully in the EBU.

⁶ For more details, see the Commission website on “The EU Single Market: Alternative Investments”, http://ec.europa.eu/internal_market/investment/alternative_investments/index_en.htm#main-contentSec2.

⁷ In the second report of 2012 the coverage was broadened to include 25 jurisdictions and the euro area as a whole, compared to 11 jurisdictions and the euro area in the 2011 exercise. This brings the coverage of the monitoring exercise to 86 percent of global GDP and 90 percent of global financial system assets.

Then there is the open question of the voting power of member states in the council of the new SSM at the ECB. Either the voting mechanism is the same as in the ECB council ('one country, one vote') or – as is urgently requested by the governor of the Bundesbank, Jens Weidmann (see *Neue Zürcher Zeitung* 2012) – a new weighting scheme (according to the capital shares of euro area countries at the ECB's capital) is applied, which gives the large countries (Germany) more weight because the SSM could also involve budgetary costs in the euro area member states (motto: 'no guarantee without control'). The question of how the non-euro area member states that will participate in SSM will be represented in the new SSM (ECB) council remains unanswered.

Can it happen again?

The EBU project is a logical step towards a better functioning EMU in the future. It will be a good instrument for preventing future crises *à la* Lehman Brothers. It is necessary, but not sufficient to resolve the present euro crisis. When the SSM does not cover all of the banks in the euro area or those in the EU27, there may be an opportunity for banks to 'outsource' risks to non-regulated markets (to shadow banks) or to banks 'too big to fail' or 'too big to save' in EU countries that are not covered by SSM. This evasion effect could trigger a new financial crisis.

A sustainable functioning and crisis-resistance EMU has to implement all of the reform steps suggested since 2010 – the bundle of new measures/instruments for better coordination and governance in the EMU (see Figure 1) that are already effective and the new measures considered by Van Rompuy (2012a; 2012b). The urgent problem of the unsustainable public debt dynamic in some of the periphery euro area countries must first be resolved before the present euro crisis can be fixed.

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