

## **TACKLING AGRICULTURAL LAND ABANDONMENT: ITALIAN LEGISLATION ON “LAND BANKS”**

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### *Abstract*

In the context of EU strategy for efficient use of natural resources and the CAP 2014-2020, there has been renewed interest in the issue of abandoned or uncultivated land in Italy. This article analyses the Italian Regions “Land Banks” initiatives for restoring the productive and sustainable use of uncultivated lands and forests. After describing the objectives and operating rules, their innovative and critical aspects are compared with the non-implemented the 1978 State Law on land abandonment and examined in relation to the Italian Constitutional principles of the “rational use of land” and “social function” of private property.

### **1. Introduction**

Agricultural land abandonment can be generically defined as “the cessation of agricultural activities on a given surface of land”<sup>1</sup>, which is therefore no longer farmed for economic, social or other reasons, and has been gradually covered over by scrub and trees<sup>2</sup>. It is traditionally measured as the loss of Utilized Agricultural Area (UAA) not converted into “artificial or afforested” area (EC-JRC, 2013, p. 22).

Significant areas of the European Union (EU) have been affected by agricultural land abandonment for a long time. Although the current extent of abandonment is not known, as there is no single legal or scientific definition or single method of measurement, the phenomenon is of concern to the EU Commission and Member States because of its negative social, economic and environmental effects (EC-JRC,

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<sup>1</sup> This definition by Haddaway et al. (2013) is actually for “farm land abandonment”, however it can be also considered appropriate for the broader term “agricultural land abandonment”. See “Agricultural land (% land area)” in The World Bank Data (<http://data.worldbank.org/indicator/AG.LND.AGRI.ZS/countries/1W?display=map>, consulted on 23 March 2016): “Agricultural land refers to the share of land area that is arable, under permanent crops, and under permanent pastures. Arable land includes land defined by the FAO as land under temporary crops (double-cropped areas are counted once), temporary meadows for mowing or for pasture, land under market or kitchen gardens, and land temporarily fallow. Land abandoned as a result of shifting cultivation is excluded. Land under permanent crops is land cultivated with crops that occupy the land for long periods and need not be replanted after each harvest, such as cocoa, coffee, and rubber. This category includes land under flowering shrubs, fruit trees, nut trees, and vines, but excludes land under trees grown for wood or timber. Permanent pasture is land used for five or more years for forage, including natural and cultivated crops.”.

<sup>2</sup> See EC-JRC, 2008, p. 37.

2013, p. 12)<sup>3</sup>. Such effects as rural depopulation, loss of biodiversity, hydrogeological instability and increase in fire risk<sup>4</sup> depend on local land use history, climate and landscape composition, and therefore differ from one territory to another (Beilin et al., 2014, p. 61).

Agricultural land abandonment seems to be “a result of declines of the viability of extensive (low input) and small-scale agricultural systems”<sup>5</sup>. For this reason, the latest Common Agricultural Policy (CAP) reforms reducing support for extensive farming and decoupling support from production seem to have contributed to an increase in this phenomenon. Recent studies consider that these CAP reforms, together with the high levels of global competition in agriculture, may cause a further increase in abandoned land over the next 20 to 30 years (EC-JRC, 2013).

To assess the risk of farmland abandonment despite the differences in political importance given to the issue by various regions and countries, the EU Commission instructed a panel of scientists coordinated by the Joint Research Centre to include it in the list of agri-environmental indicators to be developed in order to assess the integration of environmental concerns into the CAP<sup>6</sup>.

However, not only the environment is affected by agricultural land abandonment but also food security because there may be a reduction in agricultural production intended mainly for human consumption in an unprocessed or processed state.

It is precisely this aspect – food security - that seems to be the principal land abandonment concern for the Italian State, as Italy is extremely dependent on food imports (as it is on textile fibers and biofuel) since it consumes more than its agricultural land produces (Mipaaf, 2012).

In 2012 the Italian Ministry of Agriculture released its report on the growing loss of agricultural land which threatens long term food security and the environmental and hydrogeological balance of Italy (Mipaaf, 2012). The several causes of agricultural land loss described in the report are ascribed to two macro phenomena: the abandonment of agricultural land and soil sealing (mainly due to urbanization). Although the geographical extension of UAA loss due to agriculture abandonment is higher, the Italian Ministry of Agriculture considers soil sealing the main cause of concern because it is irreversible and affects the best land in terms of localization and fertility. For this reason, at the same time as the report was presented, a bill on enhancing agricultural areas and containing land consumption<sup>7</sup> was also presented.

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<sup>3</sup> Many studies analyse agricultural (or farm) land abandonment as a positive phenomenon when it represents an opportunity for ecological restoration to a state prior to agricultural establishment (e.g. re-wilding). See, for example, Haddaway et al., 2013.

<sup>4</sup> See several studies cited in EC-JRC, 2013, p. 12.

<sup>5</sup> EC-JRC, 2013, p. 12, specifically where it refers to the studies of Baudry, 1991, and Pinto Correia, 1993. On the issue, see also Sali, 2012.

<sup>6</sup> See EC-JRC, 2013, p. 22, where “Farmland abandoned” is defined as “a cessation of management which leads to undesirable changes in biodiversity and ecosystem services”. Therefore, the definition focuses on the environmental effect the phenomenon may cause.

<sup>7</sup> This first draft law on the issue was not approved and additional ones were presented later. The draft law currently under discussion in the Italian Parliament is the result of the unification of several drafts and a series of amendments accepted by the Committee charged with elaborating the final text to be voted by the Assembly (No 2039, available at <http://www.camera.it/leg17/126?tab=1&leg=17&idDocumento=2039&sede=&tipo=>).

This recent initiative by the Italian Government to address sustainable land use and contrast agricultural land consumption can be seen in the context of recent European initiatives where the EU Commission has been especially interested in soil and land<sup>8</sup> as environmental resources, as evidenced by the 2006 Thematic Strategy for Soil Protection<sup>9</sup> and the 2011 Roadmap to a Resource Efficient Europe<sup>10</sup>. In particular, the latter document aims to make the European economy sustainable by 2050 and for “land and soils”, to progressively reach the goal of no net land take for housing, industry, roads, or recreational purposes by 2050<sup>11</sup>. Therefore, *inter alia* it invites Member States to adopt measures limiting land take and soil sealing as far as possible.

While the initiatives of the central Government have mainly regarded soil sealing, Italian regional legislation has focused on agricultural land abandonment, in particular with the recent creation of “land banks”.

The aim of this article is to examine the objectives and operating rules of “land banks” in order to highlight both the innovative and critical aspects of this new regional instrument and analyze it in the context of Italian constitutional principles regarding the private ownership of land.

## 2. The Italian regional “land bank”

The “model” for the so-called *Banca della terra* (Land Bank) “was launched” by the Tuscany Region (Alabrese, 2014, p. 745) with the approval of Law No 80 of 2012<sup>12</sup>. The purpose of this “unusual bank” (Buongiorno, 2015, p. 83) is “to enhance public and private land by using it productively”<sup>13</sup>. In particular, the “bank” is described as a regional instrument to promote access to farm and forest land by private entrepreneurs, especially young farmers<sup>14</sup>. The Land Bank includes a “complete and updated inventory” of publicly or privately owned agricultural land and farms available for leases or concessions<sup>15</sup>.

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<sup>8</sup> For reasons of clarity, it should be noted that there is no international definition of “land”. Moreover, while “land” and “soil” are not synonymous, they are often considered jointly as limited resources. “Soil” is generally defined as “the top layer of the earth’s crust, formed by mineral particles, organic matter, water, air and living organisms. It is the interface between earth, air and water and hosts most of the biosphere” (COM (2006) 231 final, on the “Thematic Strategy for Soil Protection”, p. 2), while “land” can be generically defined as “the part of the earth’s surface that is not covered by water” (Oxford Dictionary, Oxford: Oxford University Press, 2011). More specifically, in the context of land consumption or soil protection, “soil” is generally used for rural land that has yet to be urbanized whereas “land” denotes areas subject to land use planning (on this regard, see Treville, 2011).

<sup>9</sup> COM (2006) 231 final. See also COM (2012) 46 final on “The implementation of the Soil Thematic Strategy and ongoing activities”.

<sup>10</sup> COM (2011) 571 final.

<sup>11</sup> The goal of no net land take by 2050 has been confirmed in the 7th EU Environmental Action Programme (2013-2020) (Decision No 1386/2013/EU of the European Parliament and Council of 20 November 2013 on a General Union Environment Action Programme to 2020 “Living well, within the limits of our planet”). See also Commission Staff Working Document “Guidelines on best practice to limit, mitigate or compensate soil sealing” SWD(2012) 101 final, Bruxelles 12.4.2012. On these documents, see Alabrese (2014).

<sup>12</sup> On Land Bank functioning, see Tuscan regional regulations of 4 March 2014, No 13/R, and of 15 October 2014, No 60/R (available at <http://raccoltanormativa.consiglio.regione.toscana.it/>).

<sup>13</sup> Author’s translation of Article 3 (1) of regional Law No 80 of 2012. On Tuscan legislation, see Di Marzio, 2015.

<sup>14</sup> Author’s translation of Article 2 (1) (a) of regional Law No 80/2012.

<sup>15</sup> Author’s translation of Article 3 of the regional Law No 80/2012.

The Land Bank is managed through the computerized regional agriculture system<sup>16</sup> by “Terre Toscane”, a regional public body which provides for permits and concessions of its own land or land consigned to it by agreement<sup>17</sup> after periodic published calls for the allocation of land included in the regional Land bank.

A section of the “bank” is specifically dedicated to abandoned or uncultivated land, which are defined as “agricultural land no longer used for production purposes for at least three years”<sup>18</sup> and “land already cultivated for crops or pasture, but overrun by shrubs and trees” (excluding those qualified as “forest” by legislation)<sup>19</sup>. The abandoned and uncultivated lands thus defined are listed in the inventory at a local level (by municipalities) and then annually published on the Land Bank website with their cadastral references to enable interested parties to submit applications for land allocation<sup>20</sup>. The application must be accompanied by a detailed “development plan” for the cultivation of the land, to be approved by Terre Toscane<sup>21</sup>.

The approval of the “development plan” allows municipalities to occupy private land identified in the Land Bank for the entire duration of the plan, free of charge, in order to allot it to the applicant who is required to comply with his plan and to pay rent to the owner of the land<sup>22</sup>. The allocation measure results in the termination of any previous rental contract of the land, without any right to indemnity<sup>23</sup>.

However, after the inclusion in the Land Bank of abandoned or uncultivated land, the owner (or the tenant) may undertake to re-cultivate the land within a set period from the communication of its inclusion by presenting a “development plan” and a specific request to the competent municipality<sup>24</sup>.

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<sup>16</sup> Agenzia Regionale Toscana Erogazioni in Agricoltura – ARTEA (<https://www.artea.toscana.it>).

<sup>17</sup> Article 4 of regional Law No 80/2012 which specifies that permits and authorizations establish the conditions, length and mode of use of the land, and rent.

<sup>18</sup> Excluding land not used for production according to EU regulations (Article 5 (2) of regional Law No 80/2012).

<sup>19</sup> Author’s translation of Article 5 (2) of the regional Law No 80/2012.

<sup>20</sup> Among those who can apply, priority shall be given to under 40 years old professional farmers, single or in cooperative (Article 3 of No 13/R implementing regulation cited above).

<sup>21</sup> Article 5 of the regional Law No 80/2012, and Article 1 of 13/R implementing regulation, cited above.

<sup>22</sup> Article 5 (6) of Law No 80/2012 (Author’s translation). The rent price is decided by the “Terre di Toscana” organization based on the regulation’s criteria, but a different amount could be also agreed upon by the owner and the applicant (article 4 of 13/R implementing regulation).

Article 2 of 13/R implementing regulation establishes that the duration of the development plan, i.e. the allocation, should not exceed fifteen years. Tuscan legislation doesn’t mention the Italian law on agricultural lease contracts (Law No 203 of 3 May 1982), which fixes a minimum duration of 15 years for agricultural leases, while legislation of other regions expressly mentions it.

<sup>23</sup> According to article 6 (3) of Law 4 August 1978, No 440 “Regulation of the use of uncultivated, abandoned and insufficiently cultivated land”. See article 4 (5) of 13/R implementing regulation.

<sup>24</sup> Article 1 (8) of 13/R implementing regulation (author’s translation). It establishes a term of 90 days from the official communication of abandoned land inclusion in the “land bank”. Within the same period of time, the landowner can request that the land be removed from the inventory, providing adequate and motivated documentation to the competent municipality proving that the land is not actually abandoned. However, the Tuscan law is not very clear and detailed on this aspect.

In the case no application is submitted for an abandoned land allocation, the competent municipality may directly manage the restoring of the land to cultivation on the basis of a mandatory “development plan” presented to Terre Toscane<sup>25</sup>.

In fact, the Law’s objective is “to promote the re-use of abandoned agricultural land”, and, contemporaneously, “to limit environmental degradation, preserve soil and hydrologic balances, control forest fires, and promote optimal spatial planning through agro-forestry activities”. In other words, redevelopment of uncultivated land should be consistent with the protection of the social, economic and environmental interests of local communities<sup>26</sup>.

### **3. A new attempt to achieve an elusive objective for Italy**

Many Italian regional laws have been adopted following the example of Tuscany<sup>27</sup>. Therefore, many regional “land banks” have been created to play the role of intermediary between land owners and young farmers or to regulate public land concessions to farmers (individually or collectively), for the purpose of better managing publicly-owned land through the direct involvement of the private sector<sup>28</sup>, favoring generational replacement by making agricultural employment accessible to young people, and promoting the sustainable use of agricultural land.

Although the “land bank” is certainly an innovative instrument, it should be remembered that its measures relating to abandoned and uncultivated land are an implementation of the principles and criteria already laid down by Italian State Law No 440 of 1978 which specifically focused on this issue but was never applied.

This State Law (still in force) expressly requires regions to implement its principles in order to recover abandoned and uncultivated lands, to preserve the hydrogeological equilibrium and to protect the environment<sup>29</sup>. Nevertheless right from the start, its formulation made implementation complicated and difficult.

First and foremost, this Law concerns not only abandoned and uncultivated land, but also the so-called “insufficiently cultivated” land which is a restrictively and closely defined category of land and therefore difficult for regions to identify

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<sup>25</sup> Article 1 (9) of Tuscan Law No 80/2012. See also article 6 of 13/R implementing regulation.

<sup>26</sup> Article 5 (1) of Law No 180 of 2012 (author’s translation).

<sup>27</sup> Liguria Law No 4 of 11 March 2014; Lombardia Law No 30 of 26 November 2014; Sicilia Law No 5 of 28 January 2014; Umbria Law No 3 of 2 April 2014; Veneto Law No 26 of 8 August 2014. For comments on and comparison of these and other similar regional laws on abandoned land, see Calabria, 2015.

<sup>28</sup> In this regard, see Access to Land (<http://www.accesstoland.eu/Policy-Environment-56>), where it is noted that “In Italy, the presence of publicly owned land, either directly or indirectly managed by the State (714.500 hectares of UAA, divided into more than 2.600 farms), represents an opportunity for small farmers.” Nevertheless, it should be considered that the recent Italian government decision to provide for systematic sale and lease of public land, mentioned by Access to Land, is mainly due to the need to service the ever increasing public debt (Decree on Liberalization of 2012).

<sup>29</sup> The “land bank” Tuscan legislation, as well as other similar current Italian regional legislation, expressly refers to the 1978 State Law, which is the “framework law” on the issue. The literature on the complex system of competence distribution between State and Regions in Italy is vast. See, among others, Germanò (2003) and Rook Basile (2006). This system, defined by article 117 of the Constitution, is, however, currently being reformed. Regarding attempts to address land abandonment in Italy predating the 1978 State Law, see, among others, Jannarelli (1978); De Simone (1982); Adornato (1992); Clarizia (1994).

and inventory<sup>30</sup>. Moreover, the procedures for identifying, inventorying and allocating abandoned and uncultivated land are not only complex, slow and cumbersome (Adornato, 1992), but the Italian land and property register, which is the essential basis for a complete and reliable inventory, was at the time very much out of date<sup>31</sup>.

In addition to the State Law's internal shortcomings, the EU's CAP evolution of the 80s and 90s favored an economic and social context which worked against its application. In fact, to address the over-production resulting from the 70s and 80s CAP system, 1988 and 1992 EU regulations introduced specific instruments to encourage less intensive production and reduce market surplus (e.g. aid for set-aside of arable land) to support and promote more sustainable agriculture<sup>32</sup>. In other words, despite the fact that the Italian State Law also had environmental protection purposes, it appeared contrary to European agricultural market requirements<sup>33</sup>. Therefore, the issue of uncultivated and abandoned land was soon dropped.

Today the critical aspects that contributed most to the failure of the State Law application seem to have been overcome. The cadastre has been updated and recent regional "land bank" legislation has simplified procedures and does not address the ambiguous category of "insufficiently cultivated land". Moreover, the European context has profoundly changed and recent CAP reforms (the 2008 CAP Health Check and the 2013 reform for 2014-2020) have gone in the opposite direction providing for supports for the productive use of land<sup>34</sup> and abolishing set aside. In particular, for the first time in many years, the latest reform mentions food security as one of the economic challenges of agriculture, elevating the supply of food to

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<sup>30</sup> Indeed, only a few regions adopted a specific legislation to implement the State law, and paradoxically they were not those with a high percentage of uncultivated and abandoned land. In this regard, Adornato, 1992, p. 288, notes that Italian case law concerning many formal and schematic judgments on regional legislation dealt the fatal blow to the State Law (see Adornato also for other references).

<sup>31</sup> This problem related to the application of the State Law is well described by Adornato, 1992, p. 285 (also for references). On the specific issue of the inventory realization, see Rook Basile (1980).

<sup>32</sup> See: Council Regulation (EEC) No 1094/88 of 25 April 1988 amending Regulations (EEC) No 797/85 and (EEC) No 1760/87 as regards the set-aside of arable land and the extensification and conversion of production; Council Regulation (EEC) No 1096/88 of 25 April 1988 establishing a Community scheme to encourage the cessation of farming; Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (all regulations are available at <http://eur-lex.europa.eu/homepage.html>).

<sup>33</sup> See, recently, Germanò, 2015, p. 193. See also Jannarelli, 1990, p. 188, and Adornato, 1992, p. 286. Instead, Boetti, 1999, expresses a different opinion on the CAP influence on the application of 1978 Italian Law.

<sup>34</sup> See, for example, the definition of "active farmer" laid down by Article 9 of regulation EU No 1307/2013 cited above.

the primary role of the agricultural sector<sup>35</sup>. In this context, the risk of land abandonment increases in importance especially for remote and less fertile areas of the EU.

Specifically with regard to Italy, it is interesting to note that the same economic, social and environmental conditions that determined the 1978 State Law are once again present: an economic crisis, high levels of unemployment among young people and hydrogeological instability. Therefore, interest in tackling the abandonment of agricultural land is reviving also because of food security concerns, which are of importance to a country so dependent on food imports.

While the current regional legislation on “land banks” commendably also deals with the recovery and management of public or private forest resources, most of which are currently abandoned, “forests” (as defined by Italian legislation<sup>36</sup>) remain excluded from the definition of “abandoned and uncultivated land”, in accordance with the choice made by the 1978 State Law<sup>37</sup>. This means that private abandoned forests cannot be subject to occupation and subsequent allocation measures by competent public authorities. In other words, the allocation of abandoned forests to young farmers by enforcement is not possible, even though forests not productively managed in Italy are increasing, with consequent concerns about risk of fire.

Lastly, it remains to be seen whether offering owners the possibility of presenting a request to recover and re-cultivate abandoned or uncultivated land included in the regional “land bank” will represent an obstacle or an opportunity for the achievement of the law’s objectives<sup>38</sup>.

#### **4. Keeping land in use: a landowner’s obligation in the Italian constitutional framework**

The idea of creating a special bank to be a custodian to hold special wealth (Marzio, 2015) such as agricultural land is certainly evocative and effective.

To preserve it and avoid depletion, this special wealth needs to be used in a productive and sustainable manner. On the contrary, not cultivating it means neglecting or abandoning it with all the negative economic, social and environmental effects mentioned above. It is precisely this abandoned productive resource which has an impact beyond the merely private sphere of the owner that is to be registered in the inventory of a “public bank”, as a prerequisite for

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<sup>35</sup> COM (2010) 672 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future”, Bruxelles, 18 November 2010, p. 4. The document specifies that in the future the CAP aims to “preserve the food production potential on a sustainable basis throughout the EU, so as to guarantee long-term food security for European citizens and to contribute to growing world food demand, expected by FAO to increase by 70% by 2050... Europe’s capacity to deliver food security is an important long term choice for Europe which cannot be taken for granted.” (p. 2). The other CAP challenges mentioned are “environmental and climate change” and “territorial balance” (p. 5).

<sup>36</sup> Article 2 of legislative decree No 227/2001 “Orientamento e modernizzazione del settore forestale”.

<sup>37</sup> About the 1978 State Law, see Carrozza, 1989, p. 118, and Adornato, 1992, p. 288.

<sup>38</sup> Regarding the analogous landowner’s “right” established by the 1978 State Law, Adornato, 1992, p. 288, talks about “excessive safeguarding” (“*eccesso di garantismo*”).

occupation and subsequent allocation measures<sup>39</sup>. The owner is thus “penalized” for a sort of negligence, because he is “guilty” of not having cultivated the land for some years (Calabria, 2015)<sup>40</sup>.

In so doing, land bank legislation and the 1978 State Law implement the Italian Constitutional principles regarding private property and especially private property of agricultural land<sup>41</sup>. According to article 42, private property is, in fact, recognised and guaranteed by the law, which however may “prescribe its limitations so as to ensure its social function”. In the case of private ownership of land, a productive good, the “functionalization” is specified by article 44 of Constitution where “ensuring the rational use of land and equitable social relationships” are identified as the purposes of the “obligations and constraints” imposed by law. Specifically, “the rational use of land” today means not merely a maximization of agricultural productivity, but sustainable land management<sup>42</sup>.

The land bank legislation, therefore, clearly expresses an Italian Law principle consistently asserted in agricultural law literature<sup>43</sup> according to which the landowner not only has powers related to the land, but also duties, which are expressly connected to its conservation as a productive resource in order to prevent environmental, economic and social risks (Granara, 2014).

Otherwise, public authorities “managing” the “bank” may have an important role in recovering the resource, directly or through selected private young farmers, as fortunately land abandonment is not an irreversible process.

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<sup>39</sup> See Calabria, 2015. It should be noted that the allocation measure may involve someone other than the land owner, e.g. in the case of an agricultural lease agreement.

<sup>40</sup> However, since the final objective of the law is to put land to productive use once again, the punitive intention towards the “absentee owner” is actually mitigated as the abandoned-land owner can also submit a request to re-cultivate the land within a specified period of time from the communication of its inclusion in the land bank (Gullà, 1995, p. 93).

<sup>41</sup> On the 1978 State Law, see especially De Simone (1982, p. 63; *ivi* also for other references).

<sup>42</sup> The English version of the Constitution of the Italian Republic is available at [https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf).

On the social function of property, there is a much literature. With special regards to land ownership, see, among others, Bolla (1963); Rodotà (1967); Irti (1972); Capizzano (1976); Gullà (1995).

<sup>43</sup> See, among others, Carrozza (1993, p. 30), who also notes that Constitutional article 44 is closely connected to article 41, which states among other things that by law businesses can be “oriented and co-ordinated for social purposes”, and both constitute the basis of the special protection that the Italian legal system provides for agricultural property (p. 32).



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