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Mr. Charles Roxburgh
HM Treasury
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Dear Madam,

EDF Trading welcomes this opportunity to provide feedback and input to the Fair and Effective Market Review. Please find below our comments to your specific questions.

Should you require any clarifications or further information, do not hesitate to contact me at 020 761 4547 or transmissionandregulation@edftrading.com.

Best regards,

Andrea Bonzanni
Regulatory Advisor

EDF TRADING

What does 'Fair and Effective' mean for FICC markets?

Q1: The Review would welcome respondents' views on the definition of 'fair and effective' FICC markets proposed in Section 3. Does it strike the right balance between safeguarding the interests of end-users without unnecessarily impeding the effectiveness of FICC markets? Are the concepts of transparency, openness and equality of opportunity appropriately specified? And how does the definition compare with those used in other markets, jurisdictions, organisations or legislation?

We broadly support the definition of 'fair and effective' FICC markets and the specification of concepts such as transparency, openness and equality of opportunity. However, we would like to set out the following comments:

FICC markets are largely wholesale markets in which retail clients or consumers have little participation. We do not think that wholesale markets should be subject to the same principles and standards as retail markets. In wholesale markets, counterparts are professional firms that enter commercial transactions as willing participants, and no one is forced to accept a price which is offered (*caveat emptor* principle) with the underpinning of robust legislative arrangements to address market manipulation and, in the case of power and gas, a very detailed framework of sectoral regulation (including a dedicated Regulation focusing on prohibitions for market manipulation and insider trading and ensuring high degrees of transparency). Therefore the existence of a comprehensive regulatory framework in FICC markets (particularly power and gas) needs to be kept in mind by the Review. In this respect, we applaud the recognition in the Consultation Document that there is a sufficient presence of regulation surrounding FICC markets, particularly in light of the recent pace of reform. We support the minimisation of the cost or operational impact of regulation, avoidance of double regulation or gold-plating. Enforcement of existing regulation and tools should be prioritised.

We believe that a major theme underlying the effectiveness of a market is liquidity. A well-functioning market must be underpinned by sufficient liquidity in order to have consistent observable and robust prices which market participants are confident transact at, narrow spreads, and the ability to execute transactions or a series of transactions or strategies. It should be noted that the availability of liquidity stems from the presence of a range of diversified market participants. If regulation becomes too onerous, it may result in participants and liquidity providers withdrawing from markets, resulting in less liquid and thus less effective markets. The Review should consider this in the context of considering introducing further regulation and/or other regulatory measurements.

There is also a need to ensure effective transparency in FICC markets. All markets are subject to high degrees of pre-trade transparency and, with the advent of REMIT and EMIR transaction reporting, regulators will have access to all transactions. EDF Trading would support the publication of (anonymised) EMIR and REMIT transaction data (by Trade Repositories or relevant national regulatory authorities) to further enhance transparency levels. In addition, the existence of MAR/MAD and REMIT ensures there is a very high standard of disclosure of fundamental data which works to build confidence in pricing in markets. The transparency requirements in REMIT for power and gas are further enhanced by additional disclosure requirements set out in the Third Energy Package.

A framework for evaluating fairness and effectiveness

Q2: Of the six themes identified in Table A on page 5 (market microstructure; competition and market discipline; benchmarks; standards of market practice; responsibilities and incentives; and surveillance and penalties), which do you consider to be the most important factors contributing to the recent series of FICC market abuses? In which other areas do you believe the fairness and effectiveness of FICC markets globally may be deficient? Do these answers vary

across jurisdictions, or specific markets within FICC? Are there any other important areas of vulnerability that are not identified in the table?

We feel that the themes identified in Table A, being **market microstructure**, **competition and market discipline**, **benchmarks**, **standards of market practice**, **responsibilities and incentives**, and **surveillance and penalties**, are fairly broad and equally and adequately address the factors contributing to FICC market abuses.

We believe that ongoing regulatory reforms need to be fully implemented before any areas of vulnerability are properly mapped and further measures considered.

In the meantime, there should be a focus on current deficiencies in the area of cross-border regulatory co-operation. There are numerous examples of inconsistencies in the regulatory approach of different jurisdictions, particularly in the area of OTC derivatives, which is the most 'global' financial instrument. This can cause difficulty of application and increases the risks of regulatory inconsistency. Insufficient cross-border cooperation between regulators risks leading to market distortion, fragmentation, reduction in competition and higher costs for commercial firms seeking to hedge risks related to their core business.

Barrier and digital options

Q3: Do trading practices involving barrier or digital options pose risks to the fairness and effectiveness of one or more FICC markets? How hard is it to distinguish between hedging and 'defending' such options in practice? Should further measures be taken to deal with the risks posed by barrier options, whether through market-wide disclosure of significant barrier positions, an extension of regulation or some other route?

As with many other financial instruments, barrier and digital options are useful tools and are not inherently improper to use. These products are already covered by effective market abuse legislation and do not require special attention or disclosure.

Market microstructure

Q4: Does the market microstructure of specific FICC markets — including trading structures, transparency, asset heterogeneity or market access — enhance or diminish fairness and effectiveness? Where there are deficiencies, will recent or in-train regulatory or technological changes improve the situation, or are further steps needed? How do these answers vary across jurisdictions, or specific markets within FICC?

FICC markets each carry their own peculiarities and challenges which may affect fairness and effectiveness. We feel that MiFID II/R will act to homogenise the approach taken to different markets.

As stated in our answer to Q1, we believe that markets must be underpinned by sufficient liquidity to function well and that liquidity stems from the presence of a range of diversified market participants. Market micro-structure and regulation should not discourage liquidity providers from participating in the market.

In fixed income:

Q5: Is greater use of electronic trading venues for a wider range of market participants possible or desirable? Are there barriers preventing a shift to a more transparent market structure?

We do not have comments on this question.

Q6: Is standardisation of corporate bond issuance possible or desirable? Should standardisation be contemplated across a broader range of fixed income products? How could that be brought about?

We do not have comments on this question.

Q7: Should the new issue process for bonds be made more transparent through the use of auction mechanisms, publication of allocations or some other route?
We do not have comments on this question.

In foreign exchange:

Q8: Are there risks associated with internalisation and last look practices? Are there barriers preventing increased pre and post-trade transparency in foreign exchange markets?

We do not have comments on this question.

Q9: Are there barriers impeding the development of more comprehensive netting and execution facilities for transacting foreign exchange fix orders?

We do not have comments on this question.

In commodities:

Q10: Are there any material barriers preventing greater transparency in OTC commodity derivatives markets? If so, what could be done to remove them?

Prior to addressing the question, we would question why OTC markets should be seen as less transparent than exchanges and other trading venues as pre-trade data are fully accessible to participants in these markets via dedicated broker platforms and transaction data are now collected by Trade Repositories. As argued in our answer to Q1, EDF Trading would support the anonymous publication these data by Trade Repositories or relevant national regulatory authorities. As such, we would question the need for even greater transparency in OTC commodity markets.

As the Review acknowledges, MiFIDII/R and EMIR will bring about a significant shift in the market and a more transparent market structure. With the implementation of EMIR (reporting to trade repositories) and of MiFID II (post-trade transparency, position reporting to regulators for the purpose of position limits rules), transparency vis-à-vis the regulators and market participants of commodity derivatives markets is in our view at a sufficient level. MiFID II will also introduce the category of Organised Trade Facilities (OTFs), which will ensure that screen- or voice-brokered platforms used for commodity trading will have to be authorised by national regulators, be subject to organisational requirements and comply with rules on the transparency of trading processes and the execution of orders.

Some commodity derivatives are also subject to robust sector regulators and we urge the Review to promote coordination and collaboration between financial and sector-specific regulators. In the field of European natural gas and power, REMIT mandates from early 2016 the reporting of all transactions and fundamental data to European energy regulators.

Only once ongoing regulatory reforms are fully implemented, will it be possible to assess the existence of gaps and the need for further intervention. Any earlier action would be imprudent and would risk disrupting the ongoing implementation work. UK authorities should also pay utmost attention in evaluating whether any potential issues are UK-specific or European/global in nature. This is a fundamental element to consider before introducing further measures in the UK, as we are pressing for global consistency and national regulators would not usually want to place their own firms at a disadvantage or encourage regulatory arbitrage away from the UK.

Regulatory measures:

Q11: Are there any areas of FICC markets where regulatory measures or internationally co-ordinated regulatory action are necessary to address fundamental structural problems that exist?

Since the advent of Dodd-Frank, we have observed a balkanisation of liquidity between US and 'Rest of the World' liquidity pools. The advent of MiFID II risks amplifying the balkanisation and turning formerly global markets into ineffective and more costly local trading centres. It is important that regulatory authorities work on global solutions.

Conflicts of interest and information flows

Q12: Where do potential conflicts of interest arise in the various FICC markets, and how do they affect the use and potential abuse of confidential information, both within and between firms?

There are issues that arise over the use of proprietary information and ensuring no abuse ensues. To this end, we would like to highlight that MAR extends the scope of market abuse rules in terms of products and markets. In particular MAR includes rules on Chinese walls, investment research and surveillance and reporting of suspicious transactions as well as the new provisions on market soundings. Power and gas markets are further regulated by REMIT and strong sector regulators.

We see no further gaps to be filled and believe that the focus for the coming years should be on the implementation of and compliance with these new rules. We would urge regulators to be mindful of the broader landscape of implementing new regulations on the part of market participants. The new regulations require follow through by further training, compliance tests and commercial team engagement. Whilst this is time consuming, it is a key priority to ensure full implementation and embedding of the new regulations.

Q13: How can the vulnerabilities posed by such conflicts be reduced? Are existing internal structures and control procedures sufficient? Where they are not, are further internal management controls required (such as better trading floor design and/or closer monitoring of electronic communications within and between firms) or is more radical action required to remove conflicts altogether?

A large majority of firms are set up in a way so as to avoid conflicts. EDF Trading has put in place:

a) preventative controls such as segregation of individual duties and structural segregation of functions (including physical separation of teams);

b) retrospective controls and surveillance, whereby all actions undertaken by the trading teams are recorded, monitored and can be accessed in case of investigation.

These controls are regularly reviewed by internal reviews, corporate audits and also mandatory annual external audits that certify their existence and robustness of the control frameworks.

We strongly believe that firms do not need more regulation and radical action is not required. Asset-backed traders such as EDF Trading would find it difficult to further separate functions even more without fundamentally changing the business model and the nature of an integrated business. It may risk forcing companies towards a sub-optimal business model.

Competition and market discipline

Q14: Is there a relationship between the level of competition in FICC markets globally and the fairness and effectiveness of those markets? What risks are posed by the increase in concentration seen in some FICC markets? In answering this, please have regard to the geographical scope of any relevant markets.

It is difficult to determine the exact link between competition and the effectiveness and fairness of certain FICC markets and we are therefore not in a position to make specific comments. On an anecdotal level, we observe that a more competitive market is likely to improve fairness and effectiveness by improving choice and lowering prices. However, attempts to artificially introduce more "fairness" into markets often result in lower competition, with detrimental effects on fairness and effectiveness in the longer run.

Promoting effective competition through market forces

Q15: To the extent that competition is currently ineffective in any of the FICC markets, are there market-led initiatives, technological or structural changes that may remedy this situation?

We have observed in recent years a tendency towards electronic trading and brokering. We also note that innovations that have the potential to alleviate some of the capital and collateral pressures on market participants have been inadvertently hampered by regulation. Finally, we would like to remark that there are naturally illiquid specialist markets in which the level of competition will inevitably remain low.

Q16: Are there any lessons that can be drawn from experiences in other financial markets (or indeed other markets) about the ways that alternative or evolving market structures could impact on competition in FICC markets?

It is important that regulators strive for global coherence and consistency of regulatory regimes. For example, with the Level 1 text of MIFIDII/R now approved, the European and U.S. regimes will not be able to converge in some areas, creating obstacles to competition, barriers to entries for foreign firms and additional operational costs for market participants. Going forward, there should be greater involvement of international global regulatory bodies at Level 1 to ensure that this does not happen.

Q17: How effective is market discipline in enforcing sound market practices in each of the key FICC markets? What could be done to strengthen it?

On Commodities, exchanges (LME, ICE, Life) have implemented position management regimes that have proved effective and now the European Union is about to implement position limits regime through MiFID II.

With such a position limits regime (provided that it is appropriately designed with regard to the netting of positions, the hedging exemption and the measure of the deliverable supply that will serve as a basis for the expression of limits), the European Union will have a sufficient regulatory regime and we do not see any further regulatory intervention on commodity derivatives markets that would be necessary.

Promoting effective competition through regulatory and legislative initiatives

Q18: In what ways might competition in any of the key FICC markets usefully be addressed by competition authorities (e.g. by assessing the state of competition in relevant markets)?

Market monitoring by competent authorities and sectorial regulators are in our view the best tools in the hands of public authority to promote competition.

Q19: Are there any additional regulatory reforms that could be helpful in promoting competition and market discipline in FICC markets?

We would remind the Review that a host of regulatory reforms (EMIR, MiFID II/R, MAR as well as sector regulation such as REMIT) has yet to reach the end of the implementation stage and we do not think it is appropriate to design further regulation before the various interdependencies and complexities created by recent rules are fully understood.

We would encourage regulators to harness market forces rather than constrain them and remove regulation that is not working. Fine tuning of regulation is encouraged; regulators should take stock of what is in place, rather than creating new rules.

Q20: Is there a need for better awareness and understanding of the existing competition framework among FICC market participants, both at firm and individual level? How do you think that might be best achieved?

Firms and market participants are always required and encouraged to keep its employees informed about competition rules. Competition law is very complex, and therefore, educational exercises would be helpful to assist the market's understanding of the rules.

We welcome external training and believe that the FCA and Competent Markets Authority (CMA) can play a central role in this area. Authorities need to be mindful that the more complex competition law, the greater the need for awareness and training.

Benchmarks

Q21: Do current domestic and international initiatives by industry and regulators to improve the robustness of benchmarks go far enough, or are further measures required?

Ongoing initiatives on benchmarks certainly go a long way in bridging the gaps of the regulatory frameworks on benchmarks that were implemented over recent years. We would advise the Review to wait for the current reforms to be finalised and implemented before drawing conclusions on the robustness of the framework and the need for further measures.

Industry-level measures

Q22: What steps could be taken to reduce the reliance of asset managers and other investors on benchmarks?

We feel that benchmarks play an important role for buy-side and sell-side market participants alike. We believe that there should not be reduced reliance on benchmarks, but sufficient assurances that benchmarks are governed and used appropriately.

In the spirit of harmonisation, we would encourage the Review to engage with other National Competent Authorities (NCAs) and pan-European regulators to harmonise language and principles (in particular the ESMA principles relating to benchmarks published on 6 June 2013) such that they can be used interchangeably.

Q23: What additional changes could be made to the design, construction and governance of benchmarks?

We do not have any comment to this question.

Q24: Should there be an industry panel to discuss benchmark use and design with the aim of assisting industry transition?

We do not have any comment to this question.

Regulatory action

Q25: What further measures are necessary to ensure full compliance with the IOSCO Principles for financial benchmarks by all benchmark providers?

We do not have any comment to this question.

Q26: How can the regulatory framework provide protection to market participants for benchmarks administered in other jurisdictions in a proportionate way?

We do not have any comment to this question.

Standards of market practice

Q27: Are existing sources of information regarding standards of market practice across FICC markets globally: (a) already sufficiently clear (or will be once current regulatory reform has concluded); (b) sufficient, but in need of clearer communication or education efforts; or (c) not sufficiently clear, requiring more specific guidance or rules to provide more detail or close genuine gaps?

As a market participant active in a number of specific FICC markets, we believe that standards of market practice are generally sufficiently clear. We do not see the need for additional rules in such a period of intense regulatory change.

Q28: Box 7 on pages 36–37 discusses a number of uncertainties over FICC market practices reported by market participants, including: the need for greater clarity over when a firm is acting in a principal or an agency capacity; reported difficulties distinguishing between legitimate trading activity and inappropriate front-running or market manipulation; and standards for internal and external communication of market activity. To the extent that there are uncertainties among participants in the different FICC markets over how they should apply existing market standards in less clear-cut situations, what are they?

We do not have specific comments on the cases reported in Box 7.

Q29: How could any perceived need to reduce uncertainties best be addressed: (a) better education about existing standards; (b) new or more detailed market codes on practices or appropriate controls; or (c) new or more detailed regulatory requirements?

We believe there cannot be a "one-size-fits-all" approach and the best way forward is a mix of (a), (b) and (c) depending on the exact uncertainty. As stated above, we do not see a need to produce further rules at this stage.

Will these uncertainties be dealt with by current reforms?

Q30: How can the industry, firms and regulators improve the understanding of existing codes and regulations by FICC market participants and their managers?

Refresher courses similar to those of Continuing Professional Development (CDP) can be used to update knowledge and behaviour. Workshop with participants from industry and regulators can also be a useful tool.

Q31: Should there be professional qualifications for individuals operating in FICC markets? Are there lessons to learn from other jurisdictions — for example, the Financial Industry Regulatory Authority's General Securities Representative (or 'Series 7') exam?

Firms already ensure that their staff possesses relevant professional qualifications. At EDF Trading, traders need to pass the relevant FCA-recognised examinations before EDFT registers them as CF30 traders with the FCA and allow them to trade.

We would recommend that the leading industry trade associations take care of ethics training for traders, but believe the impact of ethics training is not tangible and its importance is often overstated. .

Can the industry help to establish better standards of market practice?

Q32: What role can market codes of practice play in establishing, or reinforcing existing, standards of acceptable market conduct across international FICC markets?

Market codes could be seen as more flexible and capable of being updated more easily to track market innovation. Also, where developed by industry, they can be developed in a language that is more accessible to the relevant market participants. If a gap in regulation is identified, market codes can help to establish guidance and best practices.

Q33: How would any code tackle the design issues discussed in Section 5.4.3, i.e.: how to ensure it can be made sustainable given industry innovation over time? How to differentiate it from existing codes? How to give it teeth (in particular through endorsement by regulatory authorities or an international standard setting body)? How to communicate it to trading teams? Whether, and how, to customise it for individual asset classes?

Where a market code is deemed necessary, if developed and maintained by industry, it stands most chance of meeting and tracking market expectations and addressing real market concerns. It is also likely to be phrased in language more accessible to trading teams. Whether or not to customise market codes for individual asset classes will depend upon the particular issues being addressed and market feedback.

Should the scope of regulation be extended?

Q34: In the context of implementing MiFID 2, which of the FCA Principles for Businesses should apply in relation to MiFID business with Eligible Counterparties?

We do not have comments on this question.

Q35: Are there any financial instruments that should be brought more fully into the scope of regulation in order to improve the fairness and effectiveness of specific FICC markets? For any instruments proposed: (a) what protections does the current framework provide; (b) what gaps remain of relevance to fairness and effectiveness; and (c) what is the cost/benefit case, bearing in mind the Review's Terms of Reference as set out in Section 1?

The scope of commodity contracts that are in the scope of MiFID has always been uncertain, particularly regarding physical forwards traded on certain trading venues. Market participants need legal certainty and want to know precisely what are the boundaries of the definition of financial instruments are. In the context of the implementation of MiFID II, it is important for market participants to have a list of platforms registered as OTFs to assess what the scope of financial instruments will be.

Financial regulation should apply only to contracts that are financial by nature as opposed to contracts that are commercial by nature, in the sense that they are primarily for the physical supply of the underlying commodity.

Responsibilities, governance and incentives

Q36: How much of a role did inadequate governance, accountability and incentive arrangements play in the recent FICC market abuses, and to what extent do these remain potential vulnerabilities in FICC markets globally? In addition to on-going regulatory changes, what further steps can firms take to embed good conduct standards in their internal processes and governance frameworks? And how can the authorities, either internationally or domestically, help to reinforce that process, whether through articulating or incentivising good practice, or through further regulatory steps?

The structures around incentives have historically been problematic. Current regulatory initiatives to take on remuneration practices (i.e. bonuses) should do much to address these shortcomings. More broadly, we believe that incentives can be substantially improved by placing responsibility in the hands of individuals and senior management, making them accountable. This approach is supported by the FCA.

The culture of a firm is also vital to implement and maintain good conduct standards. A strong ethical culture will enable a firm to react to difficult situations and acknowledge certain types of behaviour that are unacceptable.

Firm-wide initiatives to improve incentives and governance

Q37: Do respondents' agree that the thematic areas highlighted in Section 5.5 are key priorities for FICC firms (fine-tuning performance measures; adjustments to remuneration; attitudes towards hiring, promotion and advancement; closer board involvement in governance of FICC activities; and clearer front line responsibilities)? What specific solutions to these challenges have worked well, or could work well? And how best can the authorities help to support these initiatives?

We agree. EDFT is particularly focused on tying performance measures to conduct, which automatically impacts remuneration of individual and teams. These practices are overseen by independent governance processes such as a remuneration committee, an audit committee and high level business committees and Boards. Whilst this has always been a focus of our business, it has recently been strengthened. It is therefore too early to draw final conclusion on the impact of these solutions, even though they are generally perceived as working well.

Market wide initiatives to align market conduct, incentives and governance

Q38: To what extent could the Banking Standards Review Council help FICC market participants to raise standards collectively — in particular, are there other steps that could be taken to help complement or extend this initiative in FICC markets for non-banks and internationally?

We do not have comments on this question.

Regulatory initiatives to improve governance and incentives

Q39: Are there other regulatory measures the authorities could take to strengthen personal accountability or otherwise improve the way firms manage incentives and governance? In particular, should any or all of the measures in the Senior Managers and Certification regime be extended to non-bank firms active in FICC markets?

We do not have comments on this question.

Surveillance and penalties

Q40: What role can more effective surveillance and penalties for wrongdoing play in improving the fairness and effectiveness of FICC markets globally? How can firms and the industry as a whole step up their efforts in this area? And are there areas where regulatory supervision, surveillance or enforcement in FICC markets could be further strengthened?

There are currently heavy penalties that are effective so we would recommend no further regulation as available tools seem appropriate.

MiFIDII/R, EMIR and REMIT trade reporting will make it easier to identify improper activity. Regulators can properly resource themselves by engaging with industry and put in place tools to better understand the market and better use the data at their disposal.

Firm level surveillance

Q41: How can firms increase the effectiveness of their own surveillance efforts across FICC markets globally? What role could the industry play in helping to explore best practices on how to make whistleblowing and other similar regimes more effective? Is there scope to make greater use of large scale market data sets and electronic voice surveillance to help detect cases of abuse in FICC markets? Are there other potentially effective tools?

Firms can conduct monitoring and surveillance of all communication media, as is standard practice at EDF Trading. These measures support the development of a strong culture within the organisation.

Firm level penalties

Q42: Are there processes or structures that can allow firms to punish malpractice by their own staff more effectively (for example, penalties for breaching internal guidelines)?

Yes. There are tools in place and firms proactively enforce their own internal policies (see our answer to Q41 above).

Q43: Could firms active in FICC markets do more to punish malpractice by other firms, for example by shifting business and reporting such behaviour to the authorities?

There is already a requirement on market participants report malpractice and suspicious activities by other firms. It is, however, difficult for firms to state with a reasonable degree of certainty whether certain anomalous behaviours constitute malpractice as there is not sufficient information on the nature of other firms' business and their strategy.

Regulatory level surveillance and supervision

Q44: Is the current supervisory approach and level of intensity dedicated to supervising conduct within the UK wholesale FICC markets appropriate?

We do not have comments on this question.

Q45: Are there ways to improve the data on FICC market trading behaviour available to the FCA, whether through the extension of the regulatory perimeter or otherwise?

MiFID II expands the scope of transaction reporting to wider classes of derivatives and should allow the FCA (as well as other competent authorities) to perform market surveillance effectively. Similarly, EMIR trade reporting requirements are extensive and give the FCA access to all trade information.

We do not think the FCA should look to expand the regulatory perimeter of MiFID II and EMIR at this stage but enforce global standards that ensure the equivalence and interoperability of EMIR-reported data with data reported under other jurisdictions. In this respect, industry work on global identifiers, taxonomy and FpML data standards should be endorsed by regulators.

Regulatory-level penalties

Q46: What further steps could regulators take to enhance the impact of enforcement action in FICC markets?

We do not have comments on this question.

Q47: Should consideration be given to greater use of early intervention, for example, temporary suspension of permission for a particular trading activity for firms or individuals or increased capital charges?

We do not have comments on this question.

Q48: Is there a need to widen and or strengthen criminal sanctions for misconduct in FICC markets?

We do not have comments on this question.

Q49: Is the approach set out in the Criminal Sanctions Market Abuse Directive appropriate for the United Kingdom? Are there additional instruments or activities to those envisaged by the Directive that should be covered by the domestic criminal regime?

We do not have comments on this question.