ICE CoT Procedure for addressing information regarding potential non-compliance with EUDR requirements (Grievances)

Introduction

ICE Benchmark Administration Limited ("IBA"), one of the world's most experienced administrators of regulated benchmarks and data services, is launching ICE CoT: a technology platform to support traders and operators with their compliance obligations under Regulation (EU) 2023/1115 on deforestation products[1] (the "EU Deforestation Regulation" or "EUDR") and the continued trade in compliant coffee and cocoa products within the EU.

ICE CoT supports the submission, storing, testing and sharing of due diligence information required under the EUDR, and helps users to demonstrate that cocoa and coffee and related products are deforestation-free and lawfully produced when entering the EU market.

This procedure (the "ICE CoT Grievance Procedure" or this "Procedure") addresses how IBA manages information received regarding potential non-compliance with EUDR or ICE CoT requirements and defines IBA's approach to this information as it relates to the ICE CoT platform.

IBA will establish a committee (the "ICE CoT Grievance Committee" or the "Committee") to perform the role described in this ICE CoT Grievance Procedure related to the ICE CoT platform.

It is important to note that this Procedure is separate from and will operate alongside the ICE CoT Complaints Policy.

Grievances covered by this Procedure

A "Grievance" covered by this Procedure includes any new information indicating that a relevant product registered on ICE CoT, or a user of ICE CoT, is at risk of not complying with either applicable ICE CoT requirements or EUDR requirements (or would be at risk of not complying with EUDR requirements if the relevant product were to be placed or made available on the EU market). A Grievance includes information that is notifiable to national competent authorities under EUDR Articles 4(5), 5(5) or 13(2) (or would be if the relevant product were to be placed or made available on the EU market) and any substantiated concerns submitted under EUDR Article 31.

ICE CoT Grievance Scenarios

IBA has identified three scenarios that could lead to Grievances being notified to ICE CoT:

- **Scenario 1: An ICE CoT User reports a Grievance**

  A registered user of ICE CoT (an "ICE CoT User") (which could include an EUDR Operator or Trader) obtains or is made aware of a Grievance in relation to a relevant product registered on ICE CoT or an ICE CoT User.

  The ICE CoT User should immediately inform ICE CoT of the risk of non-compliance in accordance with the terms of its User Agreement by submitting an online "Grievance Form", setting out the minimum information required in relation to the Grievance.

[1] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010

- **Scenario 2: A natural or legal person reports a Grievance**

  A natural or legal person (which could include non-government organisations (NGOs)) that is not an ICE CoT User notifies ICE CoT of a Grievance by submitting an online Grievance Form, setting out the minimum information required in relation to the Grievance.

- **Scenario 3: The ICE CoT Platform identifies a Grievance**

  If IBA identifies a Grievance, through operation of its programme of ICE CoT audits/inspections, ICE CoT surveillance measures, or other means, it will complete and submit internally a Grievance Form, setting out the minimum information required in relation to the Grievance.

EUDR process for substantiated concerns and compliance measures and actions

The EUDR contains provisions for raising, with relevant national competent authorities, duly reasoned claims based on objective and verifiable information regarding non-compliance, and which could require the intervention of such authorities. It also contains provisions for Member States and national competent authorities to take measures and actions in response to potential and actual non-compliance with the EUDR. A brief summary of certain of the provisions is set out below.

These EUDR provisions are separate and accordingly, ICE CoT Users may have separate notification obligations both under the EUDR provisions and to ICE CoT. Although ICE CoT Users are required to provide ICE CoT with information regarding EUDR notifications with respect to a relevant product registered on ICE CoT or an ICE CoT User, and such information will be requested on the Grievance Form, it is not certain that ICE CoT will receive all pertinent information. However, where information regarding these EUDR provisions is provided to the Committee it may be used in the decision-making process under this Procedure.

- **Substantiated concerns submitted to a national competent authority**

  A natural or legal person, which may include an ICE CoT User or IBA, may submit a substantiated concern regarding relevant product registered on ICE CoT or an ICE CoT User to a national competent authority under EUDR Article 31.

  Once notified, a national competent authority is obliged to assess the substantiated concern and may take further action, including, where appropriate, interim measures under EUDR Article 23 to prevent the placing or making available on the market and export of relevant products under investigation.

  The relevant national competent authority should respond to the submitter of the substantiated concern within 30 days informing them of the follow-up given to the submission and the reasons for it.

- **National competent authority action**

  Further to checks pursuant to EUDR Article 16 or their receipt of notification of a substantiated concern or other information regarding non-compliance with the EUDR, national competent authorities may take interim measures under EUDR Article 23 (including seizure or suspension of relevant products), corrective action under Article 24 (including rectification of non-compliance, or the suspension, donation to charitable or public interest purposes, or withdrawal of relevant products). Member States are also obliged to lay down rules on penalties under Article 25 (including fines, confiscation of products or revenue, temporary exclusion from public procurement processes and access to public funding, and temporary prohibition on supplying products).

Member States are required to notify the Commission of final judgments against legal persons for infringements of the EUDR and the penalties imposed on them within 30 days from the date on which the judgments become final and the Commission is required to publish on its website a list of their judgments, including: the name of the legal person; the date of the final judgment; a summary of the infringing activities; and the nature and, where financial, the amount of the penalty imposed.

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- **Notifying IBA of a Grievance**

  IBA will accept Grievances from ICE COT Users and third parties through the submission of an online Grievance Form. The Grievance Form specifies the minimum information required to be able to process the Grievance under this Procedure, including, where possible, detailed, objective and verifiable information regarding the Grievance, details regarding the applicable relevant products registered on ICE CoT or the applicable ICE CoT User, and details regarding any notification (of which the submitter is aware) to other supply chain actors or national competent authorities regarding the Grievance.

- **Processing of ICE CoT Grievances**

  IBA will acknowledge receipt of any completed Grievance Form within [2] business days to the submitter.

  IBA will conduct an initial review the Grievance Form, including to establish whether all required information has been included and whether any additional information or evidence is required, including information regarding any substantiated concerns and whether applicable national competent authorities and entities to whom the relevant product has been supplied have been informed.

  IBA will request further information or evidence from the submitter of the Grievance Form (or ICE CoT, as applicable) where necessary.

  IBA will prepare an information packet regarding the Grievance for the ICE CoT Grievance Committee and will convene a meeting of the ICE CoT Grievance Committee without undue delay to review and discuss the Grievance.

  The Committee will diligently and impartially assess the Grievance, including assessing whether the information required by the Grievance Form has been provided and whether there is sufficient information and evidence to make a decision regarding the Grievance.

  Where the Committee is able to make an initial impartial assessment based on the information and evidence available that the risk of non-compliance is not made out, including because the Grievance is not well-founded, or the supporting information is not objective or verifiable, then IBA will notify the Grievance submitter as applicable. Unless further information is provided or a new Grievance is initiated, no further action will be taken by ICE CoT.

Otherwise, the Committee may request:

a. further information and evidence for review and examination, for specific tests and checks to be undertaken on the information and evidence, and/or for an audit/inspection of the data or any systems;

b. such third party expert input as it considers necessary,

in order to be able to diligently and impartially assess the Grievance with a view to detecting potential non-compliance with the requirements of the EUDR and/or ICE CoT and making a decision to take any of the actions listed below.

The Committee will be reconvened without undue delay once any requested information or input is available.

Where the Committee receives information or updated information regarding: (i) a substantiated concern; (ii) any other assessment process under the EUDR related to potential non-compliance for the purposes of taking measures or action; or (ii) any measures or action taken, in each case with respect to a relevant product registered on ICE CoT or an ICE CoT User that is the subject of a Grievance, the Committee will consider or be convened to consider this information. The Committee may need to delay or defer its determination until any substantiated concern or other assessment process being considered or undertaken by a national competent authority has concluded and any measures or action under the EUDR have been taken.

At any meeting the Committee may decide to take such action as it deems to be reasonable and appropriate regarding the Grievance and the relevant products registered on ICE CoT or any relevant ICE CoT User, including:

a. Requesting further information, evidence or input as necessary to assess and make a decision or take action regarding the Grievance;

b. Delay or deferring any decision until any substantiated concern or other assessment process has concluded and any measures or action under the EUDR have been taken;

c. Request ICE CoT to inform any national competent authority or any relevant supply chain actors regarding the Grievance, and to provide other information to any national competent authority or relevant supply chain actors regarding the Grievance as appropriate, including regarding decisions taken by the Committee;

d. Request ICE CoT to require the Grievance submitter or an ICE CoT User to inform any national competent authority or any relevant supply chain actors regarding the Grievance, and to provide other information to any national competent authority or relevant supply chain actors regarding the Grievance as appropriate, including regarding decisions taken by the Committee;

e. Determine that there is or is not a risk of non-compliance with the requirements of ICE CoT or the EUDR;

f. Suspend or maintain a suspension of a quantity of relevant product on ICE CoT or an ICE CoT User permanently or temporarily, including subject to the outcome of any national competent authority assessment process;

g. Reinstate a suspended quantity of relevant product on ICE CoT or an ICE CoT User;

h. Such other action as the Committee deems reasonable and appropriate in the prevailing circumstances to achieve compliance with the requirements of ICE CoT and the EUDR, to protect the integrity and reputation of ICE CoT and IBA, and to protect ICE CoT Users.

IBA will notify the Grievance Submitter of any actions or decisions taken regarding the Grievance, together with the reasons for it.

Where new information related to a Grievance becomes available in relation to a relevant product registered on ICE CoT or an ICE CoT User after a final decision of the Committee, a new Grievance Form will need to be submitted to ICE CoT for the Committee for review. Any decision of the Committee is made on the basis of the information available to the Committee at that time.

- **Confidentiality**

  The Committee will keep the matter of Grievances confidential as far as possible, but it may be necessary for the Committee to make notifications or contact third parties for information regarding the Grievance, including the ICE CoT User or other entity in respect of which a Grievance is made and national competent authorities. The Committee will endeavour to do this without identifying the Grievance submitter if this is possible. The Committee or ICE CoT will identify a Grievance submitter where requested by a national competent authority or required under applicable law. The submitter of a Grievance may advise ICE CoT that it does not wish to be identified as the Grievance submitter in other circumstances; however, this may result in its being impossible for the Committee to complete its review of the Grievance pursuant to this Procedure.

- **Recording Grievances**

  IBA will retain records of all Grievance submissions for at least 5 years.

- **ICE CoT Grievance Procedure contact information**

  If you have any questions regarding this Grievance Procedure, please contact:

  ICE Benchmark Administration Limited

  FAO: ICE CoT Grievance Procedure

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Review

This procedure is reviewed at least annually by the ICE CoT Advisory & Oversight Committee and IBA Board.