



## **CAO ASSESSMENT REPORT**

**Regarding Concerns in Relation to  
IFC's Investment in Myronivsky Hliboproduct, Publichne AT (MHP) (#34041) in Ukraine**

January 2019

Office of the Compliance Advisor Ombudsman  
*for*  
the International Finance Corporation and the  
Multilateral Investment Guarantee Agency  
**[www.cao-ombudsman.org](http://www.cao-ombudsman.org)**

## **About CAO**

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

For more information, see [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

**TABLE OF CONTENTS**

LIST OF ACRONYMS ..... IV

1. OVERVIEW ..... 1

2. BACKGROUND ..... 1

    2.1 The Project..... 1

    2.2 The Complaint..... 1

3. ASSESSMENT SUMMARY ..... 2

    3.1. Methodology ..... 2

    3.2. Summary of Issues ..... 3

        3.2.1 Complainants’ perspective..... 3

        3.2.2 Company’s perspective..... 3

        3.2.3 Agenda for Mediation..... 4

4. NEXT STEPS..... 5

ANNEX A. CAO COMPLAINT HANDLING PROCESS..... 6

## **LIST OF ACRONYMS**

|      |  |
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| CAO  | Office of the Compliance Advisor Ombudsman       |
| EBRD | European Bank for Reconstruction and Development |
| IFC  | International Finance Corporation                |
| MHP  | Myronivsky Hliboproduct                          |
| MIGA | Multilateral Investment Guarantee Agency         |
| PCM  | Project Complaint Mechanism                      |
| VPF  | Vinnytsia Poultry Farm                           |

## 1. OVERVIEW

In June 2018, CAO received a complaint from local community members in Olyanystya, Zaozerne, and Kleban villages in Vinnytsia, Ukraine (the “Complainants”), with support from national and international NGOs CEE Bankwatch Network, Center for Environmental Initiatives “Ecoaction”, and Accountability Counsel regarding IFC’s investment in Myronivsky Hliboproduct (MHP, “the Company”). The complaint raises concerns about impacts from dust, noise, and odors, including heavy vehicle traffic which also causes damage to roads and buildings, and poses safety risks for pedestrians. Furthermore, the complaint claims that the Company’s operations cause air, water and soil pollution, and deplete water resources. Additional issues raised in the complaint include: improper community consultation; lack of information disclosure; occupational health and safety; and poor working conditions.

CAO found the complaint eligible for further assessment in June 2018. During the assessment, the Complainants and the Company agreed to engage in a voluntary dispute resolution process facilitated by CAO and the Project Complaint Mechanism (PCM) of the European Bank for Reconstruction and Development (EBRD)<sup>1</sup>, which also received a complaint regarding the project. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

## 2. BACKGROUND

### 2.1 The Project

According to IFC disclosures, the MHP Corporate Loan project (“the Project”) involves providing a long-term corporate loan facility of up to US\$250 million, mainly to refinance MHP’s Eurobond that was due in 2015. IFC investment includes: (i) up to US\$100 million A Loan from its own account; (ii) US\$75 million from IFC acting in its capacity as implementing entity for the Managed Co-Lending Portfolio Program; and (iii) up to US\$75 million B Loan. MHP is the largest integrated poultry producer in Ukraine. It operates the key steps of the chicken meat production process including crop growing; fodder; egg-hatching production and incubation; poultry rearing and processing; and distribution and sales. Associated agricultural and processing operations include sunflower oil production and meat processing.

### 2.2 The Complaint

The complaint to CAO was filed by local community members in Olyanystya, Zaozerne, and Kleban villages, with support from CEE Bankwatch Network, Center for Environmental Initiatives “Ecoaction” and Accountability Counsel, regarding IFC’s investment in Myronivsky Hliboproduct in Ukraine. The complaint alleges real and anticipated negative impacts to the residents of the three villages and the local environment as a result of the Project.

The Complainants claim that the construction and operation of MHP agribusiness activities, in particular the Vinnytsia Poultry Farm (VPF) and Zernoproduct Farm activities, have caused continuous odor and dust impacts from a growing number of facilities and from the application of manure on nearby fields. Complainants state that Project activities have led to a drastic

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<sup>1</sup> Please see also PCM’s Eligibility Assessment Report: <https://www.ebrd.com/cs/Satellite?c=Content&cid=1395276987243&d=&pagename=EBRD%2FContent%2FDownloadDocument>

increase in heavy vehicle traffic through their villages, resulting in damage to roads and nearby residences, as well as additional impacts from dust, noise, and foul odors affecting residents along major MHP thoroughfares. The complaint alleges that community consultation processes and disclosure of project information have been inadequate and that company representatives suppress dissent about the Project. Additional allegations are that the Company's operations cause air, water and soil pollution, and deplete local water resources. The Complainants also express fear about possible future impacts related to the planned expansion of the Vinnytsia Poultry Farm, including the construction of a new biogas plant in Zaozerne.

The complaint also claims that MHP does not have an appropriate local grievance mechanism to handle community concerns in a prompt, transparent, culturally appropriate and effective manner. The complaint raises concerns about the existing limitations to the acceptance of anonymous complaints and the alleged lack of clarity regarding the process for filing complaints with MHP through the local grievance mechanism.

The complaint states that some Complainants have worked for MHP at some point and they express employment and workplace-related concerns, including poor working conditions, insufficient mitigation of employee health and safety risks, low wages for some jobs, improper salary deductions, and retaliation against employees who raise concerns or whose family members criticize MHP.

In relation to the issues summarized in the paragraphs above, the complaint alleges likely Project non-compliance with IFC Performance Standards 1 (Assessment and Management of Environmental and Social Risks and Impacts), 2 (Labor and Working Conditions), 3 (Resource Efficiency and Pollution Prevention), and 4 (Community Health, Safety, and Security).

A similar complaint was also submitted by the same community members to the Project Complaint Mechanism (PCM) of the European Bank for Reconstruction and Development (EBRD)<sup>2</sup>. Since the two complaints raise identical issues and relate to the same project, the parties agreed that CAO and PCM cooperate with each other and with the parties in their respective processes. This is to ensure efficient use of time and resources and consistency of approaches, while respecting the independence of the different mechanisms. As a result, there will be one dispute resolution process facilitated by mediators appointed by CAO and PCM.

### **3. ASSESSMENT SUMMARY**

#### **3.1. Methodology**

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainants, gather information on the views of different stakeholders, and determine whether the Complainants and the IFC Project Sponsor would like to pursue a dispute-resolution process facilitated by CAO, or whether the complaint should be referred to CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

While CAO, as per its Operational Guidelines, is not a legal enforcement mechanism or a substitute for court systems in host countries, CAO can address the underlying issues and concerns as expressed in the complaint and offer its processes to the affected parties.

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<sup>2</sup><https://www.ebrd.com/cs/Satellite?c=Content&cid=1395274940205&d=&pagename=EBRD%2FContent%2FDownloadDocument>

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- telephone conversations and in-person meetings with the Complainants and the NGOs supporting them;
- telephone conversations and in-person meetings with MHP;
- telephone conversations with IFC's project team and Ukraine country office;
- meetings with Heads of Olyanytsya and Kleban villages; and
- telephone conversations and meetings with EBRD and PCM staff.

This Assessment Report documents the views heard by the CAO team, and explanations of next steps depending on which CAO role the parties wish to initiate, Dispute Resolution or Compliance. This report does not make any judgment on the merits of the complaint.

## **3.2. Summary of Issues**

This section gives a broad overview of the issues as expressed by the Complainants and MHP.

### **3.2.1 Complainants' perspective**

During in-country meetings, the Complainants reiterated the concerns raised in the complaint, summarized in Section 2.2 above, and confirmed their decision to initiate a constructive dialogue with MHP through CAO's Dispute Resolution function and a PCM Problem-solving Initiative. Community members also noted their preference that PCM and CAO coordinate to the extent possible to support a single dialogue process for both complaints.

The Complainants expressed their wish to start dialogue with MHP as soon as possible, especially because they fear construction and activities related to the phase two expansion of the Vinnytsia Poultry Farm will continue without their input and without their concerns being addressed.

### **3.2.2 Company's perspective**

MHP stated that all environmental impacts assessments required by Ukrainian law and lenders have been conducted and that the outcomes of the environmental impact assessments were made available to community members through public hearings. Regarding the proposed biogas plant, public consultations with impacted community members will be organized in due course.

MHP noted that they have made continuous efforts to engage with community members directly, through external consultants, through central authorities (Ministry of Ecology), and local authorities (villages' heads) as prescribed by Ukrainian legislation and following best European practice.

There are various ways available to community members to raise grievances directly with the Company: anonymously by submitting messages for MHP in the information boxes available in the villages, as well as via email, by post, by phone, and through in person meetings with MHP staff.

MHP currently does not foresee risks of air, soil, or groundwater contamination. The Company explained to the CAO team that they follow applicable laws and industry good practice concerning the application of chicken manure and pesticides in the fields. In relation to alleged impacts on local water wells in the villages, MHP stated that it conducted an independent expert assessment and the results did not demonstrate any connection between the Company's activities and increased level of nitrates in the water wells.

MHP acknowledged that the Olyanytsa bypass road construction is taking longer to complete than originally foreseen, especially due to issues related to the railway crossing. The Company thinks that the road will be completed “very soon”, but many aspects are beyond MHP control and depend on Ukrainian Railways, the state-owned enterprise that manages rail transport, because of the railway crossing.

In terms of labor and working conditions, MHP reports that they comply with requirements of Ukrainian labor legislation and international best practices. The company explained that it regularly conducts internal health and safety audits and risk assessments.

During meetings with CAO, MHP presented press articles, newsletters, photographs, and other information regarding their activities and social support to local communities, such as: creation of new jobs; development and maintenance of village infrastructure; preservation and restoration of cultural and historical heritage sites; street lights; computers, TVs, playgrounds, and heating systems for schools; roof repairs for public buildings; local “social” shops which sell limited quantities of basic products like chicken, sunflower oil and bread at very low prices for community members; and renovations to medical buildings.

MHP stated that they are open to community needs and requests and that there is an announcement board in every village together with a box where villagers can put notes or requests, which MHP collects every month. Additionally, public meetings also provide opportunities for local community members to make requests. MHP stressed that they want to be perceived as a community partner, not as a place where requests can be filed.

MHP told CAO that they do not pressure people to accept Company ideas or projects. In furtherance of this, the Company described a previous example from the village of Kleban where half of its residents opposed the construction of a new MHP facility. As a consequence of this opposition, MHP decided to select another village for its project.

MHP confirmed their willingness to work collaboratively with the Complainants to try to resolve the complaint issues through a CAO’s Dispute Resolution process and a PCM Problem-solving Initiative. The Company also noted their preference that PCM and CAO coordinate to the extent possible to support a single dialogue process for both complaints and expressed their wish to start dialogue with the Complainants as soon as possible

### **3.2.3 Agenda for Mediation**

During meetings with CAO, the Complainants and MHP representatives articulated their respective key goals and interests, many of which were shared by all parties. These goals can provide common ground to improve understanding and assist local parties in developing mutually beneficial options to resolve the complaint. The following is a summary of the Complainants’ and Company’s key goals and interests as heard and understood by the CAO team:

- preventing reprisals and threats against people who criticize MHP;
- avoiding negative impacts on local residents and the environment;
- ensuring the Project’s compliance with IFC standards and policies;
- providing accessible, timely, understandable, and accurate information to the public about MHP’s operations, social and environmental impacts, and social projects at the local level;
- ensuring meaningful and constructive consultation processes; and
- resolving the complaint issues in an efficient and structured manner.

As part of its assessment, CAO does not evaluate to what extent these goals are currently being achieved and various stakeholders may have differing views in this regard.



Based on the original complaint and the views of the relevant stakeholders, the primary questions that would need to be answered by the parties through CAO's Dispute Resolution function are:

1. How can concerned residents of Olyanytsya, Zaozerne, and Kleban, MHP, and other stakeholders work together to improve project-related information access, dissemination, and understanding, community engagement, and public consultation?
2. How might parties amicably resolve disagreements about Project impacts cited in the complaint?
3. How can local communities and MHP work together to identify and prevent and/or mitigate possible negative impacts of MHP operations?
4. How might MHP employee workplace health and safety risks and possible inadequate working conditions be identified, improved, and monitored?
5. How will MHP and local residents in Olyanytsya, Zaozerne, and Kleban engage and interact over the long-term to build relationships and address community concerns?

#### **4. NEXT STEPS**

As noted above, the Complainants and MHP stated their preference to engage with one another through a CAO dispute resolution process to try to resolve the complaint. Therefore, in accordance with CAO's Operational Guidelines, the complaint is being referred to CAO's Dispute Resolution function. The Complainants and MHP also indicated that they would prefer CAO and PCM to work toward one dispute resolution process. It was also noted by MHP and Complainants that it would be ideal if CAO and PCM can coordinate their activities as far as possible. To this end, CAO and PCM are liaising with each other to determine the best way forward. During CAO's Dispute Resolution processes, CAO provides neutral mediation/facilitation and convenes separate and joint meetings as needed. Together with PCM, CAO will work with the parties to assist them in agreeing on a timeline, process, and schedule for meetings.

## ANNEX A. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is conducted by CAO Dispute Resolution specialists. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,<sup>3</sup> the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgement** of receipt of the complaint.
- Step 2: **Eligibility**: Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: **CAO assessment**: Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement**: If the parties choose to pursue a collaborative process, CAO's dispute-resolution function is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.<sup>4</sup>

OR

**Compliance Appraisal/Investigation**: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

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<sup>3</sup> For more details on the role and work of CAO, please refer to the full Operational Guidelines: [http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines\\_2013.pdf](http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf)

<sup>4</sup> Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.