

Complaint to the Compliance Advisor/Ombudsman (CAO)

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Regarding the IFC Project № 31990 Axzon A/S in Ukraine

From the communities of villages Deliyevo, Sivka-Voynylivska and Lany of Halych and Kalush districts of Ivano-Frankivsk region.

Contact information of representatives in the Annex 1.

With the support of the National Ecological Centre of Ukraine

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Summary

This is a complaint to the Compliance Advisor/Ombudsman (CAO), independent body of the World Bank group from the citizens that have been affected by the activity of the Danish company Axzon A/S (subsidiary in Ukraine – Danosha) in Ivano-Frankivsk region of Ukraine. The complainants seek to (1) stop the operation of the farms that are functioning or built against the law, (2) have full access to environmental information regarding the farms' functioning, (3) decrease environmental and social impacts of the farms, and (4) receive reimbursement of the harm done to health and environment.

In March 2013, IFC, comprising the World Bank group, has provided a \$ 70.6 M credit to the Danish company Axzon for the pig farming in Ukraine.¹ The goal of the credit (Project 31990) is to consolidate and increase the capacity via additional industrial objects for pig farming, first of all in Ukraine. The IFC web-page does not contain specific information on the money expenditure; however, the description of the project implies that the funds are to be spent on expansion or construction of new farms, and, possibly, slaughter house.

The complainants, indicated in the Annex A, are the residents of villages Deliyevo, Lany and Sivka-Voynylivska, near which the pig farms of Danosha Company (subsidiary of Axzon A/S in Ukraine) operate and are built. The activity of Danosha (Axzon A/S)², under the IFC credit, generates significant impact on health, environment and living conditions; they include:

- air pollution and odor that substantially influence health and well-being of local citizens; in particular, causes dizziness, decreases appetite, aggravates general state of health in local communities;
- potential pollution of ground and surface waters with manure;
- usage of manure on the fields in the quantities that exceed standards, which thus leads to reduction of soil fertility and land value;
- significant restrictions in access to environmental information regarding impacts on environment and public health, environmental safety of farms;
- considerable limitation in public discussion and public participation in decision-making;
- construction and exploitation of several company's facilities with the violation of law, unsanctioned enlargement of farms' capacities;
- usage of rented farm lands for improper purpose;
- defaulting from compensation for the land usage;
- possible illegal conclusion of land lease contracts for construction purposes;
- roads' wear out due to the exploitation of the large-sized vehicles by the company, dust pollution, destruction of buildings situated near roads;
- environmental impact on the Halych National Natural Park and the river Dnister, that are under *castodia legis*, and are important objects of recreation and biodiversity protection;
- additional increase of anthropogenic impact in Kalush district of Ivano-Frankivsk region, that has been already recognized as the zone of extraordinary environmental danger.

¹<https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/4d5642e14f4cfe4485257b13005dadb?opendocument>

² Hereafter

IFC has not complied with its Policy on Environmental and Social Sustainability³, Environmental and Social Review Procedures⁴, Access to Information Policy⁵ during evaluation, monitoring and control of the Project 31990. Namely, IFC did not manage to ensure that the activity of Axzon A/S in Ukraine is in compliance with the national legislation of Ukraine and IFC Standards. IFC did not manage to ensure proper public involvement by the company Axzon A/S. IFC did not manage to ensure open access to environmental information; IFC did not manage to ensure proper environmental and social expertise required by the Environmental and Social Review Procedures.

Hence, these mistakes have led to the human rights' infringements. In particular, violation of complainants' right to health, safe environment, water, reliable information about environmental impacts and state of environment.

In the process of preparation of this complaint, the complainants have cooperated with the National Ecological Centre of Ukraine.

The complainants, including contact persons, do not wish to disclose their names and personal data to the third parties without prior consent.

Description of the Project

Axzon A/S is a Danish holding company. It owns companies "Poldanor S.A." in Poland and "Danosha" in Ukraine; both are working in the area of animal husbandry.

In March 2013, IFC has provided a credit to Axzon A/S (IFC Project 31990) to support its activity and enlarge the production capacities; particularly, the activity of Danosha's company pig farms (subsidiary of Axzon A/S in Ukraine).

Axzon A/S founded Danosha in 2004. The company operates in Ivano-Frankivsk region of Ukraine. Its two major directions are: animal husbandry and plant cultivation. By and large, Danosha has five pig complexes for 125,800 head in total. All Danosha's farms are objects of industrial animal husbandry:

1. In 2004, Danosha has bought out premises of former, not functioning pig farm, in village Kopanky and built a new pig complex which is planned for 54,000 head and includes sow-farm, weaning farm and fattening farm;
2. In 2008 the complex in village Vylky was built, which includes weaning farm and 11,900 head for slaughter;
3. In 2009, the complex in village Luka was built for 24,000 head, which includes sow-farm and weaning farm.
4. In 2009, the complex in village Tustan was bought out and reconstructed; now it has fattening farm for 24,000 pigs for slaughter;
5. In 2012, the fattening complex for 11,900 head was built in village Lany.

As of now, sixth pig complex is built in village Deliyevo for 27,300 head and seventh in village Mariyampil for 11,900 head.

³ Policy on Environmental and Social Sustainability, IFC, 2012.

⁴ Environmental and Social Review Procedures. Environment, Social And Governance Department, IFC, 2009-2013.

⁵ Access to Information Policy, IFC, 2012.

The construction of the eighth pig complex near village Sivka-Voynylivska was stopped during the judicial proceeding. Land leasing contract between the Sivka-Voynylivska Village Council and Danosha for the construction of the pig complex was signed on 8th November 2005. However at that time the community had not been fully informed about the industry output and waste production, potential impact on health and environment. After clarifying the circumstances, the community of the village held a referendum on 17th October 2010; the main question was if the local inhabitants consent to the construction of such farms near the village. At the referendum, it was decided that the community does not assent to the construction. Based on this decision, on 27th June 2012, the Sivka-Voynylivska Village Council canceled the lease agreement. In return, Danosha has initiated a court case as to impossibility of one-sided termination. Court, without having good understanding of the case, recognized contract termination to be illegitimate. The community of the village interposed an appeal. However, during the assize, reconciliation agreement was concluded between the community of the Sivka-Voynylivska and Danosha; based on which the company refused to build the pig farm on the village territory. The court of appeal accepted the reconciliation agreement and recognized that the first court decision was made with the violation of the legislative norms, which lead to the incorrect solution of the case. *Id est*, the community had a right to refuse from the construction. The example of the Sivka-Voynylivska community proves that unconscientious provision of information and lack of transparency in the procedures of public participation in discussions regarding the farm's construction have led to the problems in company's activity in future.

Affected Parties

The company works with many villages. Most rural communities lease land for agricultural crops cultivation, only in seven villages the pig farms are built or being constructed. Out of these 7, citizens of at least two villages, which are situated in proximity to Danosha pig farms, consider themselves to be affected communities due to environmental and social problems caused by the company's activity. These are local citizens of Deliyevovo and Lany. Inhabitants of other villages, especially Mariyampil, have also opposed the activity of the pig farm Danosha.

Local citizens of one more village – Sivka-Voynylivska, near which the construction of farm was stopped – have not received compensation for the used shares and land rehabilitation after the cessation of construction.

Inhabitants of adjacent territories, where Danosha is operating, and interested public are the affected parties due to Danosha withholding environmental information.

Besides, the pig farm functioning may have potential impact on the Halych National Natural Park and the river Dnister. In this case, the affected parties are all potential users of these natural resources.

Social and Environmental Problems

Access to Environmental Information

The community does not have access to full and exhaustive environmental information related to the activity of Danosha Company in Ukraine. Namely, the company does not provide free access to the information about the industrial capacities and technologies, volumes of natural resources usage and waste production, waste management, environmental and sanitary-epidemiological safety of operations, potential impacts on environment and public health. Besides, the company does not provide information about the course of implementation of the Environmental and Social Action Plan (ESAP), which is a part of company's documentation presented on the IFC's web-page⁶.

The complainants point out that during communication with the local population prior to construction, the Company did not disseminate specific information regarding industrial capacity and detailed environmental information (in particular, specific data on waste production and its utilization), materials of Environmental Impact Assessment (namely copies of such assessment). The complainants found out about the capacities of the farms only after the construction of the objects had been completed.

The web-page of the company does not include information about the volume of waste production, impacts that objects and construction have on environment and public health, measures to be taken to minimize these impacts⁷. There is only general information about the usage of the biogas units and principle of their functioning; it also mentions that manure fertilization is applied.

The public has made several attempts to receive environmental information directly from the company through inquiry letters. The efforts, however, were unsuccessful.

In particular, complainants from Deliyev village on 16th September 2012 have sent to the company a request for information regarding the volume of manure that will be produced yearly, maximum volume of lagoons for manure conservation, as well as access to the environmental documentation, especially Environmental Impact Assessment, conclusions of the State Environmental and Sanitary-Epidemiological Assessment (Annex 2).

The company provided a reply on 28th of December 2013, in which denied provision of such information. Moreover, it was indicated that the request from the community to provide environmental information is illegal (Annex 2).

The National Ecological Centre of Ukraine (NECU) have also submitted informational requests to the company regarding access to the environmental information and the course of implementation of the Environmental and Social Action Plan presented on the IFC web-page. These were the requests No.125-1/307 as of 26th July 2013 and No. 125-1/363 as of 30th September 2013. The company has replied to the first request; however, no environmental information was included (Annex 2). The second request was ignored by the company.

All copies of requests from community and NECU, as well as the company's replies are provided in the Annex 2.

⁶ <https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/c925060dbcb357ae85257b13005c59f3?opendocument>

⁷ Official web-page of the Danosha company. Link: <http://www.danosha.com.ua/> [as of 27th December 2013]

Public Participation in Decision-making

The complainants are unsatisfied with the process of public participation in decision-making regarding the issues that have direct effect on their environment and health. Namely, the complainants are disappointed with the process of public discussion during the decision-making regarding the construction of pig farms. While concluding contracts for the usage of individual shares and joint lands that were in the disposal of the village council, in majority of cases, the local citizens had no idea about actual industrial capacities of the planned enterprises, industry output and volumes of waste production due to the limitations in the access to information.

Real capacity of Danosha company in Halych district is about 11,900-54,000 head, which is much higher than could be expected by the locals. In the past, pig farms were also located on the territory of the district; however their maximum industrial capacities were several times lower than the capacities of the Axzon A/S Company (see Annex 3). It is expected that after the launch of the farms that are being constructed now the livestock will grow even further.

The industry output of the Company causes concernment of local communities due to its impacts on environment and health: usage of natural resources (in particular, water), the volumes of waste production and the necessity to utilize them, bad odor.

Besides, the complainants were not involved into discussion of the places for the farms' location. Namely, complexes in villages Lany and Deliyevo were built on the hills that speeds up spreading of odor and flows in the environment. It is unknown how such location of a farm was justified and whether alternative locations were considered.

Also, the company enlarges the industry outputs on several farms without consultations with the local communities and, possibly, without appropriate permits and agreements. According to the conclusion of the State Environmental Assessment on the working project⁸, the pig farm in Deliyevo village should be designed for 11,900 head per year. Nevertheless the Quota Plan for the Production and Disposal of Waste⁹ indicates that the annual volume of production for the pig farm in Deliyevo is 27,300 pigs (see Annex 4). In 2013 the industrial output of Deliyevo farm was almost two times increased from the initially planned. The Danosha Company did not consult with the local communities and did not unveil the intentions to increase the number of pigs on the farm. It is uncertain whether the enlargement of the number of pigs on this farm is legitimate.

Unsanctioned Construction and Operations

Some of the Company's farms do not have appropriate environmental permits for leading operations. According to the Conclusion of the State Environmental Assessment, the pig farm in Deliyevo has permits for construction that are valid only until September 2013. The visit to the village at the beginning of November 2013 has shown that the construction has not been completed and the works are ongoing. It is unclear how the company justifies the legitimacy of a farm construction in Deliyevo after September 2013.

⁸ Conclusion No. 9 /31.08.09-033 of the State Ecological Expertise regarding the project "Construction of the specialized pig farm, auto-tractor park and granary in village Deliyevo of Halych district in Ivano-Frankivsk region".

⁹ Quota plan for the Production and Disposal of Waste for 2013 for Danosha Company

Moreover, the locals of Deliyevno village testify that Danosha Company has delivered pigs and started pilot operations on the farm in September 2013, in parallel with continuation of construction. However, according to the information provided by the Ivano-Frankivsk Regional State Administration¹⁰, as of September 2013 Danosha Company has not received the permits for air emissions and special water usage, as well, agreement of the projects of the land allotment for the pig farm. These documents are necessary to begin operations (see Annex 4).

To conclude, the validity of the permits for the farm construction in Deliyevno has expired, whereas some of the permits necessary to start the work of the farm have not been received.

Furthermore, it is uncertain whether the enlargement of the number of pigs on the Deliyevno farm is legitimate, as was described in the previous chapter.

Odor

The local citizens complain about unbearable odor from the pig farms, especially during the spraying of the fields with manure water.

Generally, on the Danosha pig farms, manure is collected and stored for a certain time in the lagoons of the closed type; afterwards it is put out on the fields as organic fertilizer. Unpleasant odor from the pig farms is always present; however during the emptying out of lagoons and spraying of the fields, the odor intensifies significantly, especially under conditions of high temperatures. Most of the pig farms and sprayed fields are situated close enough to the villages.

Considering the industry output and volume of waste production, the communities of nearby villages are considerably exposed to the odor.

The unpleasant smell significantly influences health and well-being of the population: causes headache, dizziness, decreases appetite, and aggravates general state of health.

There is no odor control in Ukraine. Standards are established only for certain components, e.g. ammonia. This makes local population defenseless against such environmental impact.

Moreover, local communities point out cases when Danosha Company has violated the conditions of storage and land application of manure, which aggravated the situation with the odor spread even further. For instance, according to the testimonies of the population, in April-May 2011, the conditions of storage and land application of manure were violated, which lead to increased concentration of ammonia in the air near Danosha farms: Kopanky pig farm in Kalush district and Tustan pig farm in Halych district of Ivano-Frankivsk region (see Annex 3).

Also, local citizens of Deliyevno are concerned that increasing the number of pigs on the farm near their village will substantially intensify the odor and make living conditions unbearable.

¹⁰ Reply to the request for information No. 03-16/Ko-11 as of 20th September 2013, the Department of Ecology and Natural Resources of the Ivano-Frankivsk Regional State Administration.

Land Use

The complainants point out the problems with the land application of manure, compensation for the usage of the land shares and rehabilitation of land after the completion of operations.

The complainants are concerned that the Company injects manure into soil in yearly amounts, which exceed the soils' need in organic matters. There is no information about the amount of manure produced yearly on every farm, quantity, area and location of fields, on which manure is used, as well as the schedule of applications. The Company has violated the storage conditions and land application of manure on the pig farms in Kopanky of Kalush district and Tustan of Halych district (Annex 3), so similar violations are possible in the future.

Oversaturation of soil with manure may lead to the destruction of the fertile layer on the fields, pollution of surface and ground waters on the territory, loss of biodiversity and land value.

Until now, the Danosha Company still has not compensated the usage of land shares to some local citizens. In 2005-2012 the Company has used land shares of inhabitants of Sivka-Voynylivska village. However, locals did not receive any compensation for the usage of these land shares. An example of appeal with a demand to compensate losses for the usage of the land share is provided in Annex 5. In total, the Company has used more than 50 plots of land without any compensation (total area 200 hectares).

In other villages, the usage of the land plots and compensations for them requires verification.

In the village Sivka-Voynylivska, the Danosha Company has also built a road through the land shares. After the usage of the land was stopped, the company did not rehabilitate the land to its initial state (Annex 6). Due to the road construction, owners of several shares do not have access to their own land.

In village Deliyevo, the company has laid water pipe through the land shares without prior agreement with their owners.

Water Pollution

Local citizens are anxious about the potential threat of ground and surface waters' pollution with manure. There is no centralized water supply in these villages, so the locals use water from wells in the area. The farms are situated very close to the settlements, but the insulating characteristics of lagoons with manure and systems of its collection are unknown, since the company does not provide any environmental information. In case of pollution with manure, local communities may be deprived of access to water for drinking, household, domestic or recreational purposes.

Water Intake

For its needs, the company intakes water from the artesian wells. The volume and places of intake are unknown. Furthermore, it is undefined how and to what extent the impacts on water resources were evaluated. Local citizens are worried about the impact of additional intake on the level of ground waters, especially in the villages of Halych district (the area where farms in Lany, Tustan, Deliyevo and Mariyampil are located).

Impacts Connected with the Roads' Exploitation - Roads' Wear Out, Destruction of Buildings, Dust Pollution

In instances when the farms are situated in proximity to villages, the complainants are dissatisfied with significant worsening of the living conditions, roads' wear out due to the exploitation of trucks and large-sized vehicles of the company. The roads through villages are in a very bad condition. The increase of the road load, constant movement of large-sized vehicles ruins asphalt and makes it unsuitable for the public use. Besides, the vibrations from the movement of the large-sized vehicles have an influence on the houses that are located along the roads: cracks appear in foundations and walls (see Annex 7). Furthermore, when the roads pass through villages, large-sized vehicles considerably increase dust pollution and influence health and well-being of local population.

Increase of Anthropogenic Impact on the Bearing Capacity of the Ecosystems in Kalush District

Pig farms have significant negative impact on environment. Considering the output and type of production, all farms of Danosha Company are objects of high environmental danger according to the Resolution of the Cabinet of Ministers of Ukraine as of 28th September 2013 No. 808¹¹. Some of the Danosha's farms are located in Kalush district of Ivano-Frankivsk region, which already has significant anthropogenic pressure on the environment. Disposition of additional enterprises of high environmental danger in the district may undermine the bearing capacity of the ecosystems.

Kalush district was declared as an emergency environmental situation zone by a special Decree of the President of Ukraine¹², as well as by the joint United Nations/European Commission Technical Scoping Mission¹³, due to the state of the environment in this district (Annex 9). The mission was conducted jointly through the United Nations Disaster Assessment and Coordination (UNDAC) system and the European Commission's Monitoring and Information Centre (EC-MIC).

In Kalush district, salt deposits (sylvinite, kainite, lengbeinite) have been mined for a long time, thus, there is a large number of enterprises working. Mining and chemical industry have led to pollution of the environment from the underground and open-cast mines, sludge collectors and storages, other by-products. The mistakes in the designing of mines, mining waste dumps, settling ponds and other waste-storage facilities led to the subsidence, cracks or faults in the surface that damaged infrastructure and caused salinization of soil and water in Kalush and adjacent territories. Besides, in the district a large amount of Hexachlorobenzene (HCB) is stored. HCB is a highly toxic, persistent organic pollutant. In 2010, HCB leakage was detected. Independent scientific research found that the concentration of this pollutant in water was 100 times higher (even more in several instances) than Ukrainian standards¹⁴. Considering pollutant's characteristics, the long-term risk of HCB spreading is high.

That is why, disposition of additional industrial facilities, especially those having significant environmental impacts, in Kalush district was not justified and only increased already existing pressure on the environment. Moreover, it is unknown what

¹¹ <http://zakon2.rada.gov.ua/laws/show/808-2013-%D0%BF>

¹² <http://zakon4.rada.gov.ua/laws/show/145/2010>

¹³ [https://docs.unocha.org/sites/dms/Documents/UN-EC%20Technical%20Scoping%20Mission%20-%20Kalush%20\(16Apr10\).pdf](https://docs.unocha.org/sites/dms/Documents/UN-EC%20Technical%20Scoping%20Mission%20-%20Kalush%20(16Apr10).pdf)

¹⁴ [https://docs.unocha.org/sites/dms/Documents/UN-EC%20Technical%20Scoping%20Mission%20-%20Kalush%20\(16Apr10\).pdf](https://docs.unocha.org/sites/dms/Documents/UN-EC%20Technical%20Scoping%20Mission%20-%20Kalush%20(16Apr10).pdf)

consequences existing problems in the district may have for the pig production, because of the possibility of infiltration of the persistent pollutants into ground and surface waters. These questions have to be duly reflected in the Environmental Impact Assessment for all enterprises of Danosha in Kalush district.

Increase of Anthropogenic Impact in Halych District

Whereas in Kalush district some Danosha farms are situated nearby the zone of environmental disaster, in Halych district some pig farms are located nearby Halych National Natural Park, which has sensitive ecosystems that are protected by the national and international legislation.

Halych National Natural Park belongs to the nature-protection territories of Carpathians with an area around 15,000 hectares. The Park's lands are not concentrated in one place, but rather scattered on the territory and are a part of a spatial chain of protected areas, villages, farm lands and lands of public use along the Dnister coast. On the territory of the Park there are species of flora and fauna that are included into the Red Book of Ukraine, European Red List and Bern Convention¹⁵. The Park has unique wetlands that are now in the process to be recognized as Ramsar wetlands of international significance (Ramsar Convention, 1971)¹⁶.

At least one pig farm (in Lany) is situated in the immediate proximity to the territory of the Halych National Natural Park, which has considerable impact on its biodiversity. The facilities for pigs' fattening on the farm in Lany are located only in 10-15 meters from the Park line (see Annex 8). Representatives of the Park indicate that no consultations were conducted regarding the potential impact of the Danosha Company's activity with the specialist of the Halych National Natural Park during the selection of the construction site, construction itself and exploitation of the pig farm.

Increase of Anthropogenic Impact on the Dnister River

The pig farms of Danosha Company are situated on the territory of the river Dnister basin. Dnister is a trans-boundary watercourse of regional significance, which is protected by the Convention on the Protection and Use of Trans-Boundary Watercourses and International Lakes (Helsinki Convention, 1992)¹⁷. In case of manure leakage and ground and surface waters' pollution with manure, the Dnister river may be also contaminated, which could cause an emergency situation of a regional significance. Since there is no access to environmental information regarding Danosha's farms, it is still unknown whether impact assessment of company's activity on the Dnister river was conducted and if measures to minimize or mitigate these impacts were foreseen.

Demands

The complainants ask:

- IFC to make all necessary steps to ensure that the activity of Danosha is in line with the IFC's Standards;

¹⁵ <http://www.halychpark.if.ua/>

¹⁶ http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0

¹⁷ The law of Ukraine to join the Convention: <http://zakon2.rada.gov.ua/laws/show/801-14>

- IFC to ensure the disclosure of all documentation regarding environmental and social impacts of the Project to communities;
- in future, to ensure access to timely and comprehensive environmental information. In particular, the complainants wish to have free access to the environmental impact assessments and other environmental permits; publicizing of existing or planned production capacities of the farms, the volume of waste production and waste management plans, as well as other environmental information about the company and its impact on the environment and public health; announce the course of implementation of the Environmental and Social Action Plan, presented on the IFC's Project website;
- the Company to provide an effective mechanism for communication with the local communities, which is now completely absent. In particular, the complainants wish to receive timely replies from the company to their inquiries, which include information on the merits of a given issue. The company also has to provide accessible and effective complaint mechanism for local people;
- The company to ensure public involvement in decision-making on matters relating to life and health of local communities and environment. In particular, the public should be involved in discussing the issues regarding construction of new objects - location of facilities, their capacities, volumes of conditions of natural resources' use, waste production and management;
- the company to ensure periodic publication of information on the volume of manure land application per unit area, the technology of prior preparation of manure, schedule of application, advance warning of the local population about the land application of manure, present data regarding impacts on soil and conduct such assessments if this has not been done previously;
- the company to disclose information about the impacts on ground and surface water, schedule and volumes of water use, water purification technologies, precautions, impacts on the Dnister River and plan to minimize these impacts. Conduct proper assessments if they were not done before;
- conduct assessments of cumulative impacts on the ecosystems of Halych and Kalush districts. Particular attention should be given to the carrying capacity of the ecosystem in Kalush district as extreme environmental danger; conduct assessments of cumulative environmental impacts on the Halych National Natural Park and minimization of such impacts;
- conduct impact assessments during the construction and reconstruction of facilities, if such assessments were not carried out before, and ensure measures to minimize these impacts during construction and reconstruction;
- introduce technologies and methods to reduce odor and minimize exposure of local population to odor;
- stop activities that do not meet the requirements of Ukrainian or international laws or IFC's standards;
 - discontinue the building of the farm in Deliyevo village because of the violation of the public participation procedure during the planning and decision-making phases. Besides, the farm was located on the hill, which increases the spread of odor and lesion area in the event of an emergency;
 - stop activity of the farm in Lany village, because of the violation of the public participation procedure during the planning and decision-making phases and the impacts on the Halych Natural Park.

- terminate other illegitimate activities; particularly, laying and usage of water pipe through the land shares in Deliyevo village.
- carry out rehabilitation of land after cessation of its exploitation;
- return compensation for the used land shares;
- develop and implement measures to reduce the negative impacts of the roads' use. In particular, road maintenance, reduction of dust pollution, compensation for cracks in the houses;
- check the legitimacy of activities, such as land-use and land leasing for construction, environmental activity of the company.

Violations of the IFC Policies and Procedures

IFC has not complied with the terms of its Policy on Environmental and Social Sustainability¹⁸, Environmental and Social Review Procedures¹⁹, Access to Information Policy²⁰ in the evaluation, monitoring and supervision of the Project 31990. In particular, IFC failed to ensure that the activities Axzon A/S in Ukraine are in accordance with the national legislation of Ukraine and IFC's Standards; IFC failed to ensure that Axzon A/S adequately involves public; IFC failed to provide the necessary assessment of environmental and social performance, as required by the Environmental and Social Review Procedures.

IFC failed to ensure that the activities of its client, company Axzon A/S in Ukraine, are in accordance with the Policy on Environmental and Social Sustainability (PESS), Environmental and Social Review Procedures (ESRP)

According to the PESS, "central to IFC's development mission are its efforts to carry out investment and advisory activities with the intent "not to harm" people and the environment, to enhance the sustainability of private sector operations and the markets they work in, and to achieve positive development outcomes. The Corporation is committed to ensuring that the costs of economic development do not fall disproportionately on those who are poor or vulnerable, that the environment is not degraded in the process, and that renewable natural resources are managed sustainably. IFC believes that the client's regular engagement with stakeholders about matters that directly affect them plays an important role in avoiding or minimizing risks and impacts to people and the environment"²¹. IFC did not ensure that, as the result of Danosha's Company activity, the economic development costs did not fall disproportionately on the vulnerable groups; IFC did not ensure that the environmental conditions did not worsen (the health impacts, odor, problems with water use, risks of manure leakage into soil and water objects, impacts on biodiversity, etc); IFC did not provide for regular consultations with community to avoid and minimize risks.

According to the PESS, IFC also acknowledges the responsibility of business to respect human rights, which means to avoid infringing on the human rights of others and to

¹⁸ Policy on Environmental and Social Sustainability, IFC, 2012.

¹⁹ Environmental and Social Review Procedures, Environment, Social and Governance Department, IFC, 2009-2013.

²⁰ Access to Information Policy, IFC, 2012.

²¹ PESS, Article 9.

address adverse human rights impacts business may cause or contribute to²². Since IFC has not ensured that the Company's activity is in line with the PESS, Danosha's activity infringes human rights; namely human right to health and safe environment, right to water, right to reliable information about environmental impacts and state of the environment.

As per the PESS, IFC should use a process of environmental and social categorization to reflect the magnitude of risks and impacts²³. The Project 31990 was classified as category B, as a "business activity with potential limited adverse environmental or social risks and/or impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures". However, the Project 31990 is aimed at increasing production, construction of new farms and, possibly, a slaughter house. Construction of new objects is always connected with substantial changes of the environment. Moreover, all farms of the Company are already characterized by high environmental and social risks, not always local (as in a case of a potential contamination of the Dnister river with manure). The number of pigs on each farm of the Company reaches 12,000-54,000. According to Ukrainian legislation, farms of such scale should be regarded as objects of high environmental danger²⁴, which is the highest class of hazardous objects. Thus, considering potential risks for the environment, the Project 31990 should be classified as a category A project.

According to the PESS, in cases when the business activity to be financed is likely to generate potential significant adverse impacts on communities (i.e., Affected Communities), IFC expects clients to engage in a process of Informed Consultation and Participation (ICP)²⁵. In case of Danosha, IFC did not provide for the ICP process.

IFC did not manage to ensure effective supervision of the 31990 Project, which would guarantee that the activity of the company is in line with the IFC's standards regarding environmental and social sustainability²⁶.

IFC failed to ensure that the activity of its client, company Axzon A/S in Ukraine, is in accordance with the IFC's Performance Standards on Environmental and Social Sustainability

The PESS demands IFC to ensure that the projects it finances are in line with the IFC's Performance Standards on Environmental and Social Sustainability²⁷. The activity of Danosha (Axzon A/S) does not correspond to these standards.

1. IFC did not manage to ensure that the Project is carried out in line with the national legislation

In the introduction of the IFC Performance Standards on Environmental and Social Sustainability²⁸, it is indicated that the company should adhere to the national and international legislation.

²² PESS, Article 12.

²³ PESS, Article 40.

²⁴ <http://zakon4.rada.gov.ua/laws/show/808-2013-%D0%BF>

²⁵ PESS, Article 30

²⁶ PESS, Article 45. ESRP, Article 6, Direct Investments: Supervision.

²⁷ International Finance Corporation. Policy on Environmental and Social Sustainability. 1st January 2012.

By not disclosing environmental information and failing to provide replies to the request for information from the community, the Company has violated the Constitution of Ukraine in Part 2 of Art. 50, which guarantees everyone free access to information about the state of the environment. Such information may not be regarded as confidential. In addition, the company has violated the Law of Ukraine "On Access to Public Information" and the Law of Ukraine in art. 9 "On Environmental Protection" which states that every citizen of Ukraine has the right to free access to information on the state of the environment (environmental information), free obtainment, use, distribution, and storage of such information, except restrictions prescribed by law. Access to the environmental information regarding Danosha company's activities is not among those exceptions. Besides, the fact that the company has not provided environmental information, is a violation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), ratified by Ukraine on 6th July, 1999.

The company has violated the Law of Ukraine "On Environmental Assessment", since it continues farm construction in Deliyevno village after the conclusions of the environmental assessment expired.

Due to the absence of the environmental information, it is difficult to assess whether there are other violations of the Ukrainian legislation.

2. IFC failed to ensure that the Project meets the Performance Standard 1

Performance Standard 1 (PS 1) requires the establishment and maintenance of an effective Environmental and Social Management System (ESMS). ESMS includes preparation of social and environmental assessment of the project and public involvement, including (1) the interaction with stakeholders, (2) creation of grievance mechanism for affected communities and (3) ongoing reporting. Danosha's performance can be classified as poor or non-existent in each of the three points.

2.1 Danosha failed to provide for stakeholders' engagement

According to the PS1, Danosha was to prepare social and environmental assessment of the project, ensure disclosure of information and conduct Informed Consultation and Participation to guarantee effective ESMS²⁹. Presentation of the Project (farm in Deliyevno village) to community was made without full disclosure of information; particularly regarding the project's scope, duration, risks and potential impacts on the community, mitigation strategies, the process of interaction with the stakeholders and grievance mechanism. Annex 4 includes minutes of the assembly of Deliyevno and Lany villages, during which the project was presented. The Minutes of the meeting do not contain specific information presented by the Company. Likewise, there is no mention of presenting the copies of the environmental impact assessment, foreseen by Ukrainian legislation. The minutes do not contain data on the number and names of present community representatives.

The complainants point out that the Company did not conduct Informed Consultation and Participation process with the interested parties.

²⁸ PESS, Articles 3 and 7. Performance Standards on Environmental and Social Sustainability, Introduction, Article 5.

²⁹ IFC Performance Standards on Environmental and Social Sustainability, Performance Standard 1, paragraphs 29-31.

2.2 Danosha did not ensure external communications with the public and grievance mechanisms

According to the PS 1, Danosha was to establish and maintain a procedure of external communications with the public³⁰. This procedure includes methods to (i) receive and register external communications from the public; (ii) screen and assess the issues raised and determine how to address them; (iii) provide, track, and document responses, if any; and (iv) adjust the management program, as appropriate. In addition, in case there are affected communities, Danosha was to create the grievance mechanism. It should seek to resolve concerns promptly, using an understandable and transparent consultative process.

Not only Danosha did not provide for the external communications procedures, but also ignored the attempts of the public to receive such information through a letter of request or denied access to environmental information (see Annex 2). Namely, the company refused to provide environmental information when members of the community addressed the company through letters (such appeal mechanism to private institutions is foreseen by the Ukrainian legislation). Moreover, the official reply of the Company stated that the community does not have the right to receive such information (see Annex 2).

2.3 Danosha did not ensure ongoing reporting to the Affected Communities

According to the PS 1, Danosha was to provide periodic reports to the Affected Communities that describe progress with implementation of the project Action Plans on issues that involve ongoing risk to or impacts on Affected Communities. However, none periodic information was presented to the interested community. Moreover, the public does not have access to information about the course of implementation of the Environmental and Social Action Plan, which is presented on the IFC's page under the Environmental & Social Review Summary of the Project 31990³¹. This Action Plan was not presented to the local communities. On the IFC's website, the page of the Project 31990 includes information that the Environmental and Social Assessment and Action Plan will be locally available in Ukrainian at the company's address in Ivano-Frankivsk region and on the Company's website³². However, the Company does not provide any information at the following address. The Company's website does not contain any links or documents regarding the Environmental and Social Assessment and Action Plan³³. The Company has ignored the inquiry of NECU (see Annex 2) about the course of implementation of this plan.

³⁰ IFC Performance Standards on Environmental and Social Sustainability, Performance Standard 1, paragraphs 34-35.

³¹ Environmental & Social Review Summary of the Project 31990. Link:

<https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/c925060dbcb357ae85257b13005c59f3?opendocument>. [3rd January, 2014]

³² Environmental & Social Review Summary of the Project 31990: Axzon will make the current ESRS/ESAP review locally available, in Polish, Ukrainian and English language as appropriate, as part of their continued interaction with the local communities. The general disclosure will take place at their internet portals, where they also describe their general approach to Corporate Social Responsibility and Environmental performance: <http://www.axzon.eu/> Subsidiaries: <http://www.danosha.com.ua/>. Further the documents will be presented in Ukrainian language at the following address: Ul lisowa 1, 77-330 Kalush, Ivano Frankivsk Oblast, Ukraine. Link:

<<https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/c925060dbcb357ae85257b13005c59f3?opendocument>>. [3rd January, 2014].

³³ Official website of the Danosha Company. Link: <<http://www.danosha.com.ua/uk/2011-09-12-09-47-00/sustainability>>. [3rd January, 2014].

Due to non-disclosure of the information by Danosha, it is not clear how effective is the ESMS of the company regarding other elements.

3. IFC failed to ensure that the Project is in line with the Performance Standard 3

The Performance Standard 3 is aimed at avoiding or minimizing pollution from project activities. Danosha did not prevent pollution of the environment around the pig farms in Kopanky and Tustan villages during its activity and did not take into account all relevant factors to minimize pollution, as foreseen by the PS 3.

3.1. Danosha did not prevent pollution of environment

In 2011, it was declared that the conditions of storage and land application of manure were violated, which lead to the excess of ammonia in the air around Kopanky pig farm in Kalush district and Tustan pig farm in Halych district, Ivano- Frankivsk region. The complainants state that such violations have occurred repeatedly. In such a way, Danosha has violated the requirements of the PS 3, under which the company should avoid the release of pollutants or, when avoidance is not feasible, minimize and/or control the intensity and mass flow of their release³⁴. This applies to the release of pollutants into air, water, and land due to routine, non-routine, and accidental circumstances.

3.2 Danosha did not take into account all relevant factors to avoid pollution as required by PS 3

Danosha pig farms are located in Halych and Kalush district of Ivano-Frankivsk region. In Halych district, the company's facilities are situated in the immediate proximity to the Halych National park, which protects extremely sensitive wetlands and is an important center of biodiversity. In Kalush district, where the rest of the pig farms are located, Danosha has already built additional facilities and plans further increase of capacities, although this district has been recognized as an emergency environmental situation zone by a special Decree of the President of Ukraine³⁵, as well as, by the joint United Nations/European Commission Technical Scoping Mission³⁶. Moreover, all Danosha's pig farms are located in the basin of the Dnister River, which is a trans-boundary watercourse of the regional significance. The load of additional livestock facilities in the area could undermine the assimilation capacity of the environment. Thus, Danosha is violating the PS 3 by neglecting all relevant factors to prevent pollution from its activity³⁷. Namely, Danosha did not take into account existing ambient conditions and land use (large number of industrial facilities on the territory of the Kalush district), as well as proximity to areas that are important in terms of biodiversity conservation – Halych National Park and Dnister river; Danosha did not consider the finite assimilative capacity of the environment.

Ibid, it is indicated that when the project has the potential to constitute a significant source of emissions in an already degraded area, as in case of the Danosha's pig farms,

³⁴ IFC Performance Standards on Environmental and Social Sustainability, Performance Standard 3, paragraph 10.

³⁵ <http://zakon4.rada.gov.ua/laws/show/145/2010>

³⁶ [https://docs.unocha.org/sites/dms/Documents/UN-EC%20Technical%20Scoping%20Mission%20-%20Kalush%20\(16Apr10\).pdf](https://docs.unocha.org/sites/dms/Documents/UN-EC%20Technical%20Scoping%20Mission%20-%20Kalush%20(16Apr10).pdf)

³⁷ IFC Performance Standards on Environmental and Social Sustainability, Performance Standard 3, paragraph 11.

it should consider additional strategies, including evaluation of project location alternatives.

4. IFC failed to ensure that the Project is in line with the Performance Standard 4 Community Health, Safety, and Security

The PS 4 is aimed at anticipating and avoiding adverse impacts on the health and safety of the Affected Community, during the project life. According to the PS 4, Danosha was to evaluate the risks and impacts to the health and safety of the Affected Communities, develop and establish preventive measures³⁸. The communities affected by the Project 31990 suffer from odor that influences health and well-being, dust pollution occurring from the exploitation of the large-sized vehicles in the villages and potential pollution with manure. These risks were not considered by the Company and no preventive measures were taken, or the scale of preventive measures does not correspond with the impacts of Danosha's activity.

5. IFC failed to ensure that the Project is in line with the Performance Standard 6 Biodiversity Conservation and Sustainable Management of Living Natural Resources

The PS 6 is aimed at protection and conservation of biodiversity, supporting potential of the ecosystem services; including provisioning, regulating, cultural and supporting services. Danosha did not consider PS 6 in its Environmental and Social Review Summary of the Project. Danosha could not avoid adverse impact on the biodiversity and ecosystem services for the Affected Communities.

5.1 Danosha did not consider PS 6 in its Environmental and Social Review Summary of the Project

The applicability of this Performance Standard is established during the environmental and social risks and impacts identification process. The Danosha company's activities are associated with impacts on biodiversity and ecosystem services of the Halych National Park and the river Dnister, which are protected by the national and international law. Therefore, the activity of Danosha should be in line with the PS 6. Besides, all projects engaged in animal husbandry are obliged to verify that the living natural resources are managed in a sustainable way, as foreseen by PS 6, especially paragraphs 26-30³⁹. However the Environmental and Social Review Summary of the Project 31990 on the IFC's website does not list PS 6 as the standard applied to the Project implementation, which violates requirements of the IFC's Policy on Environmental and Social Sustainability.

³⁸ IFC Performance Standards on Environmental and Social Sustainability, Performance Standard 4, paragraph 5.

³⁹ IFC Performance Standards on Environmental and Social Sustainability, Performance Standard 6, paragraph 26.

5.2 Danosha could not avoid adverse impact on the biodiversity and ecosystem services for the Affected Communities

In accordance to PS 6, when identifying the risks and impacts, Danosha was to consider direct and indirect project-related impacts on biodiversity and ecosystem services. As a matter of priority, Danosha was to avoid impacts on biodiversity and ecosystem services⁴⁰. When avoidance of impacts is not possible, measures to minimize impacts and restore biodiversity should be implemented. Danosha located the pig farm in Lany village in immediate proximity to the Halych National Park and the river Dnister. Odor from the farm, water intake, other pollutants emission and the hazard of manure leakage has direct impact on the aquatic ecosystem and wetlands and their biodiversity. Also, there is no pressing need in such geographical location of the pig farm. Besides, Danosha, should guarantee the participation of communities in determination of priority ecosystem services of relevance to Affected Communities (where the pig farms have direct impact) and measures to minimize these impacts⁴¹. The pig farms have a direct impact on the water usage of the communities, cultural and recreational services of the Halych National Park and the river Dnister. Danosha has violated PS 6; since it did not conduct analysis of impacts on the ecosystem services and biodiversity with the involvement of affected communities, as well as did not avoid these impacts.

⁴⁰ IFC Performance Standards on Environmental and Social Sustainability, Performance Standard 6, paragraph 7.

⁴¹ IFC Performance Standards on Environmental and Social Sustainability, Performance Standard 6, paragraph 24-26.