European Bank
for Reconstruction and Development

Project
Complaint
Mechanism

COMPLAINT: MHP Corporate Support Loan and MHP Biogas Projects

REQUEST NUMBER: 2018/09

ELIGIBILITY ASSESSMENT REPORT – September 2018

The Project Complaint Mechanism (PCM) is the accountability mechanism of the EBRD. PCM provides an opportunity for an independent review of Complaints from one or more individual(s) or organisation(s) concerning an EBRD Project, which allegedly has caused, or is likely to cause harm. PCM may address Complaints through two functions: Compliance Review, which seeks to determine whether or not the EBRD has complied with its Environmental and Social Policy and/or the Project-specific provisions of the Public Information Policy; and Problem-solving, which has the objective of restoring a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault. Affected Parties can request one or both of these functions.

For more information about PCM, contact us or visit www.ebrd.com.

Contact information

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http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism.html

How to submit a Complaint to the PCM

Complaints about the environmental and social performance of the EBRD can be submitted by email, telephone or in writing at the above address, or via the online form at:

http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/submit-a-complaint.html

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Unless otherwise indicated capitalised terms used in this report are those as set forth in the PCM Rules of Procedure.

EXECUTIVE SUMMARY

The Project Complaint Mechanism (PCM) received a Complaint from community members (Complainants) from Olyanytsya, Zaozerne and Kleban villages in Vinnytsia Oblast, Ukraine. The Complainants assert they have been impacted by the activities of the EBRD investments in MHP, including the MHP Corporate Support Loan and the MHP Biogas Projects.

The Complainants are supported by representatives of local and international civil society organizations. In their Complaint letter the Complainants requested Problem-solving. Should Problem-solving not be successful, they requested that PCM undertake a Compliance Review.

The Eligibility Assessors have determined that the Complaint is eligible for Problem-solving in accordance with the PCM Rules of Procedure, specifically paragraphs 24-26 and 28-29. The Complaint:

- has been filed within prescribed timeframes;
- describes the PCM functions requested;
- describes the outcomes sought;
- provides adequate information relating to prior communications with the Bank and Client;
- raises issues that are appropriate for a Problem-solving and the Eligibility Assessors consider that a dialogue process is likely to have a positive effect;
- is not disqualified under any criteria set forth in paragraph 28 of the PCM Rules of Procedure.

The Eligibility Assessors also find that the Complaint satisfies the criteria for a Compliance Review. In the view of the Assessors, the Problem-solving Initiative should be conducted in the first instance. The scope of any Compliance Review may be considered at a later stage, pending the outcomes of the Problem-solving Initiative and following consultations with the Relevant Parties.

I. BACKGROUND

1. On 5 June 2018 the Project Complaint Mechanism (PCM) received a Complaint connected with EBRD investments in Myronivsky Hliboproduct (MHP). MHP Group is a leading vertically integrated poultry/grain/fodder producer in Ukraine. The Complaint was submitted by community members from Olyanytsya, Zaozerne and Kleban villages in Vinnytsia Oblast, alleging impacts on the environmental and social conditions in the community and limited access to information about MHP's activities and EBRD's investments. The Complaint requested that a Problem-solving Initiative (PSI) be undertaken by the PCM and, if not successful, Compliance Review.[1]

2. The PCM Officer registered the Complaint on 21 June 2018 in accordance with paragraphs 11-13 of the PCM Rules of Procedure (PCM RP). The Complaint was subsequently posted on the PCM Register pursuant to paragraph 20 of the PCM RP.

3. On 29 June 2018 Mr Constantin-Adi Gavrila was appointed as *ad hoc* PCM Expert to conduct this Eligibility Assessment jointly with the PCM Officer, in accordance with paragraph 22 of the PCM RP.

4. PCM is aware that a similar Complaint has been submitted by the same community members to the Compliance Advisor Ombudsman (CAO)[2] of the World Bank Group. PCM has been communicating with CAO representatives to seek means to collaborate and to avoid duplication of efforts and disturbance to common parties during the Complaint processing, in line with paragraph 23 of the PCM RP.

5. Although four EBRD investments in MHP are referred to in the Complaint, two Projects are relevant for the purposes of the Complaint. The Project Summary Document regarding the MHP Corporate Support Loan Project provides as follows:

    - *[T]he loan will be used to support the agricultural working capital needs of MHP associated with the growing of grains and oilseeds and the processing of these grains and oilseeds into raw material for fodder production. The capex component of the loan will support the purchase of new agricultural equipment for crop farming as well as oilseed processing activities after the launch of a new soy processing plant. This Project was approved for funding by the EBRD Board of Directors on 28 October 2015 as a B category Project in accordance with the 2014 EBRD Environmental and Social (E&S) Policy, as the potential impacts are expected to be site specific and readily identifiable and addressed through mitigation measures.*[3]

6. The Project Summary Document in respect of the MHP Biogas Project states:

    - *The Project is aimed at the construction by Myronivsky Hliboproduct (MHP) of a Greenfield 10 MW biogas plant in Vinnitsa region of Ukraine. The Project will support MHP Group's strategy to improve the energy efficiency and environmental footprint of its operations. The Project is expected to have a significant transition impact under the 'Green' quality as it will promote the efficient utilization of chicken manure and other agricultural residues for energy production and the application of best available techniques related to waste management. The Project is expected to result in significant reduction in GHG emissions. This Project was approved by the EBRD*

[1] Complaint 2018/09, available at http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html and annexed to this report.
[2] For more details, please visit: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=1274
[3] Project Summary Document for MHP Corporate Support Loan, available at https://www.ebrd.com/work-with-us/projects/psd/mhp-corporate-support-loan.html.

Board of Directors on 13 December 2017, as a category B Project under the 2014 EBRD Environmental and Social Policy. The Project elements are site specific and readily addressed through well-understood mitigation measures.[4]

II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT

7. The Eligibility Assessors have undertaken a general examination of the Complaint, as well as the formal response of EBRD Management to the Complaint, as well as documents and information provided by the Complainants, EBRD staff and the Client.

8. Initial meetings by teleconference were held with Complainants, Bank staff and the Client in July 2018. In-country consultations were also undertaken by the PCM Expert together with a member of CAO staff and a CAO consultant during 10-15 August 2018.

9. The in-country meetings held with Complainants had a number of objectives, including to:

- Understand the Complainants' general experience with MHP activities, including positive impacts as well as pending concerns;
- Explore, in general terms, the underlying needs of the Complainants and consider the Complainants' request for confidentiality;
- Clarify what the PCM Problem-solving and the Compliance Review functions can and cannot achieve in order to manage Complainants' expectations;
- Survey Complainants' views about whether a PSI might be helpful (or not), also considering the Complainants' request to keep their identities confidential, and assess interest in pursuing a constructive dialogue;
- To circle back and share with the community members the Company's preferences; and
- Discuss Complainants' views generally on terms to be included in a potential Framework Agreement for a constructive dialogue process.

10. Meetings with MHP representatives at their offices in Ladyzhyn were aimed at understanding the Company's perspectives on the issues raised and clarifying the PCM functions and procedures. MHP had also organised two site visits, to the Olyanytsia new bypass road and to the Ladyzhyn wastewater treatment plant, both constructed by MHP.

11. During the mission, meetings were also held with the heads of Olyanytsya and Kleban villages, who expressed their views regarding the issues raised by Complainants.

III. SUMMARY OF THE RELEVANT PARTIES' VIEWS

1. Complainants

12. In the Complaint, the Complainants raised environmental and social concerns as well as concerns about limited access to information in relation to the operations of MHP. They also asserted that EBRD has not acted in accordance with its obligations under the Environmental and Social Policy in relation to its investments in MHP.

13. Complainants stated their belief that full resolution of the matter is possible through a constructive facilitated dialogue between MHP and affected community members, and so

[4] Project Summary Document for MHP Biogas, available at https://www.ebrd.com/work-with-us/projects/psd/mhp-biogas.html.

requested that PCM initiate a PSI. Yet, if parties are not able to agree on a solution, Complainants requested that a Compliance Review be undertaken.

14. In summary, the Complainants asserted that:

> *The construction and operation of MHP agribusiness activities in our local area, namely its interrelated Vinnytsia Poultry Farm (VPF) and Zernoproduct Farm activities (collectively "the Project"), have caused continuous odour and dust impacts from a significant and growing number of facilities surrounding our villages and from the application of manure on nearby fields. Project activities have led to a drastic increase in heavy vehicle traffic through our villages, resulting in damage to roads and nearby residences, as well as additional impacts from dust, noise and foul odours for residents along major MHP thoroughfares. Community consultation processes have been poor, based on inadequate disclosure of information, and involved pressure from Company representatives to support the Project and suppress any dissent. We also fear additional impacts from the Project, including pollution of our air, water and soil. Water levels in some local wells have been noticeably depleted in recent years, and we fear that this is caused by MHP's local operations. Moreover, we fear that the planned expansion of the VPF, which will double its operations and involve construction of a new biogas plant, will also cause additional impacts. MHP has failed to provide us with basic information that would allow us to understand the full extent of these and other impacts and be assured that the Company's activities will not negatively affect our environment and health*.

15. During in-country meetings affected community members validated the issues raised in the Complaint and confirmed that their immediate priority is to pursue Problem-solving; the Compliance Review function could be considered at a later stage in the case that Problem-solving is not successful. Community members also noted their preference that PCM and CAO coordinate to the extent possible to support a single dialogue process for both complaints.

2. Bank Management

16. In a written response[5] to the Complaint, EBRD Management indicated support for a PSI involving MHP and community members from the villages referred to in the Complaint.

17. The Bank stated that MHP is a long-standing EBRD Client and that the following Projects have been undertaken with MHP:

- July 2010: loan for financing working capital associated with expanding operations and the construction of a biogas plant at the poultry farm Oril Leader.
- November 2013: financing to support the acquisition of agricultural and grain infrastructure in Russia and capital expenditures related to agricultural equipment for MHP Group's agricultural farming operations in Ukraine.
- November 2015: loan to support the agricultural working capital needs of MHP associated with the growing of grains and oilseeds and the processing of these grains and oilseeds into raw material for fodder production. The capex component of the loan supported the purchase of new agricultural equipment for crop farming as well as oilseed processing activities after the launch of a new soy processing plant.
- December 2017: loan for the construction of a Greenfield 10 MW biogas plant in Vinnitsa region of Ukraine.

18. The Bank highlighted that, to date, the only outstanding Project concerns the biogas plant. They also indicated that EBRD provided financing to MHP and that the subsidiaries mentioned in the Complaint letter are not direct borrowers under EBRD loans, although the

[5] Bank Management Response dated 20 July 2018 available in annex to this report.

Bank noted that, these subsidiaries, being involved in farming and fodder activities, could have indirectly benefited from EBRD funds.

19. In relation to the MHP Biogas Project, the Bank stated that environmental and social due diligence on the Project was undertaken and that a number of issues were identified and are being addressed by the Company, such as lack of a cumulative environmental and social impact assessment.

20. EBRD Management indicated that they believe there have been substantial improvements in the environmental, social and stakeholder engagement practices of the Company. In spite of the efforts undertaken to date, the Bank welcomed the opportunity for an independent review of the issues raised and committed to offer the necessary support to the PCM to accelerate the dialogue process to try and resolve the issues raised.

21. Finally, in a meeting held in Kiev on 15 August 2018, the EBRD project team indicated their previous efforts in engaging with Complainants, starting back in 2013, as well as the EBRD's continuous support offered to MHP in improving the way they engage with stakeholders, manage grievances and offer public access to information.

3. The Client

22. The PCM Officer informed the Client about the registration of the Complaint and invited them to provide a response. The Client provided a written submission to the PCM on 26 July 2018 and agreed that certain information should be included as part of the Eligibility Assessment report. Additional information was provided by the Client during in-country meetings. In summary, MHP provided the following information:

- All planned activities were subject to an environmental impact assessment before a decision regarding a new construction facility was taken. The Company also explained that the outcomes of the environmental impact assessments were made available to impacted community members through public hearings.

- MHP has 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, via email, by post, by phone and through in person meetings with MHP staff.

- Concerning complainants allegations related to potential environmental impacts of the biogas plant, the Client asserted that they have undertaken and released an environmental impact assessment as required by local legislation and that public consultations with impacted community members are planned to be organised in due course.

- MHP currently does not foresee risks of air, soil or groundwater contamination. The Client explained that they follow local compliance rules concerning the application of chicken manure and pesticides in the fields. In relation to Complainants' alleged impacts on drinking water wells in the villages, the Client stated that independent expertise was conducted and its results did not show any connection between the Company's activities and the increased level of nitrates in the water wells.

- All measures are being taken by the Company to comply with requirements of Ukrainian labour legislation and International best practice. They explained that the Company is regularly conducting internal health and safety audits and risk assessments.

23. During meetings the Company also presented information regarding their activities and the social support the Company is offering to local communities, such as creation of new jobs (around 5,000 jobs created as of January 2018), development and maintenance of villages' infrastructure, and preservation and restoration of cultural and historical heritage sites (investments about 40 million UAH during 2012-2018).

24. Further, the Company indicated their willingness to participate in a PCM-facilitated dialogue process with the Complainants, to discuss the issues raised in the Complaint. The Company also noted their preference that PCM and CAO coordinate to the extent possible to support a single dialogue process for both complaints.

IV. DETERMINATION OF ELIGIBILITY

25. The Eligibility Assessors have examined the Complaint as well as relevant information from the Bank and Client to determine whether the relevant eligibility criteria are met under the PCM RP.

26. Pursuant to paragraph 24 of the PCM RP, the Eligibility Assessors do not judge the merits of the allegations in the Complaint and do not make a judgement regarding the truthfulness or correctness of the Complaint in making their determination on eligibility.

27. The Eligibility Assessors have taken note of information relating to the criteria set out in paragraph 25 of the PCM RP:

- Function: Complainants have indicated a desire for PCM to undertake a PSI, and if the PSI is unsuccessful, Compliance Review.

- Outcomes: Complainants have indicated the following outcomes sought as a result of the PCM process:

    a) *Publicly release information, in an appropriate form and language, about the Project and its local impacts. This should include, but not be limited to, information on the total water use of the VPF and Zernoproduct Farm, impacts on surrounding groundwater and other water resources and cumulative pollution impacts on air, water and soil. Information should also explain the cumulative impacts of the Project together with other polluting activities in the area. Finally, it should include information about all currently envisioned new MHP operations in the area, including construction of VPF Phase 2 facilities, new land acquisitions by Zernoproduct Farm and other local Project operations.*
    b) *Work with local communities to develop improved consultation processes that enable all affected people to meaningfully consult on the entire planned farm expansion, and on any specific facilities that may affect them;*
    c) *Commission an independent investigation into the Project's local air, water and soil pollution impacts and any potential links to health impacts in local residents;*
    d) *Implement, and ensure strict adherence to, effective mitigation measures to address odour and pollution impacts;*
    e) *Implement necessary measures to address and minimize impacts from Project-related heavy vehicle road use, including by constructing necessary bypass roads, implementing and effectively enforcing vehicle speed and safety*

measures, repairing and strengthening roads along primary MHP thoroughfares and funding repairs for property damage caused by heavy vehicle road use;

f) Commission an investigation into reported employment issues and work with independent experts to make any necessary improvements to workplace policy, practice and/or culture; and

g) Suspend construction of Phase 2 facilities until a comprehensive assessment of social and environmental impacts is disclosed and meaningful, inclusive consultations are held.

- Correspondence: Complainants have described their efforts to raise the issues directly with the Client and the Bank during the 2011-2018 period. Complainants submitted relevant supporting documents and copies of their correspondence with the Bank and the Company relating to the issues raised in the Complaint.

- Policy: Complainants have asserted violations of the EBRD's 2014 Environmental and Social Policy, namely in relation to PR 1: Assessment and Management of Environmental and Social Impacts and Issues; PR 2: Labour and Working Conditions; PR 3: Resource Efficiency and Pollution Prevention and Control; PR 4: Health and Safety; PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement and PR 10: Information Disclosure and Stakeholder Engagement.

28. Pursuant to paragraph 28 of the PCM RP the Eligibility Assessors have not found that the Complaint was filed fraudulently or for a frivolous purpose, or that its primary purpose is to seek competitive advantage through the disclosure of information or through delaying any EBRD Project. Further, the Complaint has not been addressed by a mechanism of another co-financing institution, and it does not relate to the obligations of a third party.

1. Eligibility for a Problem-solving Initiative

29. The Eligibility Assessors have determined that the eligibility criteria set out in paragraph 24(a) of the PCM RP are satisfied, named that the Complainants are affected by MHP operations and that the issues raised are covered by Environmental and Social Policy.

30. Pursuant to paragraph 26 of the PCM RP, the Eligibility Assessors consider that a PSI may assist in resolving the issues raised in the Complaint and is likely to have a positive result. Several factors inform this conclusion:

- The Relevant Parties have sufficient incentives to reach an agreement;

- Affected community members and the Client are willing to participate in meetings or other forums related to a PSI;

- The Relevant Parties share common interests, such as the potential to benefit from the exchange of relevant information, improve the consultation process between the Company and affected communities, mitigation of impacts on communities, and building a long-lasting constructive dialogue process.

31. Finally, the Eligibility Assessors have noted the Complainants' expectation for a constructive dialogue with MHP and the expectation for the PCM to provide a structured and independently facilitated framework for such a dialogue.

2. Eligibility for a Compliance Review

32. The Eligibility Assessors consider that paragraph 24(b) of the PCM RP is met as there are two investments in MHP that meet the prescribed timeline for a Compliance Review. Further, the issues raised by Complainants relate to the Environmental and Social Policy.

33. The Eligibility Assessors must consider paragraph 27 of the PCM RP, which provides:

> *Where the Complaint raises issues appropriate for a Compliance Review, the Eligibility Assessors will, in their determination of eligibility, also consider whether the Complaint relates to: (a) actions or inactions that are the responsibility of the Bank; (b) more than a minor technical violation of a Relevant EBRD Policy unless such technical violation is alleged to have caused harm; (c) a failure of the Bank to monitor Client commitments pursuant to a Relevant EBRD Policy.*

34. The Eligibility Assessors are of the view that paragraph 27 of the PCM RP is satisfied. While the Bank's assertion that the alleged impacts stem from broader MHP activities rather than due to the specific investments it has made is very clear, a number of the issues as presented by Complainants raise potential project scoping, appraisal and monitoring questions. Accordingly, and mindful of the need to refrain from making any judgement on the merits of the Complaint, the Eligibility Assessors find that the Complaint relates to such Bank responsibilities as described in the Environmental and Social Policy. Finally, the Eligibility Assessors consider that the Complaint raises more than a minor technical violation of the Policy.

V. CONCLUSION

35. On the basis of the information set out above, the Eligibility Assessors have found that the Complaint satisfies the eligibility criteria for both Problem-solving and Compliance Review. In accordance with the PCM RP[6] the Eligibility Assessors have determined that the PSI should be conducted in first instance, and the scope of any Compliance Review would be considered at a later stage, pending the outcomes of the PSI and subject to further discussions with Relevant Parties. Accordingly, terms of reference for the Compliance Review would be developed and discussed with parties at that time.

[6] In accordance with paragraph 30 of the PCM RP: "The Eligibility Assessors will issue an Eligibility Assessment Report […] with a determination of whether the Complaint is eligible for a Problem-solving Initiative, Compliance Review, both (with a decision regarding the order in which they should be conducted), or neither."

TERMS OF REFERENCE FOR A PROBLEM-SOLVING INITIATIVE

Complaint on MHP Corporate Support Loan and MHP Biogas Projects, Ukraine
Request: 2018/09

Application

1. These Terms of Reference apply to any activity or action undertaken as part of the Problem-solving Initiative, which includes the promotion of a facilitated dialogue among the Parties to discuss the issues raised in the Complaint, without attributing blame or fault.[7]

2. Activities carried out as part of the PSI and subject to these Terms of Reference are subject to modifications which the Problem-solving Expert and the PCM Officer may, at any time, expressly agree upon, except modification that may prejudice the interests of any Relevant Party or is inconsistent with accepted dispute-resolution practice.[8]

Problem-solving Expert

3. The Problem-solving Expert shall conduct the PSI in a neutral, independent and impartial manner and will be guided by principles of objectivity and fairness giving consideration to the needs, concerns and interests of the Relevant Parties.

Time Frame

4. The PSI will commence as soon as practicable following the President's decision to accept the Eligibility Assessors' recommendation to undertake a PSI.

5. Every effort shall be made to ensure that the PSI is conducted as expeditiously as circumstances permit. It is intended that the first stage of the process, including capacity-building and facilitated discussions among the Relevant Parties, will be completed within 45 calendar days. It is understood that the time for subsequent stages will be guided by the requirements of the process. The PSI will be considered completed when the Relevant Parties reach an agreement, if one of the Parties no longer wishes to continue in the process, or when, in the opinion of the Problem-solving Expert, no further progress toward resolution is possible, as per paragraph 37 of the PCM RP.

Procedure: Conduct of the Problem-solving Initiative

6. The Problem-solving Expert may conduct the PSI in such a manner as he/she considers appropriate, according to the work plan that has been discussed and agreed to by the Parties, and taking into account the PCM RP, the concerns expressed in the Complaint, and the general circumstances of the Complaint. The Expert will employ such methods as he/she

[7] The problem-solving function of the PCM is described in the Rules of Procedure as having "the objective of restoring a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault."
[8] European Code of Conduct for Mediators:
http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf.

deems necessary including facilitated information-exchange, mediated bilateral and joint discussions and conciliation.

7. During the course of the PSI the Problem-solving Expert may:

   a. Organize the dialogue process;
   b. Develop an agreed work plan and framework agreement for the process, in consultation with the Complainants and the Client;
   c. Finalize objectives for the dialogue process and agendas with input from all Parties;
   d. Seek to ensure a productive working environment where Parties can explore creative options;
   e. Facilitate solutions as described by the different stakeholders and initiate and guide the PSI process;
   f. Document and publish process results and agreements, as appropriate and in consultation with the Parties;
   g. Treat all Parties with respect and assure a fair and balanced process where Parties can make informed choices;
   h. Coordinate with independent experts and/or Independent Accountability Mechanisms, as appropriate.

   Note: It is not the role of the Problem-solving Expert to decide whether Parties' actions, opinions or perceptions are right or wrong or to arbitrate in favour of one of the Parties.

Problem-solving Initiative Completion Report

8. In accordance with paragraph 37 of the PCM RP, the Problem-solving Expert shall prepare a Completion Report. The Report will describe the issues raised in the Complaint; the methods used during the PSI; and the results of the PSI including any issues that remain outstanding. The Report will also identify the need for any follow-up monitoring and reporting by the PCM Officer.

9. Prior to publicly releasing the Problem-solving Completion Report, the PCM Officer will verify with all Relevant Parties that they agree to the content as well as public release of the Report and that there are no confidentiality concerns raised.

10. The Completion Report shall be distributed to the Relevant Parties, the President and the Board of Directors for information, and publicly released in accordance with paragraph 38 of the PCM RP.

11. In accordance with paragraph 39 of the PCM RP, the PCM Officer will monitor the implementation of any agreements reached during the PSI. The PCM Officer will submit draft PSI Monitoring Reports to the Relevant Parties who will be given reasonable opportunity to comment on such Reports. If the PCM Officer receives comments from the Relevant Parties, the PCM Officer will have five (5) Business Days from the day the last comments are received to finalise the Report and will send the final Report to the President and to the Board. Within five (5) Business Days thereafter, the PSI Monitoring Report will be publicly released and posted on the PCM website. The PCM Officer will issue PSI Monitoring Reports at least biannually or until the PCM Officer determines that monitoring is no longer needed.

Exclusion of Liability

12. Without prejudice to the privileges and immunities enjoyed by PCM Experts, the Problem-solving Expert shall not be liable to any party for any act or omission in connection with any PSI activities undertaken pursuant to these Terms of Reference.

ANNEX 1: COMPLAINT

05 June 2018

Erica Bach, PCM Officer
Project Complaint Mechanism
European Bank for Reconstruction and Development
1 Exchange Square, London, UK
E-mail: Bach, Erica <BachE@ebrd.com>

Dear Ms. Bach,

We are community members[1] from the villages of Olyanytsya, Zaozerne and Kleban in Vinnytsia Oblast, Ukraine, who have been impacted in various ways by the operations of PJSC Myronivsky Hliboproduct ("MHP" or the "Company") and its subsidiaries, Vinnytska Ptahofabryka LLC, Vinnytsia Poultry Farm Branch Complex for Manufacturing Feeds LLC and PrJSC Zernoproduct MHP.[2]

The construction and operation of MHP agribusiness activities in our local area, namely its interrelated Vinnytsia Poultry Farm (VPF) and Zernoproduct Farm activities (collectively "the Project"), have caused continuous odor and dust impacts from a significant and growing number of facilities surrounding our villages and from the application of manure on nearby fields. Project activities have led to a drastic increase in heavy vehicle traffic through our villages, resulting in damage to roads and nearby residences, as well as additional impacts from dust, noise and foul odors for residents along major MHP thoroughfares. Community consultation processes have been poor, based on inadequate disclosure of information, and involved pressure from Company representatives to support the Project and suppress any dissent. We also fear additional impacts from the Project, including pollution of our air, water and soil. Water levels in some local wells have been noticeably depleted in recent years, and we fear that this is caused by MHP's local operations. Moreover, we fear that the planned expansion of the VPF, which will double its operations and involve construction of a new biogas plant, will also cause additional impacts. MHP has failed to provide us with basic information that would allow us to understand the full extent of these and other impacts and be assured that the Company's activities will not negatively affect our environment and health.

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1 See Annex 1 for information on how to contact complainants and our advisors.

2 In this complaint the terms MHP and the Company refer broadly to PJSC MHP and its subsidiaries. As local affected people, it is often not possible to distinguish which MHP subsidiary is responsible for a particular operation.

The European Bank for Reconstruction and Development ("EBRD") has provided four separate investments to MHP since 2010. The most recent investment was provided in December 2017 for the construction of a new biogas plant that will form a key part of the VPF's expansion.[3] This loan is currently in disbursement. A 2015 loan for MHP's grain and fodder production activities is currently in repayment,[4] while the two prior loans are now closed.[5]

Our concerns and the associated EBRD policies that have been or may be violated are detailed in the following sections. We believe that full resolution of this matter remains possible through a constructive facilitated dialogue between MHP and affected community members. Therefore we request that the PCM initiates a Problem-Solving process. However, if the parties are not able to agree on a solution, we request that the complaint proceeds to Compliance Review.

We further request that the identities of the individual signatories to this complaint remain confidential, as we fear retaliatory actions should our identities be disclosed.[6] We ask that this complaint be treated as public and posted on the PCM's website. However, we wish the attached annexes to remain confidential.

I. Factual background

a. The Company

MHP is the largest poultry producer in Ukraine, accounting for 30% of the industrially produced poultry consumed in the country in 2017.[7] It is also one of the country's top exporters, with products sold in 63 countries, including widely throughout the European Union.[8] The Company's vertically integrated business model involves controlling all aspects of the poultry production chain: growing crops to produce chicken fodder; collecting, incubating and hatching eggs; raising and slaughtering chickens; processing, distributing and selling their meat; and re-purposing manure as fertilizer for its crops. The Company also controls secondary facilities to support its operations, such as water treatment facilities and a recent expansion into biogas plants, and has expanded into related markets including cattle breeding and meat and sausage production.

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[3] Project Summary Document (PSD) for MHP Biogas (Project No. 49301), available at http://www.ebrd.com/work-with-us/projects/psd/mhp-biogas.html. The project client is Myronivsky Hliboproduct PJSC / MHP Group.

[4] PSD for MHP Corporate Loan Support (Project No. 47806), available at http://www.ebrd.com/work-with-us/projects/psd/mhp-corporate-support-loan.html. The project client is Myronivsky Hliboproduct PJSC / MHP Group.

[5] PSD for MHP Farming (Project No. 45253), available at http://www.ebrd.com/work-with-us/projects/psd/mhp-farming.html (project client is MHP Group); PSD for MHP (Project No. 41132), available at http://www.ebrd.com/work-with-us/projects/psd/mhp.html (project client is JSC Myronivsky Hliboproduct, a company of MHP Group).

[6] For further context on the reason for our fears of retaliation, see Annex 3.

[7] Annual Report and Accounts 2017, MHP Agro & Industrial Holding, p. 7, available at https://www.mhp.com.ua:8443/library/file/ar-2017-as-210318-final2.pdf.

[8] European export countries include the Netherlands, France, Germany, Spain, Italy, Belgium, Switzerland, the United Kingdom and Ireland, among others. *Id.* at 9.

The EBRD is not the only international investor in MHP. The International Finance Corporation (IFC) has also provided a number of loans to the company. According to the IFC's Summary of Investment Information for its 2015 investment, MHP produced 472,800 tonnes of chicken meat and harvested 2 million tonnes of crops in 2013 alone.[9] Since that time, MHP has continued to expand its operations. [10] By 2017, MHP had expanded its production of chicken meat to over 560,000 tonnes per year.[11] The Company controls around 370,000 hectares of crop land, one of the largest land banks in Ukraine.[12] Due to a moratorium on the sale of agricultural land in Ukraine, which has been in effect since 2001,[13] MHP's agricultural activities are primarily conducted on plots that are leased from individuals through long-term lease agreements.

While MHP's vertically integrated model has contributed to its status as a leading Ukrainian agribusiness, the scale and nature of its business have also contributed to mounting concerns about its social and environmental impacts.[14] These concerns are compounded by patterns of poor community consultation and a lack of information provided about MHP's operations, leaving project-affected people such as ourselves guessing about the true impacts of its operations.

b. The Vinnytsia Poultry Farm and Zernoproduct Farm

The VPF, which MHP has called the largest poultry farm in Europe,[15] accounts for nearly half of MHP's total poultry production, with output averaging around 277,803 tonnes of chicken meat per year.[16] MHP began construction of the VPF in 2010. Its construction was divided into two phases, the first of which became operational in 2014.[17] Phase 1 includes a fodder production plant and grain storage facilities, a breeder farm and chicken hatchery, 12 brigades of poultry houses, a slaughterhouse, a wastewater treatment plant and workers' housing facilities.

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9 Project ID 34041, IFC Summary of Investment Information (SII), "Project Sponsor and Major Shareholders of Project Company" available at https://disclosures.ifc.org/#/projectDetail/SII/34041; IFC Environmental & Social Review Summary for Project 34041, "Project Description," available at https://disclosures.ifc.org/#/projectDetail/ESRS/34041."

10 IFC SII for Project 34041, "IFC's Expected Role and Additionality."

11 MHP Annual Report 2017 at 25.

12 *Id.* at 8.

13 "Ukraine's Ban on Selling Farmland is Choking the Economy," James Gomez and Kateryna Choursina, Bloomberg (1 Jan. 2018), available at https://www.bloomberg.com/news/features/2018-01-02/ukraine-s-ban-on-selling-farmland-is-choking-the-economy.

14 We are not alone in raising these concerns. Concerns about social and environmental impacts of MHP operations have reported by others: "Наша Ряба скидає в Сільницю стоки невідомого походження", Ladyzhyn blog (19 Jun. 2013), available at http://lad.vn.ua/blog/control/nasha-ryaba-skidae-v-silnicyu-stoki-nevidomogo-pohodzhennya.html; "В Черкаському районі гине риба - чиновники та місцеві жителі називають різні причини" (2 Feb. 2017), available at http://kropyva.ck.ua/content/v-cherkaskomu-raion-gine-riba-chinovniki-ta-mstsev-zhitel-nazivayut-r-zn-prichini%20; "МИРОНІВСЬКА ПТАХОФАБРИКА НАЗВАЛА ІНЦИДЕНТ ЗІ ЗЛИВОМ НЕЧИСТОТ НЕПРИПУСТИМИМ" Vicko News (1 Mar. 2017), available at http://vikka.ua/news/84631-mironivska-ptahofabrika-nazvala-intsident-zi-zlivom-nechistot-nepripustimim-video.htm?fb_comment_id=1163207897109968_1163561310407960#fcb872abdaa26c.

15 MHP Website, "Vinnytsia Poultry Farm LLC," https://www.mhp.com.ua/en/operations/op-vinnitskaja-ptitsefabrika-oao-mkhp (last accessed: 9 May 2018).

16 *Id.*

17 *Id.*

Each brigade consists of 38 poultry houses and has a capacity of approximately 1,484,280 chickens (broilers), meaning that there are currently as many as 17.8 million chickens being reared in the VPF at any one time.[18]

The typical brigade layout. Each brigade requires a total area of 25-30 hectares of land and can house approximately 39,060 chickens at a time. Source: 2016 OPIC Supplementary ESIA, p. 6, figure 2.3.

Existing poultry houses within the VPF.

[18] Environmental Impact Assessment for Brigade 13, "Spektr" Separate Division of MHP PJSC (Feb. 2015), Sec. 3.1, included in Annex 7. The EIAs for Brigades 7, 8, 9 and 55 all reflect the same numbers. Note that somewhat higher numbers of chickens per brigade are reported on MHP's website (https://www.mhp.com.ua/en/operations/op-vinnitskaja-ptitsefabrika-oao-mkhp) and significantly lower numbers are reported in a 2016 OPIC Supplementary ESIA ((Vinnytsia Poultry Farm Environmental and Social Impact Assessment Supplementary Information Report, WSP Persons Brinckerhoff, Prepared for the Overseas Private Investment Corporation (Dec. 2016), p. 6). We believe that the numbers in the environmental assessment documents to be the most accurate, as they are consistent across Brigades.

The "overall project area" of Phases 1 and 2 of the VPF will use an estimated 27,000 hectares of land in the Vinnytsia Oblast between and surrounding our communities.[19]

Approximate site areas are marked by yellow lines, while existing and proposed facilities are indicated by various coloured dots (see map key). Source: 2016 OPIC Supplementary ESIA, p.5, figure 2.2. This map is approximate as some facility locations have changed.

MHP's Zernoproduct Farm ("Zernoproduct") operations span across an overlapping area of Vinnytsia Oblast. Established in 2004, Zernoproduct grows, produces and stores grains, which are in turn processed into fodder for the VPF and other MHP animal rearing operations.[20] Zernoproduct Farm's sunflower seed husks are used as bedding for the VPF's chickens, while the VPF reportedly sells "organic matter from chicken-broilers" to Zernoproduct for use as fertilizer.[21] In 2013, Zernoproduct Farm controlled a reported 25,867 hectares in the area around Ladyzhin.[22]

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[19] OPIC Supplementary ESIA at sec. 2.4. It is not clear to us exactly which facilities this estimate includes.

[20] Although they are technically two separate legal entities with a common parent, the distinction between the operations of the Zernoproduct Farm and the operations of the VPF in our local area are not entirely clear. For example, some operations such as Brigade 13, the fodder plant and the sunflower crushing plant are included in the description of the VPF yet are listed elsewhere as being owned by Zernoproduct Farm. See, e.g. Annual Report and Accounts 2013, MHP, p. 20. The description of operations in this complaint comprises our best understanding of the two entities' interrelated operations.

[21] "Куряче гімно стало головним болем мешканців Ладижина" Vinnitsa.info (12 Sep 2013), available at http://www.vinnitsa.info/news/kuryache-gimno-stalo-golovnim-bolem-meshkantsiv-ladizhina.html.

[22] *Id.* This appears to be corroborated by information on MHP's website, which states that Zernoproduct Farm has a land bank of over 90,000 hectares, around 25,000 of which is concentrated in its Tulchynska, Bershadska,

Despite the massive size of the VPF and Zernoproduct Farm, MHP has not publicly released an environmental assessment or other document explaining the social and environmental impacts of and total resources used by its local operations. Many basic facts are therefore unknown to local communities.

A 2016 Supplementary Environmental and Social Impact Assessment ("ESIA") for the VPF released by the U.S. Overseas Private Investment Corporation ("OPIC") in connection with its own investment review process attempts to estimate the resource use and other impacts of the VPF, by adding together predictions and reports found in other documents, produced at varying times, for individual facilities.[23] However, discrepancies between the OPIC Supplementary ESIA and other project documents call into question the accuracy of these numbers.[24] No ESIA has been publicly disclosed for Zernoproduct Farm's crop growing activities, or for the associated application of manure as fertilizer.

The OPIC Supplementary ESIA reports that Phase 1 of the VPF uses over 3.4 million cubic meters of water per year, taken from the Pivdenny Bug River, and produces over 224,000 tonnes of manure per year, which is re-purposed as fertilizer on Zernoproduct's local crop land.[25] A 2015 MHP benchmarking exercise found that the VPF produced 787,870 tonnes of CO2 equivalent greenhouse gases.[26] Used wastewater from the slaughterhouse, fodder plant, hatchery and rearing brigades is processed by the VPF's wastewater treatment facility and discharged back into the river.[27]

MHP had a goal to begin construction of Phase 2 of the VPF in 2017.[28] Phase 2 may include construction of between 10 and 12 additional poultry brigades, each with 38 poultry houses.[29] It will also entail the expansion of all VPF facilities, with the aim to drastically increase the volume of production at all levels.[30] Finally, Phase 2 also involves the construction of a biogas plant to accommodate the additional manure produced by twice the number of chickens and to power MHP's local operations. Once fully operational, the VPF is expected to:

- Include a total of at least 836 separate chicken houses, positioned in at least 22 brigades;

Haysynska, Horyivska and Olianytska branch offices, which we presume correlate with the villages and rayons (districts) of the same names near Ladyzhyn.

[23] See OPIC Supplementary ESIA. To our knowledge, OPIC has not yet made a decision to invest in the VPF.

[24] For example, the OPIC Supplementary ESIA reports that each of the 12 existing brigades houses 39,050 chickens (sec. 2.5), whereas environmental assessment documents for individual brigades indicate that a standard VPF brigade houses nearly 1.5 million chickens (around 39,000 chickens per *poultry house*, with 38 poultry houses in each brigade) (see, e.g., EIAs for Brigades 7, 8, 9, 13 and 55).

[25] OPIC Supplementary ESIA at 112, 139.

[26] OPIC Supplementary ESIA, Appendix C: Best Available Techniques at sec. 2.4.

[27] OPIC Supplementary ESIA at 9-10.

[28] Annual Report and Accounts 2016, MHP, p. 14.

[29] OPIC Supplemental ESIA at sec. 2.5 reports that MHP plans to build 10 new brigades; page 113 reports that it plans to build 9 new brigades. Elsewhere, MHP has stated that Phase 2 will double the VPF's production capacity, suggesting that the final number of brigades will be double the 12 constructed in Phase 1. See, e.g., 2017 MHP Annual Report at 10. It appears that at least 10 new brigades are already in the early stages of planning and/or construction.

[30] OPIC Supplemental ESIA at 6-11.

- Have capacity to house 32 million chickens at a time;[31]
- Consume over 6 million cubic meters of water per year;[32]
- Produce on the order of 1.5 million tonnes of greenhouse gases per year;[33]
- Produce potentially close to 6 million cubic meters of sewage per year;[34] and
- Produce over 411,000 tonnes of manure per year.[35]

c. EBRD investments in MHP

The EBRD has provided repeated investments in MHP's agribusiness operations in Ukraine since 2010.[36] Its first loan of $65 million USD helped to finance the construction of MHP's first biogas plant at the Oril Leader poultry farm in Dnepropetrovsk Oblast and other expansion operations.[37] The EBRD followed this with a 2013 investment, which increased its debt exposure to $100 million USD, financing capital expenditures for agricultural equipment and MHP's expansion activities in Russia.[38]

A 2015 loan of $85 million USD, which is still in repayment, went towards additional expansion of MHP's agricultural operations, specifically its grain growing and fodder production activities.[39] This loan is directly relevant to the operations of the Zernoproduct Farm and VPF, which include the growth of grains (Zernoproduct), which are then processed into fodder and used to raise broiler chickens at the VPF.

A recent loan of 25 million EUR, approved in December 2017, is currently in disbursement to finance the construction of the VPF's new biogas plant, which is a key part of the Phase 2 expansion of the VPF and also closely tied to the Zernoproduct Farm.[40] The biogas

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31 Calculated based on standard capacity of existing MHP brigades.

32 OPIC Supplemental ESIA at 139.

33 This is a rough estimate. The OPIC Supplementary ESIA reports that MHP estimated Phase 1 GHG emissions at 787,870 tonnes in 2015 (Appendix C at sec. 2.4), and we understand that Phase 2 will double the VPF's operations. While the ESIA for the biogas plant claims that it will reduce the overall GHG emissions of the VPF, this claim is not well supported in project documents and we fear that the plant may even increase overall GHG emissions, if there are fugitive losses of methane, or if manure is still stored for long periods in the open air before it enters the plant, or if the conversion into biogas is less efficient than the Company expects.

34 The OPIC Supplemental ESIA states that the wastewater treatment plant has a current capacity to process 11,000m^3 of wastewater per day for Phase 1, operating 312 days per year, meaning its current annual capacity is around 3.432 million m^3/year. MHP is building out an additional treatment line for Phase 2. (OPIC Supplemental ESIA at 10)

35 This number is calculated by multiplying on the estimated 18,722.2 tonnes of manure produced per brigade per year by 22 (the estimated total number of brigades to be constructed). BR. 55 EIA at p. 128.

36 The EBRD is not alone in supporting MHP with hundreds of millions of dollars in financing. The International Finance Corporation, European Investment Bank and Atradius (a Dutch state trade insurance agency) have also supported MHP through financing and guarantees.

37 PSD for MHP (Project No. 41132), available at http://www.ebrd.com/work-with-us/projects/psd/mhp.html.

38 PSD for MHP Farming (Project No. 45253), available at http://www.ebrd.com/work-with-us/projects/psd/mhp-farming.html.

39 PSD for MHP Corporate Loan Support (Project No. 47806), available at http://www.ebrd.com/work-with-us/projects/psd/mhp-corporate-support-loan.html.

40 Project Summary Document for MHP Biogas (Project No. 49301), available at http://www.ebrd.com/work-with-us/projects/psd/mhp-biogas.html.

plant will be used to dispose of the hundreds of thousands of additional tonnes of manure that the VPF will produce per year following the Phase 2 expansion, while liquid waste that is left behind from the biogas production process will in turn be re-purposed as fertilizer for the Zernoproduct farm.[41] In short, the EBRD-supported biogas plant plays a key part in enabling the Phase 2 expansion, by providing a mechanism for disposing of more than 180,000 tonnes of additional chicken manure that will be produced by Phase 2 poultry rearing operations.

II. Community concerns

As described in the following sections, MHP's operations in our immediate vicinity have led to a number of actual and feared impacts on us. Heavy vehicle traffic has resulted in damage to village roads and nearby residences. We have experienced continual impacts from dust, noise and foul odors caused by vehicles passing through our village as well as emanating from MHP's nearby poultry farming and other agricultural activities. We also fear additional impacts from the Project, including pollution of our air, water and soil and depletion of water resources. Moreover, we fear that the Company's planned expansion of operations may cause additional harm in the future.

Overlaying all of these concerns are ongoing issues with MHP's consultation and information disclosure practices. We have had limited opportunities to be consulted about MHP's operations and expansion plans. Even when we have been consulted, MHP has failed to provide us with basic information that would allow us to understand the full extent of social and environmental impacts from its operations and be assured that the Company's activities will not negatively affect our environment and health. Consultations have not addressed basic questions regarding social and environmental impacts and have often involved pressure from Company representatives to support development and expansion plans. We have often only learned about and been consulted on planned new facilities after land had already been leased and set aside and initial construction planning was underway, depriving us of the opportunity to be meaningfully consulted on these developments. Even promises made to us during consultation meetings regarding measures to mitigate impacts have not been fulfilled.

We believe that there is still an opportunity for these concerns to be resolved through an independently facilitated dialogue with MHP, should the Company demonstrate a willingness to meet with us in good faith.

a. Problems with MHP's community consultation practices and information disclosure

Consultation

Since MHP first came to our area, we have experienced repeated and systematic problems with their approach to community consultation meetings about Project plans. Since the construction of Phase 1 of the VPF began, residents have only been invited to meetings to

[41] Biogas Plant ESIA at p. 67.

discuss facilities directly located on the territory of their village council,[42] even though facilities on adjacent land also raise social and environmental risks and impacts for nearby communities.[43] Even for those facilities planned on the lands of our own village councils, many local residents only learned about consultation meetings when it was already too late to influence Project plans.[44] Meetings included presentations about the Company, but potential risks and impacts were not explained during the meetings, and local affected people were not provided sufficiently detailed written information to understand the overall implications for our communities of each proposed facility, nor of MHP's local operations as a whole.[45]

Even some landowners who leased land to MHP have reported that they were not properly consulted on, or even made aware of, MHP's planned Project facilities prior to their construction.[46] Moreover, local landowners were not given an opportunity to fairly negotiate the terms of the lease agreements, but instead were presented with long-term lease agreements with fixed prices, leaving individual farmers faced with a "take it or leave it offer" with no opportunity to negotiate. Owners of land adjacent to MHP facilities, and within the required sanitary protection zone, also believe they should have been individually consulted about the impacts to their land from dust and other types of pollution produced by these facilities.[47]

As MHP moves forward with its Phase 2 expansion works, the Company is organizing public hearings about its new facilities. Despite some recent attempts to improve its document disclosure practices, many of the same problems that we have experienced for years still persist. MHP still relies on village-level public hearings as the only opportunity for "consultation" with local affected people about its facilities. Local people are only invited to consultations about the specific facilities that are planned for construction on their village council territory, and no consultation meetings whatsoever have been held on the Company's local operations as a whole. As a result, we have had no opportunity to learn about its full impacts, or to ask questions or voice our concerns about the whole Project. Moreover, by limiting consultations to facility-

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42 A 2010 Trostyanets District Council meeting is the one exception to this that we can recall. At that meeting, a small select group of representatives from villages in Trostyanets Rayon were invited to discuss and approve urban planning documents, which provided for construction of at least 8 major MHP facilities on the land of Olyanytsya, Chetvertinyvka and Hordiivka village councils. Only 22 people from Olyanytsya were present at the meeting. Minutes of Trostyanets District Council Meeting (21 Sep. 2010) included in Annex 8.

43 For example, Olyanytsya community members were not consulted on the construction of Brigades 8 and 9 or the fodder plant, which are located on the territory of neighboring village councils, although these are within a few kilometers of Olyanytsya and closer to some Olyanytsya residences than the brigades about which they have been invited to consult.

44 Interview with former head of Olyanytsya, *Black Earth: Agribusiness in Ukraine and the marginalization of rural communities*, Natalia Kolomiets, National Ecological Centre of Ukraine and Fidanka Bacheva McGrath, CEE Bankwatch Network (Sep. 2015), p. 26.

45 Interview with former head of Olyanytsya, *Black Earth*, pg. 26.

46 For example, in 2014, one landowner reported that he had leased land to MHP with the understanding that the Company would use it for agricultural activity and was unaware of their plan to build large farming infrastructure on the land until construction started. This example was documented in the *Black Earth* Report, p. 27.

47 Some villagers fear that having chicken brigades or other facilities operating adjacent to their land may cause long-term impacts, which may include reduced crop yields, reduced property value and/or limitations on land use. Issues of land use and land value may become more relevant as Ukraine considers ending its moratorium on agricultural land sales.

specific public hearings, local people have only learned about each planned facility after it was already too late to influence its development. Permitting processes are often completed and "pre-construction" works at the planned facility location often begin before the MHP has been planning the development of the VPF – including Phase 2 – since at least 2010, yet local people are still uninformed and uncertain of its full scope of operations and impacts.

For example, public hearings for Brigade 47 took place in the village of Vasylivka in July 2016, with 93 people in attendance.[48] Part of the Phase 2 expansion, Brigade 47 will be an MHP-standard set of 38 chicken houses designed to hold around 1.5 million chickens at a time. Community members from the neighboring village of Zaozerne did not learn about the public hearing until after the fact, when an article in the local newspaper announced that a hearing had been held on the new facility. The planned site of Brigade 47 sits on the territory of Zaozerne Village Council, which includes both the villages of Zaozerne and Vasylivka.[49] Nonetheless, no public announcements were made in Zaozerne about the public hearings. Announcements had been posted only in the smaller village of Vasylivka, at their Culture House information desk.[50] When villagers from Zaozerne attempted to petition their village council to hold a public hearing in Zaozerne, the petition was rejected. Although 79 individuals signed the petition, the village council accepted only 40 of the signatories as legitimate (less than the 50 required by local statute), finding various issues with the rest.[51]

A similar situation occurred the following year regarding the new planned biogas plant, which is also planned for construction on Zaozerne Village Council lands. A public hearing was held on 29 June 2017 in Vasylivka, and residents of Zaozerne once again were not adequately informed. However, this time some Zaozerne residents learned of the public hearing beforehand. They collected 166 signatures against the construction of the biogas plant and presented these at the public hearing. However, local public officials refused to accept the petition and announced that only the votes of the 122 people present at the meeting would be counted in the assessment of public support for the new facility. The EBRD project summary[52] noted that information disclosure and public hearings were conducted as required "under the national permitting process [… as] project information disclosure provided in the frame of above indicated meetings addressed only the aspects associated with the development of the Biogas Complex facility" excluding the linear infrastructure elements and associated overall impacts. The ESAP for the project includes a commitment from MHP to define and implement a Communication and Disclosure Programme to include aspects on the implementation of all project components, however, it is unclear what will be the purpose of this programme given that the biogas plant

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48 Letter from Zaozerne residents to the EBRD (Nov. 2017), included in Annex 4.

49 While Brigade 47 is closer to the village of Vasylivka than the village of Zaozerne, it is close enough to Zaozerne that residents fear it will directly impact them and wanted an opportunity to be consulted about its construction.

50 Letter from Zaozerne Village Council (10 Feb. 2017), included in Annex 4.

51 For example, villagers who own agricultural land and/or residential property in Zaozerne village council territory but have their official state registration in another village council territory were not accepted as valid signatories. Notice from Zaozerne Village Council (21 Apr. 2017), included in Annex 4. While this practice conforms with local law, it has the impact of preventing affected people from participating in consultations on project activities that will affect them and their properties. Notice from Zaozerne Village Council (21 Apr. 2017).

52 PSD for MHP Biogas (Project No. 49301), available at http://www.ebrd.com/work-with-us/projects/psd/mhp-biogas.html.

construction is already advanced. The full scope of the biogas facility – including all associated infrastructure – should have been thoroughly explained in the public hearing on the biogas plant.

MHP representatives have claimed that public hearings are open to anyone who wants to attend, yet meetings are not advertised as open to all, nor does this claim match our experience. When affected people from neighboring villages have learned about and tried to attend public hearings of another village council, they have been discouraged from raising concerns and treated by the members of the host village as illegitimate participants.

Recently, on 26 March 2018, a public hearing was to be held by the Mankivka Village Council about the construction of Brigade 55. Prior to the hearing, residents of Kleban and Zaozerne sent requests to MHP to hold hearings in our villages as well.[53] Our NGO advocates also sent an email to MHP asking that residents of Zaozerne and Kleban be included in the public consultation process on Brigade 55.[54] MHP responded that they are not responsible for the hearing, and that the Mykhailivka self-governing bodies will decide who can attend and disseminate information to the public about the hearings.[55] However, this explanation does not accord with Ukrainian law, which states that public discussion of planned activities can take place through one or more hearings, with the number of public hearings defined by the project promoter according to the scale of the expected impacts.[56]

Following this correspondence, community members from Zaozerne and Kleban attempted to attend the public hearing in Mankivka. These villagers were allowed to enter the meeting room, but when one of them began to raise questions and concerns about the new facility, they were shouted out of the room by other participants. Another visiting community member was accused of being paid by outside interests. These inter-community conflicts are inherent to MHP's practice of limiting consultations to only one meeting per facility, held by the village council on whose territory the facility will be constructed, with an MHP representative in attendance but not facilitating the meeting. This has resulted in a widespread understanding by local villagers that only residents of that village council are welcome to attend the public hearings, which effectively prevents affected people from other villagers from being consulted.

The Company's under-inclusive consultation practice is compounded by other issues. Public hearings have not provided a genuine opportunity for local people to hear about and understand the negative risks and impacts of MHP facilities before decisions are made. Documents to be voted on – including environmental assessments and spatial plans – are not widely distributed before the meeting, making informed participation difficult. Hearings are often facilitated in such a manner as to discourage discussion of negative impacts.

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53 *See* letter from Zaozerne residents to MHP (23 Mar. 2018), included in Annex 4. While neither Kleban nor Zaozerne is the closest village to the site of Brigade 55, residents of both villages fear that Brigade 55 will to cause cumulative impacts that may worsen any existing pollution of local air, water or soil, potentially posing a health risk for local people throughout the area.

54 Email from [redacted], CEE Bankwatch Network/Centre for Environmental Initiatives "Ecoaction" to [redacted] Public Relations and CSR Specialist, MHP (22 Mar. 2018), included in Annex 4.

55 Email from [redacted] Public Relations and CSR Specialist, MHP, to [redacted] CEE Bankwatch Network/Centre for Environmental Initiatives "Ecoaction" (23 Mar. 2018), included in Annex 4.

56 Provision of the Cabinet of Ministers of Ukraine, № 989 від (13 Dec. 2017).

We can turn to the consultation process for Brigade 43, a set of 38 chicken houses to be constructed on Olyanytsya Village Council land as part of the VPF Phase 2, as an example. In September 2016, the Olyanytsya Village Council held a public hearing about MHP's planned construction of Brigade 43. The minutes from the hearing state that the subjects to be discussed were the Detailed Spatial Plan and the "Preliminary EIA"[57] for Brigade 43, yet neither of these documents was publicly distributed prior to or during the hearing and information requests to MHP and the Trostyanets Rayon Administration have not produced any results.[58] We still have not seen either document. A summary description of the new facility was published in the local newspaper prior to the meeting, but the description of impacts is too brief to provide meaningful information.[59]

During the public hearing, the negative impacts of Brigade 43 were not discussed.[60] Discussion instead focused on the benefits of Brigade 43 and MHP's promise to build water infrastructure for the village of Olyanytsya, in return for the public's support for construction of Brigades 43 and 44 on Olyanytysya Village Council territory. Only 20 minutes were allocated for questions about Brigade 43, and another 20 minutes for public comments.[61] With 324 people attending the meeting, this was not enough time to hear and address all questions, and we fear that meeting organizers may have been avoiding calling on some of the participants likely to have questions and comments about the facility's risks and negative impacts. In the view of some community members, the hearing was facilitated in such a way as to prevent dissenting voices from speaking.[62]

A group of around 225 villagers signed a letter expressing their opposition to the planned Brigade 43, which they presented at the public hearing. Despite this letter, and additional comments raised at the meeting, the Company dismissed all of the concerns raised, which included documented impacts from MHP's heavy vehicles on local roadways (discussed below), with little explanation, calling them "groundless."[63] Such a dismissive response to community members' legitimate concerns prevents public hearings from serving as a genuine forum for discussion or information gathering. Yet, this practice is typical: a brief newspaper announcement is often the only written information distributed about new MHP facilities prior to public hearings,[64] and information about negative risks and impacts at the hearings themselves is

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57 Ukrainian law does not include any reference to a "Preliminary EIA," but MHP has explained it as a short version of an EIA, developed before complete information is available about a new facility. Letter from MHP to Chyhyryn community members (9 Mar. 2017). It is not clear when a full ESIA will be completed or whether it will be disclosed to local people.

58 *See,* for example, the written requests for information sent on 15 February 2017, included in Annex 4.

59 For example, regarding impacts on air and soil, the newspaper posting simply states that they will not exceed standards, without any further detail. ЗАЯВА ПРО НАМІРИ, Тростянецькі ВІСТІ (19 Aug. 2016), included in Annex 8.

60 Ecoaction interviews with two Olyanytsya community members, 4 Nov. 2017.

61 Minutes of Olyanytsya Village Council Public Hearing (21 Sep. 2016), p. 3, included in Annex 8.

62 Ecoaction interviews with two Olyanytsya community members, 4 Nov. 2017.

63 Minutes of Olyanytsya Village Council Public Hearing (21 Sep. 2016), included in Annex 8.

64 For example, this was also the case for Brigade 47. See Notice of Commencement of the Review Procedure, Brigade 47, Tulchin Krai (1 Jul. 2016).

often absent or misleading.[65] The minutes of the public hearing on Brigade 43 report that because "no substantiated comments were received," the Village Council Chairman declared that the detailed spatial plan and preliminary EIA for Brigade 43 were approved.[66]

Many public hearings have also suffered from an atmosphere of intimidation, discouraging participants from raising concerns or voting against MHP facilities, and dissuading some affected people from attending hearings at all. An open "voting" process at public hearings, conducted through a public show of hands rather than a secret ballot or another method, has made some community members – especially MHP employees and their family members – feel pressured to publicly show their support for MHP's plans. Under Ukrainian law, there is no requirement to hold a vote at public hearings, which are intended as an opportunity to gather information on public opinion about a project.[67] However, we believe that MHP and local public officials who support them use these votes as a way to influence public opinion about new facilities. We consider that voting may be a useful way to show the public's attitude about a planned new facility, but only if voting is done properly, with adequate protections in place to guard against community members feeling pressured or intimidated to vote in a certain way. We believe that a secret ballot voting process would be one way to guard against this potential pressure or intimidation. We have suggested this for past public hearings about MHP facilities, such as in the public hearing on Brigade 43, but these requests were not taken up.

Some community members with relatives working for MHP simply do not attend public hearings because they fear that if they attend and speak against MHP's construction plans, they or their family member may be subject to retaliation.[68] We fear that MHP influences employees to attend public meetings in support of MHP's planned new developments. At least two employees have reported such pressure.[69]

> "For meetings even in other villages, as their employee, I was pressured to participate and 'defend dignity of the company.' First they gather everyone, … promise to give you a day off and 500 UAH if you participate in the 'right' way. If you are not willing to participate, they make hints that you can be fired. Always you were told that there will be a person at the meeting who will watch how you vote."[70]

For an example of other community intimidation tactics, we can look again to the under-inclusive consultation process surrounding Brigade 47, discussed above, and the response by

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65 For example, during a 2010 meeting of the Trostyanets District Council to discuss and approve urban planning documents, which provided for construction of at least 8 major MHP facilities on the land of Olyanytsya, Chetvertinyvka and Hordiivka village councils, a Company representative ensured participants that the farm facilities will not have adverse effects on people and the environment. Minutes of Trostyanets District Council Meeting (21 Sep. 2010), included in Annex 8.

66 Minutes of Olyanytsya Village Council Public Hearing (21 Sep. 2016), p. 17-18, included in Annex 8.

67 Law on ecological expertise, Bulletin of the Verkhovna Rada, 1995, No. 8, p. 54, Article 11, available at http://zakon3.rada.gov.ua/laws/show/45/95-%D0%B2%D1%80.

68 Ecoaction interview with Olyanytsya community member, 4 Nov. 2017.

69 Ecoaction interview with current or former MHP employee, 4 Nov. 2017; Interviews with current and former MHP employees, April 2018.

70 Ecoaction interview with current or former MHP employee, 4 Nov. 2017.

community members in Zaozerne. When community members in Zaozerne learned that the public hearing on Brigade 47 had already taken place, nearly 350 villagers signed a petition expressing their disapproval of the planned construction – far more than the 93 villagers who were present at the original public hearing.[71] The petition was presented in a meeting with an MHP Director on 27 January 2017. In the meeting, community members explained that the July 2016 public hearing for Brigade 47 was not adequate on its own because it did not include the village of Zaozerne and requested the Company to halt construction of Brigade 47 until it is determined whether the public hearing was legitimate and in conformance with Ukrainian legal requirements.[72] The Director refused this request outright, and in a follow-up letter after the meeting accused the community members of illegally violating the Company's right to conduct business.[73]

In the following weeks, individuals who had signed the petition were subject to intimidation and pressure to change their opinion on the new facility and to retract their signatures. Around eight out of nearly 350 signatories eventually signed form letters of "signature recall."[74]

In May 2017, Zaozerne activists filed a case in the Vinnytsia Administrative Court demanding cancellation of the Ruling of the Tulchyn Administration to develop the documentation and permits for construction of Brigade 47. The petition argued that the public hearing for Brigade 47 did not satisfy the requirements of Ukrainian law and MHP was also a party to the case.[75] The court ruled against the petitioner in March 2018, and on 24 May 2018 the decision was appealed to the Vinnytsia Administrative Court of Appeal. The filing of the court case shows how frustrated some community members have become with the MHP's practice of holding limited consultation meetings that do not allow for a genuine understanding of Project impacts, nor an opportunity to influence Project designs.

These problems are indicative of a pattern of illegitimate consultations that we have experienced since MHP first arrived in the region.

Information disclosure

The Company has claimed that environmental assessment documents are available upon request,[76] but MHP has often failed to provide documents in response to requests dating back to

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71 Petition, "Residents of the Zaozerne Village Council who opposed the construction of the brigade for the cultivation of chickens #47 within Vasylivka" included with a letter from community members to Vinnytsia Broiler Director (27 Jan. 2017), included in Annex 4.

72 *See* letter from community members to Vinnytsia Broiler Director (27 Jan. 2017), submitted to MHP on the day of the meeting, included in Annex 4. The Vinnytsia Broiler is an affiliate of Vinnytska Ptahofabryka LLC.

73 Letter from Vinnytsia Broiler Director addressed to a local community member (14 Feb. 2017), included in Annex 4.

74 These letters are dated between 14 April 2017 and 20 April 2017. Included in Annex 4.

75 See National Ecological Centre of Ukraine (NECU) "Прокуратура почала досудове розслідування щодо підробки рішення громадських слухань по будівництву курника МХП" (17 May 2017), http://necu.org.ua/prokuratura-pochala-dosudove-rozsliduvannya-schodo-pidrobky-rishennya-hromsluhan-mhp/ and Вінницьким Окружним Адміністративним Суд "УВАГА! ПОВІДОМЛЕННЯ ЩОДО РОЗГЛЯДУ СПРАВИ!" (26 Jul. 2017), http://voas.gov.ua/news/podiy/uvaga_pov_domlennya_shchodo_rozglyadu_spravi/.

76 *Black Earth*, p. 27.

2012.[77] Local community members' attempts, in 2016, to obtain environmental assessment documents related to Brigade 43 are an example, as described above.[78] Prior to 2016, a community-based NGO requested several technical and environmental documents from the Company, including information about its manure management system, but never received the requested information.[79] To date, we have not been provided with full environmental assessments for the slaughterhouse, hatchery, waste water treatment facility, or manure storage facility. These facilities were all built years ago as part of the VPF Phase 1, but we understand that at least some of them will be expanded to accommodate Phase 2.[80] We have not been informed of any plan to provide environmental assessment documents that address the expansion plans.

Company representatives have at times refused to provide any document that is not explicitly required to be disclosed under Ukrainian law, or advised requesters to ask local government entities for documents.[81] This approach strains the relationship between local communities and the Company and presents additional barriers to affected people accessing basic information about Project operations.

When the Company does disclose information, it generally provides environmental assessments that cover only single facilities within the farm, or one- to two-page excerpts of environmental assessments. These have not included sufficient detail to address our questions regarding the impacts of Project operations. For example, a "Statement of Environmental Impact" that we received related to the hatchery is less than two pages long and states simply that environmental risks are insignificant, since MHP has taken comprehensive measures to protect the environment.[82] It does not specify which measures were taken. Likewise, the Statement of Environmental Impact for the Brigade 6 water drainage system, which was implemented to reduce groundwater levels to prevent flooding of chicken brigades, states that if the drainage system is operated in a normal manner, "the impact on the environment is absent."[83] These statements do not provide enough detail to address our questions and concerns about the Project.

Even when we have received more complete assessments, they have not provided full information on risks and impacts. We received nearly identical assessments for Brigades 7, 8 and 9, giving the appearance that each assessment was comprised of boiler-plate language and that little thought had been put into site-specific assessment of impacts.[84] Risks related to increased heavy vehicle traffic or storage and application of manure were not identified or assessed in any

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77 For an explanation of difficulties accessing environmental assessment documents, see, e.g., Letter from NECU to EBRD (25 Oct. 2013), included in Annex 4.

78 An Olyanytsya community member sent written requests for information to MHP and the Trostyanets District Administration. *See* the letter dated 15 February 2017 in Annex 4.

79 *Black Earth*, p. 27.

80 OPIC Supplementary ESIA at sec. 24.

81 See, e.g., Letter from Vinnytsia Broiler Director to affected community member (23 May 2017), refusing to provide a copy of the building permit for Brigade 47 and explaining that he does not interpret the Ukrainian law on access to information to require disclosure of that document. Included in Annex 4.

82 See excerpted Statement of Environmental Impact for the Hatchery, included in Annex 7.

83 See excerpted Statement of Environmental Impact for Brigade 6, Drainage System on the territory of the construction of Brigade no. 6 (Sep. 2010), included in Annex 7.

84 These documents are included in Annex 7.

of the documents we have seen. As described in the following sections, assessments of air pollution do not provide enough detail to determine whether pollution impacts will have long-term impacts on our health.

Following extensive advocacy on this issue with MHP and with international lenders, we have recently noticed some improvements in access to information. Community members' efforts to access documents related to Brigade 47 are a relevant example of this progress. As discussed above, community members from Zaozerne attended a meeting with an MHP official on 27 January 2017 and presented him with a letter requesting information, including environmental assessments, in relation to Brigade 47. Following the meeting they received a letter denying their request, explaining that, "According to Article 19 of the Constitution of Ukraine the legal order in Ukraine is based on fundamentals, according to which none can be forced to do something which is not foreseen by the legislation. The poultry farm 'Vinnystya Broiler' operates within Ukrainian legislation."[85] However, after an intervention by MHP's Public Relations and Corporate Social Responsibility Director, copies of the Preliminary EIA and Detailed Spatial Plan for Brigade 47 were eventually provided in April 2017. Unfortunately, the former Public Relations and Corporate Social Responsibility Director is no longer employed by MHP, and it is therefore unclear whether recent progress on MHP's disclosure practices will continue.

Disclosure practices of state authorities have also improved over the past year. In 2017, the Detailed Spatial Plan for the biogas plant was posted on the Tulchyn Administration's website and sent on request. Also in 2017, after community members finally succeeded in accessing the Pre-EIA and Detailed Spatial Plan for Brigade 47, and many months after the public hearing on these documents, both were posted on the Tulchyn Administration's website. A new Ukrainian EIA law that came into effect in December 2017 has further improved public access to documents, as EIAs are now posted publicly on the website of the Ministry of Environment.[86] This is helpful for some community members, who can now access these documents with the assistance of NGO advocates, but not all affected people have internet access or would know to look on the Ministry of Environmental website for information about the impacts of Project operations. This new online disclosure policy alone should not relieve MHP of its responsibility to ensure local people have reasonable access to Project information.

Improvements in disclosure practices by MHP and the government have not gone far enough – environmental assessment documents are still not made publicly available by the Company, and the Preliminary EIA for Brigade 47, while longer and more detailed than previous environmental assessment documents that were shared with us, still has many information gaps. It notes that the facility will contribute to air pollution and includes a list of pollutants to be discharged but does not estimate the amount of any pollutant.[87] The document provides no baseline assessment or assessment of the cumulative impacts of Brigade 47 and surrounding

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85 Letter from Vinnytsia Broiler Director addressed to local community member (14 Feb. 2017), included in Annex 4.

86 The new EIA law only applies to new developments, so the Brigade 55 EIA and consultation process was our first experience with the new law.

87 Preliminary Environmental Impact Assessment, Brigade 47 "Spektr" Separate Division of MHP PJSC (2016), Section 5.1 The air environment, included in Annex 7.

planned or existing facilities and denies that the facility will cause any social impacts whatsoever.[88] This does not comport with our own experience of existing brigades. As described in the following sections, existing brigades have contributed to a number of social impacts from Project operations, including foul odors and impacts from heavy vehicle traffic on local roads.

Even the ESIA for Brigade 55, which is the longest and most detailed environmental assessment document that has been disclosed for any MHP brigade, does not include an assessment of cumulative impacts, and its baseline air quality assessments are not detailed enough to provide meaningful information on health impacts from Project-related dust.[89]

Perhaps most importantly, MHP has yet to produce a comprehensive ESIA that provides a holistic assessment of Project activities and their impacts. Community members and local CSO representatives have been requesting a comprehensive environmental assessment for the VPF since it was first constructed, without success.[90] We understand that MHP has not developed any comprehensive environmental impact assessment of its VPF operations. Its Zernoproduct operations are largely not subject to environmental assessment requirements, making it difficult to obtain information on the potential risks or impacts of its agricultural operations, and specifically the storage and application of pesticides and thousands of tonnes of manure onto local agricultural lands as fertilizer.

Without a comprehensive assessment of all local operations, community members are left guessing about the exact size and impacts of the Project. The exact number of chicken brigades that will ultimately be included in the VPF is unknown to us. MHP develops brigades using a seemingly random numbering pattern, making it difficult for local people to understand how many brigades have been built and how many more are in development. For example, we understand that Phase 2 construction is currently scheduled to involve construction of (at least) Brigades 13, 22, 23, 42, 43, 44, 47, 49 and 55.

The EBRD-financed biogas plant is an example of a piecemeal impact assessment even for separate greenfield facilities within the VPF. The project was approved for construction in 2017, and the EBRD's support for the project was approved the same year. Both approvals were based on a Preliminary EIA that included only the biogas plant, but not the linear infrastructure, such as roads and biogas pipeline. The EBRD project summary justified this by saying that "in line with national regulatory requirements the linear infrastructure components do not require environmental impact assessment or environmental permitting and are only subject to construction permitting."[91] In addition, the EBRD financing covers also a CHP plant at a different location in the VPF, however, at the time of project approval this facility lacked an EIA altogether.

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88 Preliminary EIA, Brigade 47, Section 7, Assessment of the impact of planned activities on the surrounding social environment, included in Annex 7.

89 Environmental Impact Assessment, Brigade 55 (2018), included in Annex 7.

90 See, e.g., Letter from Ladyzhyn Civil Council, NECU, Public Centre of Ecological Control and Voice of Nature to EBRD (21 Oct. 2013), included in Annex 4.

91 PSD for MHP Biogas (Project No. 49301), available at http://www.ebrd.com/work-with-us/projects/psd/mhp-biogas.html.

The biogas plant project is also an example that even when we believe that we understand a facility's size and impacts, these have at times been changed following public hearings. For example, the biogas plant's Preliminary EIA described it as a 10 MW plant.[92] We recently learned that MHP might be considering doubling its size, to produce as much as 24 MW of power.[93] We do not know whether a new public hearing will be held on this updated plan. Regardless, MHP has already begun construction of the biogas plant, the EBRD has already approved a new loan for a 10MW facility, and we are skeptical that a new public hearing would provide a genuine opportunity to raise concerns and provide input into the facility's design and development.

Efforts to resolve these issues to date

As early as 2011, local residents have raised concerns about inadequate consultations and lack of information about negative impacts of the Project. Following numerous letters and appeals to the EBRD and other multilateral financers,[94] and due to the recommendation of the EBRD and IFC, MHP hired two stakeholder engagement consultants in 2016 and 2017. While this was a welcome decision, the nature and purpose of the consultants' roles was unclear to us throughout their appointment.[95] While we had hoped that hiring these consultants would have resulted in a noticeable increase in opportunities for us to engage with MHP and discuss our concerns, this has not been the case. We have seen little change in the consultation problems detailed above.

To our knowledge, the MHP-hired consultants held just two meetings with selected community members in our area, in the summer and autumn of 2017. Community members from our villages were invited to one of these meetings, in November 2017. The discussion covered important topics, including environmental impacts, the need for improved consultation with all affected people and better disclosure of information about negative Project impacts.[96] Unfortunately, since that meeting, we have not been offered an opportunity to follow up on the matters discussed, and we have not noticed a change in MHP's handling of the issues discussed. In our opinion, the one-time nature of the meeting and the lack of clarity around follow-on actions prevented the meeting from having any real impact. Moreover, we believe that meetings with the Company would be more productive in the presence of an independent third-party facilitator, and preferably a trained mediator. The MHP-hired consultant was not well-positioned to play such a role.

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92 Biogas Plant Preliminary Assessment of Environmental Impact, Sec. 4 Overview of Project Design, p. 68.

93 Annex 2 to the Biogas Plant ESIA, available at http://eia.menr.gov.ua/uploads/documents/521/reports/2f17300608809f80aec56da3b8950b80.pdf.

94 Other multilateral financers of MHP include the International Finance Corporation and the European Investment Bank. MHP has also received numerous financial guarantees from Dutch trade credit insurance agency Atradius DSB.

95 When asked by NGO representatives about the role of the consultants, MHP indicated that the nature of their role was an internal matter, not public information. Meeting between between representatives of MHP, CEE Bankwatch Network and NECU, 7 Apr. 2017. Notes from this meeting are included in Annex 4.

96 Minutes of meeting between MHP representative, MHP-hired consultant, local community members and local NGO representatives (16 Nov. 2017), included in Annex 4.

We learned that the contract of at least one consultant has now ended. More recently, we also learned that MHP's Director for Public Relations and Corporate Social Responsibility, who also attended the meeting in November 2017 and appeared to play a positive role in improving information disclosure, has also left the Company. This has left us with additional uncertainty around how MHP's stakeholder engagement will be led.

In 2017, MHP released a new Stakeholder Engagement Plan (SEP) that lays out its processes for consulting and communicating with local people and other stakeholders.[97] The new plan includes useful language, but much of it is framed in such general terms that it is difficult to know exactly what MHP is committing to, or to hold the Company accountable to those commitments. Further, since the plan was released in 2017, we have not noticed a change in the major consultation challenges discussed above, leaving us fearful that the new SEP will not have much impact on MHP's practice of consultation and communication with our local communities.

Moreover, the VPF also has its own SEP, and it is not clear how or whether the new MHP-wide SEP will impact the site-specific plan. The VPF's SEP is inadequate in several ways. The only regular method for consulting with and receiving feedback from local communities is through public meetings scheduled to take place 4 times per year, but there are no minimum standards or guidelines for what information will be included in these meetings. In fact, the document does not specify any requirements for reporting information to local communities, other than a vague statement that "the enterprise regularly reports on its activity to … various interested parties."[98] The document further specifies that annual reporting on health and safety and environmental protection is provided only to "internal interested parties."[99] It does not articulate a process to allow local communities to access this information.

b. Impacts from heavy vehicle traffic on village roads

Since MHP's local operations began, and particularly since 2010 when the construction of VPF Phase 1 began, heavy vehicle traffic on local village roads has increased dramatically, leading to public safety concerns and physical damage to roads and surrounding buildings. A particularly serious example is MHP's use of the main road through Olyanytsya, although other villages have experienced impacts from MHP road use as well.

Most of the local village roads, including the main road through Olyanytsya, were roads of regional significance, however became major transport corridors when MHP operations began in the area. Now, MHP relies extensively on this route to transport chickens, chicken parts, manure, fodder and other cargo between its facilities. This road is currently the most logical route to travel between MHP's manure storage facility and seven of its existing brigades on one side, and its hatchery, slaughterhouse, fodder plant, waste water treatment plant and another five brigades on the other side. As a result, since 2010, people in Olyanytsya have experienced

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97 MHP Stakeholder Engagement Plan, Kiev (2017) available at https://www.mhp.com.ua/en/responsibility/communication/stakeholder-engagement-plan.

98 Plan of Interaction with Stackeholders (sic.) for year 2016, LLC Vinnytsia Poultry Factory Branch "Processing Complex," p. 13, included in Annex 10.

99 *Id.* at 12.

significant negative impacts caused by heavy traffic from large industrial vehicles associated with the Project.

Large vehicles frequently utilize village roads creating risks to pedestrian safety and damage to physical property.

These impacts were particularly severe during construction, when heavy machinery traveled through the main road regularly. However, even after Phase 1 construction ended, heavy vehicles have continued to use the main road through Olyanytsya. In November 2017, we installed a video recorder to collect footage of the Olyanytsya main road for a full 7-day period. The footage shows an average of 400 MHP-related heavy vehicles traveling on the road each day, which accounted for approximately 70% of heavy vehicle traffic during the recorded period.[100]

The size and weight of these industrial vehicles has caused damage to the road and surrounding properties, which were not built with the expectation of having to sustain vibrations from such frequent heavy vehicle traffic. Many houses near the main road now have noticeable cracks in their walls and roofs, which were not present prior to MHP's construction of the VPF. These cracks can be seen in houses bordering both sides of the road, regardless of the year of construction of the house. In addition to vibrations, MHP-related heavy vehicle traffic has also led to noise and dust pollution, as well as strong odors from vehicle cargo, causing a constant nuisance for local residents. Matters are made worse by the speed of passing trucks and lack of effective speed control and road safety measures, which causes a safety concern for local residents.

[100] See Annex 5 for more details on the findings of that exercise.

Cracks have appeared in recent years in residents' homes close to the road, both on building exteriors and along the walls and ceilings of interior rooms.

Impacts from MHP's heavy road use were foreseeable. In fact, MHP acknowledged them in meetings with community members in Olyanytsya in 2010.[101] Local residents have made numerous appeals for the immediate construction of the bypass road and other measures to address road impacts, dating back to 2012 or earlier.[102] In one such letter, community members in Olyanytsya again raised concerns about road impacts and presented a series of demands to MHP to address the issue, including construction of a bypass road, major road repairs, construction of sidewalks, speed limits, and an agreement not to construct any new brigades on Olyanytsya lands until these measures are carried out.[103] The Company and local officials agreed to implement all of the requested actions,[104] but to date, we have not seen any real progress.

In early 2015, as MHP was negotiating loans for its expansion with the EIB[105] and the EBRD, the Company developed a draft plan for a bypass road, but then progress stalled.[106]

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101 The newspaper L'Express published an article on 25 March 2010 about the public hearings in Olyanytsya and describes MHP's promises "to develop the proposal for the road building and reconstruction in the region with total length of 120 km and could be used publicly." (Article included in Annex 6).

102 See, e.g., Letter from The Committee to Save Olyanytsya to the Trostyanets Administration and Council (21 Sep. 2012), included in Annex 4.

103 This letter is discussed in the Minutes of an Olyanytsya Village Council Public Hearing (6 Dec. 2015), included in Annex 8.

104 *Id.*

105 EIB project information on fodder plant project: http://www.eib.org/projects/pipelines/pipeline/20120184.

106 Minutes of an Olyanytsya Village Council Public Hearing (6 Dec. 2015), included in Annex 8.

Construction has been delayed time and again for various reasons, despite continuing promises that it will be completed soon.[107] Meanwhile, the Company's construction of VPF Phase 2 facilities has continued on time. We interpret this as a prioritization of MHP's profit-making operations over the interests and wellbeing of local communities.

The planned Olyanytsya bypass is indicated by the blue dotted line. Source: OPIC Supplementary ESIA, figure 2.2.

According to the Supplementary ESIA released by OPIC, the construction of the long-promised bypass road to "relieve traffic in villages that are affected by MHP activities" will now form part of the VPF's Phase 2 expansion.[108] The Supplementary ESIA does not include any discussion of the long history of requests for the bypass road or the delay in building it, nor does it discuss the resulting significant impacts to community members in Olyanytsya from MHP's current road use. We are concerned that the document reflects a continuing failure by MHP to prioritize identifying and addressing its impacts on local people.

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107 A March 2017 letter from MHP stated, "the road will be finished in the nearest future". See letter in response to Commission findings (31 Mar. 2017). In a meeting to discuss MHP's intentions to build Brigades 43 and 44 on Olyanytsya Village Council lands in exchange for financing new water supply infrastructure, the Chairman of the Trostyanets Rayon Administration promised that the construction of the bypass road is underway, and that it would be completed and open for use "before the start of active construction and operation" of the new brigades. Minutes of a general meeting in Olyanytsya (2 Jul. 2016), included in Annex 8.

108 OPIC Supplemental ESIA at 10.

In 2016, seeing little progress on any planned bypass road, community members in Olyanytsya sent another collective appeal to the local government,[109] which led to the establishment of a commission to evaluate the damage to buildings from heavy vehicle traffic.[110] The commission included a number of experienced technical personnel, including:

- Chief Architect of the Rayon State Administration;
- Head of the Housing and Utilities Sector of the Rayon State Administration;
- Chief Specialist of the Urban Development and Agriculture Department of the Rayon State Administration; and
- Police Major of the Road Safety Sector.

In November 2016, the commission conducted visual inspections of the technical condition of 46 buildings in the village located near the main road.[111]

> "As a result of the survey, it was found that in all of the ... buildings subject to visual inspection there is *massive damage to building structures* of varying degrees of gravity, namely, subsidence of foundation, splitting of foundations, splits and cracks of walls, wall displacements, cracks and sagging ceilings, splitting on the perimeter of the buildings, destruction of plaster, both in the middle and the outside of the premises."[112]

The commission confirmed that similar damage was visible in buildings along the road regardless of when they were constructed; buildings from the 1940-50s and from the 1980-90s had suffered similar damage.[113] Among the primary causes of the damage, the commission listed:

- Continuous use of the road by heavy vehicles to transport goods, causing vibrations and dynamic impacts to houses;
- Non-observance of traffic rules, namely speeding; and
- Aggressive driving practices, such as continuous breaking, accelerating and maneuvering during heavy traffic.[114]

On 14 March 2017, the Olyanytsya Village Council sent a letter to MHP, explaining the results of the commission investigation.[115] MHP responded in March 2017 by denying responsibility for the cracks, stating that it is a public roadway and implying that they are simply one of many road users.[116] MHP also noted that it follows restrictions on the weight of goods carried by vehicles, as set by the vehicles' manufacturers, instructs its drivers to follow all road rules, pay taxes and also donated money to repair the road through Olyanytsya in 2016.[117] These

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109 Collective complaint from 20 Olyanytsya residents (Sep. 2016), included in Annex 4.
110 Decision #151 of the Trostyanets Rayon Council (27 Sep. 2016), included in Annex 8.
111 Road Commission report (Act) (14 Nov. 2016), included in Annex 8.
112 Road Commission report, p. 2 (emphasis added).
113 *Id.*
114 *Id.* The commission also identified other contributing factors, such as poor quality road cover, houses having been built too close to the road, or with shallow foundations or low quality building materials.
115 This letter was addressed to the Vinnytsia Broiler (14 Mar. 2017), included in Annex 4.
116 Letter from Vinnytsia Broiler to Olyanytsya Village Council (31 Mar. 2017) p. 2, included in Annex 4.
117 *Id.* at 2-3.

actions are welcome, but they do not negate the need for MHP to address the direct impacts of its operations on surrounding residents.

Local residents in other villages have also been impacted by MHP's heavy use of local roads and fear that these impacts will become more serious as Phase 2 is constructed and becomes fully operational. For example, the planned biogas plant to be constructed on Zaozerne Village Council lands will likely lead to a significant increase in manure transport vehicles passing close to the villages of Zaozerne and Kleban, but the Company has not discussed with us any measures to mitigate impacts from this heavy vehicle traffic.

c. Foul odors

Local communities have regularly experienced foul odors originating from the Company's operations, particularly from their chicken rearing brigades and from heaps of manure piled in local fields for eventual use as fertilizer, in addition to foul smells from heavy vehicles carrying chickens, manure, and other organic matter. At least one community member has reported that foul odors within the village are at times so extreme that they have induced vomiting. We fear that the Phase 2 expansion, including the construction of a biogas plant, will increase these problems.

In 2013, "Technical Conditions" were established that allow the Company to store manure in open organized manure storages and temporary field piles.[118] This has had significant implications for our communities, as manure piles are regularly stored for extended periods of time in the fields near our villages, causing an increase in odor problems. As of 2013, the Zernoproduct Farm had registered 38 official field storage piles in the area surrounding Ladyzhyn, Trostyanets, Tulchyn, Bershad and Haysyn rayons.[119] Residents of Kleban raised this issue in complaints to their district government, advocating for their assistance to apply strong mitigation requirements and to enforce government regulations to address the terrible smell and other potential impacts from these manure piles,[120] and in a letter to the Minister of Environment, advocating for government inspections into MHP's operations.[121] The State Environmental Inspection of Ukraine responded, per the Minister's request, explaining that it would not be possible to conduct an inspection of MHP as requested because inspections can only be carried out with the permission of the Cabinet of Ministers of Ukraine or at the request of the entity to be audited, plus budget allocations for state supervision of compliance with environmental regulations had been reduced.[122] This concern was also confirmed during an NGO fact finding

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118 "Куряче гімно стало головним болем мешканців Ладижина" Vinnitsa.info (12 Sep. 2013), available at http://www.vinnitsa.info/news/kuryache-gimno-stalo-golovnim-bolem-meshkantsiv-ladizhina.html. We are unsure what the process is for granting these Technical Conditions, whether they were properly granted in this case, or whether MHP has registered additional field storage piles since 2013.

119 *Id.*

120 Letter from Kleban residents to the Tulchyn District Administration, included in Annex 4.

121 Letter from Kleban villagers to Minister of Ecology (19 Oct. 2014), included in Annex 4.

122 Under current Ukrainian law, state environmental inspections of large enterprises, such as the VPF, are permitted but the company is given 2 weeks' notice prior to the audit. Community members have not been able to access full inspection documents, although authorities have provided some excerpts.

trip in 2015, and recorded in the Black Earth report, published by CEE Bankwatch Network following that mission.[123]

Regarding smells emanating from chicken brigades, MHP has responded to this concern by stating that it complies with sanitary protection zone requirements,[124] characterizing the smell as "insignificant" and claiming that it "can be felt only in case of unfavourable strong wind. Discomfort is short."[125] While the sanitary protection zone is welcome, MHP's response has felt dismissive of what community members experience as a significant and ongoing problem.

Chicken excrement lays uncovered in a manure storage facility.

Moreover, the sanitary protection zone that MHP has allotted around each brigade is currently nothing more than an open space: an allotted distance between each brigade and the next building. Under Ukrainian law, sanitary protection zones surrounding chicken houses should have landscaping and shrubs covering at least 50% of their width, and any sides that face residential developments should be provided strips of trees and bushes, of a width not less than 50 meters.[126] We believe that these natural barriers would help to mitigate the foul smells and potential environmental impacts from MHP's chicken rearing operations.

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123 *Black Earth*, p. 21.

124 Under Ukrainian law, a sanitary protection zone is a required buffer zone of a certain size separating facilities that generate pollution, or otherwise influence the environment, from residential buildings and social infrastructure. Facilities are generally required to ensure that pollution impacts at the edge of the sanitary protection zone do not exceed defined standards. State Sanitary Rules of Planning and Development of Human Settlements № 173-96.

125 *Black Earth* at 21, citing MHP Chief Ecologist, 26 Aug. 2015, General comments provided to FFM report, via e-mail to CEE Bankwatch and SOMO.

126 Order of the Ministry of Health No. 173, "On Approval of the State Sanitary rules of planning and construction of settlements," (19 Jun. 1996) sec. 5.13, available at http://zakon2.rada.gov.ua/laws/show/z0379-96.

For years, community members from Kleban have been petitioning MHP and local government bodies for these natural barriers to be added between brigades and residential developments.[127] Following a petition from local residents and rejection of initial planning documents by the Kleban Village Council,[128] MHP eventually agreed, in 2011, to build a forest barrier around Brigade 4, which was constructed on Kleban Village Council land.[129] To date, MHP has not followed through on these commitments and as a result the village of Kleban is experiencing undue odor impacts from multiple MHP brigades to the Northwest, which is typically upwind of the village.

d. Lack of information and fear of potential impacts: pollution and loss of water resources

We also fear that the Project may be causing negative impacts to our local environment. Air, soil and water impacts have all been associated with large-scale industrial chicken farms and large-scale agricultural production,[130] and the VPF and Zernoproduct operations include both of these at an unprecedented scale in our region. As MHP has not provided detailed or comprehensive information on its local operations or their risks or resource use, we are left questioning how our environment may be impacted by MHP's current and future activities.

Specifically, we fear that storage of large quantities of manure in the open air has caused or will cause unnecessary pollution to air, soil and groundwater. Although MHP has a designated manure storage facility on Hordiivka Village Council lands, we have seen the Company store manure in open fields in other locations near our villages for months at a time. This is a particular problem for the communities surrounding Brigades 1-5, which are located the farthest from MHP's official manure storage facility and therefore have suffered from many informal manure piles being placed in surrounding fields. It is presumably more time consuming for MHP to move manure back and forth between brigades in that area and the manure storage facility, when there are MHP-controlled fields near to Brigades 1-5 that manure can be stored on. We imagine that this approach makes sense from a time and cost saving perspective, but it creates significant additional impacts on local communities, which MHP has not adequately taken into account or addressed. Moreover, we fear that the minimalist construction of the manure storage facility itself, with no roof and walls on only some sides, may not provide adequate protection against pollution impacts from stored manure.

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127 See, e.g., Letter from Kleban villagers to Minister of Ecology (19 Oct. 2014), included in Annex 4.

128 Letter from Kleban villagers with comments and suggestions on territorial plan (undated), included in Annex 4; Minutes of Public Hearing on Council Spatial Plan, Kleban Village Council (25 Mar. 2011). See also Remarks and proposals on the Council Spatial Plan, Executive Committee of the Kleban Agricultural Council (12 Jul. 2010), included in Annex 8.

129 Letter from Vinnytsia Broiler to Kleban Village Council (22 Jun. 2011), included in Annex 4.

130 See, e.g., Natasha Geiling, *Environmentalists Want This State to Take Chicken Poop Out of Its Clean Energy Plan*, ThinkProgress (Nov. 18, 2015), https://thinkprogress.org/environmentalists-want-this-state-to-take-chicken-poop-out-of-its-clean-energy-plan-7af26f98ddc/; GRACE Communications Foundation, *Industrial Crop Production* (last visited Sep. 20, 2017), www.sustainabletable.org/804/industrial-crop-production; P. Gerber, C. Opio and H. Steinfeld, *Poultry Production and the Environment - a Review*, FAO (2008), p. 6, http://www.fao.org/ag/againfo/home/events/bangkok2007/docs/part2/2_2.pdf.

We are also concerned that other MHP practices may contribute to unknown pollution impacts, such as its use of pesticides and application of used water from poultry houses to irrigate crop land. For example, on 6 May 2017, a local resident witnessed pesticide spraying on a field leased and controlled by the Company across the road from her residence, at a distance of about 10 meters from her land and without prior notice to her.[131] Recently, on 4 May 2018, the same community member again noticed Zernoproduct Farm spraying pesticides close to her residence and without prior notice. This recent incident was again raised through a phone call to MHP's Corporate Social Responsibility team, and after that the spraying did eventually stop, but we fear such incidents may continue to occur. Community members fear that spraying of pesticides may lead to potential pollution of soil and groundwater, as well as unknown health impacts for local residents. Disposal of treated wastewater in the Pivdenny Bug River raises similar concerns.[132] For example, in May 2018 local community members noticed dead fish floating in the river near the outflow pipe of the wastewater treatment plant and we fear that this may have been related to the Company's operations.[133]

Community members reported seeing dead fish floating in the river near the outflow pipe of the wastewater treatment. Source: Facebook (see further Annex 6).

In response to community fears that the VPF may be polluting water sources, in spring 2016, a Trostyanets Rayon Council Deputy requested that the sanitary inspection service

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131 Following the incident, this matter was immediately raised in a letter to the Company. See Letter from Zaozerne Village Council Head to Zernoproduct Farm (15 May 2017), included in Annex 4.

132 The Company claims that the water released from the water treatment plant meets all relevant quality standards, but we have not been provided information to understand the basis for this claim. We are aware of reports of visibly discolored water being released from an MHP water treatment facility in another region of Ukraine, although as far as we are aware these reports have not been investigated. See, e.g., "На "Мироновський птахофабрищ" не змогли пояснити появу коричневих стоків до річки Росава," NECU, available at http://necu.org.ua/myronivska-ptahofabryka-skyd-rosava/; https://www.youtube.com/watch?v=EqmSzDPjygI. The VPF's water treatment facility releases treated water well below the surface of the river, so we have no way to see if it is similarly discolored.

133 See Facebook posts and comments, May 2018, included in Annex 6.

investigate water safety in the area. Water samples taken from a selection of wells in Olyanytsya found elevated levels of nitrates of 130-165 mg/L,[134] which is 2-3 times the World Health Organization's ("WHO") recommended guideline level of 50 mg/L.[135] We understand that high levels of nitrates in water are toxic to humans and may be associated with health impacts.[136] Agricultural activity, including excessive application of fertilizer, is one known cause of excessive nitrates in groundwater.[137] The same water samples also showed the presence of e.coli and levels of ammonia of 1.82 to 3.85 mg/L, and we are afraid this may indicate a higher level of ammonia than is naturally occurring in the area.[138] The WHO identifies intensive animal rearing as a possible cause of elevated levels of ammonia in groundwater,[139] and the United States Agency for Toxic Substances and Disease Registry specifically points to the application of excessive amounts of chicken manure fertilizer as a possible cause.[140]

Following the water testing, public officials responded by providing warnings to the local community of the danger of using contaminated well water, but for many of us, our wells are our only source of water for household use. The cause of nitrate pollution in local wells was not investigated, but we fear that it may be related to the operations of the VPF in the area.

Further, in July and August of 2016, a Ukrainian State Environmental Inspection team found that the VPF's subsidiary fodder production facility violated permit requirements by failing to properly measure or document air pollution emissions.[141] An inspection of the Zernoproduct Farm from August 2015 found violations of use restrictions on water protection areas along the riverbank, including plowing of land, and improper documentation of the use of pesticides.[142] We have not been provided with the full report from this visit, but based on the summary document we have seen, these findings seem to substantiate our fears that MHP may not be doing everything that is possible, or even required, to limit pollution impacts to our local environment.[143]

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134 Water sampling results included in Annex 9.

135 WHO Guidelines for Drinking-water Quality, Fourth Edition Incorporating the First Addendum (2017), p. 398, available at http://apps.who.int/iris/bitstream/10665/254637/1/9789241549950-eng.pdf?ua=1.

136 See "Nitrate: Health Effects in Drinking Water," Natural Resources Cornell Cooperative Extension, available at http://psep.cce.cornell.edu/facts-slides-self/facts/nit-heef-grw85.aspx, discussing nitrates' potential to cause methemoglobinemia or "blue baby disease," as well as the association between nitrates in drinking water and the presence of other possible contaminants, such as bacteria or pesticides.

137 WHO Guidelines for Drinking-water Quality, Fourth Edition Incorporating the First Addendum (2017), p. 398, available at http://apps.who.int/iris/bitstream/10665/254637/1/9789241549950-eng.pdf?ua=1.

138 The WHO states that naturally occurring levels are usually below 0.2 mg/l. WHO Guideline, 4th Edition, p. 313, available at http://apps.who.int/iris/bitstream/10665/254637/1/9789241549950-eng.pdf?ua=1. *See also,* Toxicological Profile for Ammonia, Agency for Toxic Substances and Disease Registry, US Department for Health and Human Services, 2004, Sec. 6.4.2, available at https://www.atsdr.cdc.gov/toxprofiles/tp126-c6.pdf.

139 WHO Guideline, 4th Edition, pp. 313, available at http://apps.who.int/iris/bitstream/10665/254637/1/9789241549950-eng.pdf?ua=1.

140 Toxicological Profile for Ammonia, Agency for Toxic Substances and Disease Registry, US Department for Health and Human Services, 2004, Sec. 6.4.2, available at https://www.atsdr.cdc.gov/toxprofiles/tp126-c6.pdf.

141 Letter from I. Osadchuk, Acting Chief, State Environmental Inspection of Ukraine (19 Jan. 2017) at p. 1, included in Annex 9. This information was provided in response to an information request sent to the State Environmental Inspectorate in January 2017.

142 *Id.*

143 EIB Completion Report, http://www.eib.org/infocentre/register/all/81223755.pdf, included in Annex 2.

We fear that potential environmental pollution from VPF operations may lead to health impacts for local community members. For example, some community members believe that there has been an increase in rates of cancer and asthma in our villages since the construction of the VPF, which may be tied to pollution from VPF facilities, or to cumulative impacts from the VPF and other local polluters.[144]

In addition to potential pollution impacts, we are also concerned that the VPF's heavy water use has impacted the availability of water resources for community use. Almost immediately following construction of VPF Phase 1, community members in Olyanytsya began to notice water levels dropping in their wells. The drop in water level corresponded with MHP's deliberate dewatering, in 2010, of a local field to lower the water table and prevent flooding during the construction of its Brigade 6.[145] Local community members have raised this issue several times with MHP and local government representatives.[146] When this issue was raised with MHP in 2015, the Company responded that according to their data, "the level of groundwater decreased this year all over Ukraine with some minor exceptions. This process is cyclical and the level of groundwater should increase soon again."[147] This explanation does not match community members' experience. In the more than seven years since the time of the dewatering, we have not observed water levels in local wells return to previous levels.

Moreover, the water levels in the Ladyzhyn Reservoir and southern Pivdenny Bug River, which are immediately downstream from MHP's water intake for the entire VPF, have dropped significantly in recent years, especially in the summer.[148] Local communities have raised this fear a number of times,[149] but MHP has not provided information to show that the reduced water levels in the river are unrelated to the Project's water use. Phase 1 of the VPF has been estimated to use over 3.4 million m^3 of water per year, and this estimate does not include the additional water needs of the Zernoproduct Farm's agricultural operations.[150] According to a February 2016 Monitoring Report commissioned by the European Bank for Reconstruction and Development (EBRD), at that time, no assessments were available regarding the VPF's impacts on sustainable

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144 We understand that some studies have shown an apparent link between increased rates of asthma in rural schoolchildren and the presence of nearby intensive agriculture operations. See, e.g., Sigurdarson, S. T., and Kline, J. N., *School proximity to concentrated animal feeding operations and prevalence of asthma in students*, Chest, 129(6) 1486-1491, (2006), https://www.ncbi.nlm.nih.gov/pubmed/16778265; Sara G. Ramussen, Joan A. Casey, Karen Bandeen-Roche, and Brian S. Schwartz, Proximity to Indsustrial Food Animal Production and Asthma Exacerbations in Pennsylvania, 2005-2012, 14 Int'l J. Environ. Res. Public Health 362 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5409563/pdf/ijerph-14-00362.pdf.

145 This dewatering is described in a half-page environmental impact statement, which claims without further explanation that "in the process of operating a drainage system in the normal mode with the release of water into the water intake vaporizer, the impact on the environment is absent." Statement of Environmental Impact, Drainage System on the territory of the construction of Brigade no. 6 (Sep. 2010), included in Annex 7.

146 See, e.g., Minutes of Olyanytsya Village Council Public Hearing (21 Sep. 2016), included in Annex 8.

147 *Black Earth* at 24.

148 Local people have observed this drop, and it is also reflected in news reports. See "Через вкрай низький рівень води у водосховищі Ладижинська ГЕС працює лише 2-2,5 години на добу" My Vin (31 Aug 2015), available at http://www.myvin.com.ua/ua/news/region/36843.html.

149 See, e.g., Letter from Olyanytsya community members to Vinnytsia Broiler Director, Trostyanets Administration, Trostyanets Rayon Council and Prosecutor's Office (23 Mar. 2016), included in Annex 4.

150 OPIC Supplementary ESIA at 139.

water yield in the river.[151]

Further, the 2016 State Environmental Inspection team found that a local MHP facility had violated conditions for special water use permits by neglecting its annual reporting requirements on groundwater use.[152] Similar concerns have been raised by local communities living near MHP's chicken rearing operations in other areas of Ukraine, and in those scenarios, the Company has been equally reticent to disclose information on its water use and other potential impacts.[153]

The Company has denied any responsibility for reduced water availability or water pollution,[154] although they have not provided evidence to support these claims, or any other documentation regarding the impacts of their water use. Without seeing evidence of their water use, it is not clear how MHP concluded that the reductions of water in our wells are unrelated to their industrial water use. Nor is it clear how much the Company has looked into this question. We therefore continue to fear that VPF operations may have impacted our access to water and that the planned expansion may lead to additional impacts.

In response to our ongoing concerns about water access, MHP has offered to pay for pipes to connect some villages to a water grid, to avoid the need to rely on existing village wells. For example, in Olyanytsya, the Company offered to construct a water grid for the village in return for villagers' support to construct Brigades 43 and 44 on Olyanytsya Village Council land. Unfortunately, this measure has not provided a true solution for many residents. While MHP offered to pay for the construction of public water pipes through the village, it has left each resident to finance the installation of additional pipes necessary to connect their residence. The cost of such installations, approximately 4000 UAH (around 150 USD) per residence, is prohibitive for some community members. Moreover, we have not been provided information about the quality of the water from this new source. We understand that water will be sourced from underground aquifers, but we have no further information to confirm whether this will impact water resources in other ways, or whether the quality of water from the new pipes will be better than our existing well water and safe to drink.

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151 Monitoring Assessment Summary Report, Assessment Subject: MHP Group, WSP Parsons Brinckerhoff (Feb. 2016), Sec. 4.3, available at http://www.ebrd.com/cs/Satellite?c=Content&cid=1395250435187&d=&pagename=EBRD%2FContent%2FDownloadDocument. The Monitoring Report found it unlikely that the VPF's use of water from the river would create an issue, given the volume of the river's flow, but it is unclear whether this assessment took into account the reported reduced water levels of the downstream reservoir and Southern Pivdenny Bug River.

152 Letter from I. Osadchuk, Acting Chief, State Environmental Inspection of Ukraine (19 Jan 2017) at p. 1, included in Annex 9. This report is concerning, but without further information on MHP's reporting of water use at the state level, we are unable to determine its significance.

153 For example, communities in the Kaniv Rayon in Cherkasy Oblast noticed a significant drop in the water table, and local people have been unable to identify any possible cause for the drop other than the operations of MHP's poultry brigades nearby. The Myronivska Poultry Farm, a subsidiary of MHP operating in the region, had planned to help to identify alternative water sources in the area, but it has offered only limited funds for this initiative and still has not provided information about its actual water impacts. For further information, see Comments from NECU and CEE Bankwatch Network on MHP's Stakeholder Engagement, p. 2-3, included in Annex 4.

154 Minutes of Olyanytsya Village Council Public Hearing (21 Sep. 2016), included in Annex 8; *Black Earth* at 24.

e. Employment concerns

A number of complainants have worked for MHP at some point, and based on those experiences, we are concerned that the employment conditions at Project facilities fall below national and international standards for reasonable working conditions. At times, conditions have even posed a danger to employees' health and safety. Some workers have also experienced intimidation or retaliation in connection with concerns they or their family members have raised about the Project.

Many jobs at MHP involve difficult and demanding work, and some jobs also come with inherent health and safety risks. We are concerned that MHP is not doing enough to mitigate these risks and ensure a safe working environment for its employees. For example, one mechanist reported that MHP provided a synthetic uniform to wear, which presented a fire hazard during welding activities.[155] The same person also reported that in rooms where welding was taking place, no eye protection was provided for surrounding workers, which caused them to experience some vision problems after working around welding activities.[156] A driver reported being asked to work two days in a row without any time to sleep in between. This person reported falling asleep while driving on multiple occasions, luckily without causing any damage or injury.[157] A third employee reported that they were given an unreasonably large workload: "working for three people" and being told that no other employees would be assigned to help, a situation which they believe led to their development of serious pain in their hands and legs, which has persisted.[158]

At least two workers reported that jobs in the slaughterhouse are paid an unfairly low wage considering the challenging nature of the work.[159] All of the current and former employees that were interviewed during the preparation of this complaint reported that MHP promised them certain benefits as part of their employment, but then deducted those benefits from their wages.[160] Employees reported that these deductions included things like the bus fare to ride on MHP's worker buses, the cost of employee uniforms and things like soap and shampoo that were kept at the MHP facility for the use of all workers (a standard fee was deducted from employee salaries regardless of who actually used these products).[161] The Company also offers chicken meat as a monthly "bonus" to employees with good performance, but the cost of the meat is nevertheless deducted from the employee's salary.[162]

Workers have also reported various forms of pressure and intimidation, including apparent retaliation against employees who raise concerns about poor working conditions. For example, a slaughterhouse employee reported falling ill with pneumonia after being asked to work in a very cold room.[163] The employee reported that following their illness they requested to

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155 Interview with current or former MHP employee #5, April 2018.
156 *Id.*
157 Interview with current or former MHP employee #3, April 2018.
158 Interview with current or former MHP employee #2, April 2018.
159 Interviews with current or former MHP employees #1 and #2, April 2018.
160 Interviews with current or former MHP employees, April 2018.
161 Interview with current or former MHP employee #5, April 2018.
162 Interviews with current or former MHP employees #2-5, April 2018.
163 Interview with current or former MHP employee #1, April 2018.

be transferred to another facility, but this request was denied and the Company instead asked them to leave, explaining that "sick employees are not needed."[164] Another employee reported experiencing pressure from MHP related to a family member who had publicly raised questions and concerns about the impacts of MHP facilities.[165]

Local communities believed that the Project would serve as an opportunity to improve the local economy, in part by providing jobs to local people. While it is true that MHP has become a significant local employer, this has created a situation in which employees are reliant on MHP for work, making it difficult for workers to advocate for better working conditions or wages by raising concerns directly with their employer or "voting with their feet" and leaving jobs with substandard working conditions.

III. Claims under the EBRD's policies

a. EBRD repeatedly mis-categorized its investments as Environmental Category B

EBRD's investments in MHP, and particularly its most recent 2015 and 2017 investments, were improperly identified as Environmental Category B projects. According to the EBRD's ESP2014 #23 "*The EBRD categorises each project to determine the nature and level of environmental and social investigations, information disclosure and stakeholder engagement required. This will be commensurate with the nature, location, sensitivity and scale of the project, and the significance of its potential adverse future environmental and social impacts. Past and present environmental and social issues and risks associated with project-related existing facilities will be subject to environmental and social appraisal regardless of the categorisation.*"

The policy states that "#24. *A project is categorised A when it could result in potentially significant adverse future environmental and/or social impacts which, at the time of categorisation, cannot readily be identified or assessed, and which, therefore, require a formalised and participatory environmental and social impact assessment process*" whereas a category B project's "*potential adverse future environmental and/or social impacts are typically site-specific, and/or readily identified and addressed through mitigation measures.*"[166]

EBRD's most recent investments were intended to support MHP's grain and fodder production and the utilisation of wastes from the existing poultry facilities and agricultural residues to generate biogas, which are integral to the Company's expansion efforts in rural Vinnytsia.[167] The inherent risks of intensive animal rearing, coupled with the sheer *scale* of

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164 *Id.*

165 Interview with current or former MHP employee #5, April 2018.

166 EBRD's Environmental and Social Policy #25

167 PSD for the MHP Corporate Support loan (Project No. 47806) says "The launch of the new soya processing plant will allow MHP to become vertically integrated in relation to fodder production (soy is currently processed externally)", available at http://www.ebrd.com/work-with-us/projects/psd/mhp-corporate-support-loan.html; PSD for MHP Biogas (Project No. 49301) states that the Project "belongs to the Vinnytsia Poultry Farm Division of MHP [...] is aimed at utilising wastes from the existing poultry facilities to generate biogas to be used as an alternative energy source by using state-of-the-art technology", available at http://www.ebrd.com/work-with-us/projects/psd/mhp-biogas.html

operations concentrated in the overlapping VPF and Zernoproduct Farm and the *sensitivity* and *significance* of environmental and social impacts that have long been raised by local communities, media and NGO representatives about MHP's operations, provide more than adequate reason to consider this a Category A investment.

Intensive animal rearing is an inherently risky sector, which an ever-growing number of studies has linked to *significant impacts* including pollution of air and groundwater and damage to biodiversity in local rivers from improper disposal, treatment and use of waste water and manure.[168] These impacts have in turn been linked to health impacts for nearby populations, including higher incidence of asthma and a variety of pulmonary and neurobehavioral impairments.[169]

The massive *scale* of local Project operations only makes the inherent risks of intensive poultry rearing all the more probable in this instance. The higher the concentration of poultry in a given area, the greater the risk that pollutants will be released into the air in quantities high enough to be dangerous for local people and the environment. It also increases need for grain and fodder production, the amount of water needed for cleaning and sanitation purposes and the amount of waste and waste water produced, each of which comes with environmental risks that will intensify accordingly. As discussed above, MHP advertises that the VPF is the largest poultry farm in all of Europe.[170] Its vertically integrated business model means that the VPF, and its planned expansion, will involve construction of significant additional facilities within a relatively concentrated geographic area, in a rural setting that has never before experienced this degree of industrial activity. EBRD's investments are assisting MHP to double the operations of the VPF,[171] which will increase its risks and impacts accordingly. Once fully constructed, we expect that the VPF will:

- Include a total of at least 836 separate chicken houses, positioned in at least 22 brigades;[172]
- Have capacity to house 32 million chickens at a time; [173]
- Consume over 6 million cubic meters of water per year;[174]

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168 See, e.g., P. Gerber, C. Opio and H. Steinfeld, *Poultry Production and the Environment - a Review*, FAO (2008), pg. 6, http://www.fao.org/ag/againfo/home/events/bangkok2007/docs/part2/2_2.pdf.

169 See, e.g., *School proximity to concentrated animal feeding operations and prevalence of asthma in students*, Chest, Sigurdarson, S. T., and Kline, J. N. (2006), 129(6) 1486-1491, available at https://www.ncbi.nlm.nih.gov/pubmed/16778265; *Proximity to Industrial Food Animal Production and Asthma Exacerbations in Pennsylvania*, Sara G. Ramussen, Joan A. Casey, Karen Bandeen-Roche, and Brian S. Schwartz (2017), 2005-2012, 14 Int'l J. Environ. Res. Public Health 362, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5409563/pdf/ijerph-14-00362.pdf; *Neighbors of vast hog farms say foul air endangers their health*, Lee, J., The New York Times (2003, May 11), available at http://www.nytimes.com/2003/05/11/us/neighbors-of-vast-hog-farms-say-foul-air-endangers-their-health.html; *Human Impairment from Living near Confined Animal (Hog) Feeding Operations*, Kaye H. Kilburn, 2011, available at https://www.hindawi.com/journals/jeph/2012/565690/.

170 MHP Website, https://www.mhp.com.ua/en/operations/op-vinnitskaja-ptitsefabrika-oao-mkhp (last accessed: 6 May. 2017).

171 Phase 2 is expected to double current production of the VPF. MHP Annual Report 2017 at 10.

172 As each brigade holds at least 1.4million broiler places, this triggers a compulsory EIA requirement. Annex I (17) of the EIA Directive requires that installations for the intensive rearing of poultry or pigs with more than 85 000 places for broilers or 60 000 places for hens must have an EIA.

173 Calculated based on standard capacity of existing MHP brigades.

- Produce on the order of 1.5 million tonnes of greenhouse gases per year;[175]
- Produce potentially close to 6 million cubic meters of sewage per year;[176] and
- Produce over 411,000 tonnes of manure per year.[177]

MHP has also indicated a need to expand its agricultural land bank in order to grow enough crops to supply its expanding chicken operations with sufficient fodder.[178] While some of the potential pollution impacts from this type of operation may in theory be mitigated through careful planning and innovative management practices, the risk of significant long-term impacts is nonetheless high, and it may not be immediately clear whether the chosen mitigation measures are adequate. Further, longstanding weaknesses in MHP's impact assessment and monitoring practices mean that the Company is unlikely to implement such innovative measures. The EBRD should have categorized its investment accordingly.

The adverse environmental and social impacts along the supply chain for the biogas plant are not *site-specific and/or readily identified*, and therefore the production of waste at the poultry rearing facilities as well as other sources of waste for the biogas plant need to be clearly identified and their impacts assessed and properly mitigated. The same stands for the impacts of the associated linear infrastructure needed for the biogas plant, which also calls for an integrated approach to impact assessment and stakeholder engagement. For example, the PSD for the Biogas Plant project identifies that there are road traffic-related risks representing an issue of community concern[179], however, the impact assessment of the plant did not include sufficient discussion on linear infrastructure[180], and moreover, all impacted communities were not included

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174 OPIC Supplemental ESIA at 139.

175 This is a rough estimate. The OPIC Supplementary ESIA reports that MHP estimated Phase 1 GHG emissions at 787,870 tonnes in 2015 (Appendix C at sec. 2.4), and we understand that Phase 2 will double the VPF's operations. While the ESIA for the biogas plant claims that it will reduce the overall GHG emissions of the VPF, this claim is not well supported in project documents and we fear that the plant may even increase overall GHG emissions, if there are fugitive losses of methane, or if manure is still stored for long periods in the open air before it enters the plant, or if the conversion into biogas is less efficient than the Company expects.

176 The OPIC Supplemental ESIA states that the wastewater treatment plant has a current capacity to process 11,000m^3 of wastewater per day for Phase 1, operating 312 days per year, meaning its current annual capacity is around 3.432 million m^3/year. MHP is building out an additional treatment line for Phase 2. (OPIC Supplemental ESIA at 10)

177 This number is calculated by multiplying on the estimated 18,722.2 tonnes of manure produced per brigade per year by 22 (the estimated total number brigades to be constructed). BR. 55 EIA at p. 128.

178 See MHP 2014 Consolidated Financial Statements, Director's Report at 8; MHP SA 2016 Annual Report, Director's Report at 28.

179 The Biogas Plant PSD states: "Road traffic-related risks represent an issue of community concern. This was considered by MHP and addressed by including a new access road as an additional Project component. The new road is designed to ensure that the main Project traffic will bypass communities. In spite of the bypass it is expected that Project-related road traffic will still need to use the existing road network. Provision of associated mitigation measures and related management planning are therefore included within the ESAP."

180 *Id.* According to the PSD for the Biogas plant project the ESAP requires post-approval the following: Completion of the Environmental Impact Assessment for the CHP facility and extension of the study to include consideration of the linear elements of the Project; Ensure that the required construction permits are in place for preparatory and construction works on the road and biogas pipeline; Development of a Traffic Management Plan and implementation of measures for vehicle monitoring

in the consultations[181]. Proper categorisation of the Project by the EBRD would have ensured both comprehensive assessment and adequate disclosure and public consultations.

Moreover, OPIC classified its potential investment for a similar loan – to fund the expansion of the VPF – as Category A. This is significant, as OPIC's definition of Environmental Category A is close to the EBRD's: "Category A projects are likely to have significant adverse environmental and/or social impacts that are irreversible, sensitive, diverse, or unprecedented."[182] OPIC's stated rationale for the Category A classification is simply that the VPF expansion "involves the construction of an installation for the intensive rearing of poultry."[183] For OPIC, it seems that the significant and diverse risks generally associated with intensive poultry rearing were enough to merit a Category A rating.

b. Basic social and environmental assessment information has not been disclosed

As discussed above, community members have had great difficulty accessing basic Project information, including environmental assessments, in violation of Performance Requirement 1. The EBRD should have required MHP to conduct and disclose a comprehensive ESIA covering all Project operations. Instead, even the piecemeal environmental assessments that the Company has carried out on individual Project facilities are not easily available to local affected people. Moreover, the EBRD approved the greenfield biogas plant project in December 2017 without comprehensive impact assessment of all the components of the project and associated linear infrastructure. The EBRD claims this was in line with national requirements, but it breached of its own Environmental and Social Policy and more stringent EU standards.

1. The EBRD should have required MHP to conduct and disclose a comprehensive ESIA covering all Project operations

The EBRD is a signatory to the European Principles for the Environment and therefore committed to promoting the adoption of EU environmental principles, practices and substantive standards by EBRD-financed projects regardless of their geographical location, i.e. in non-EU countries like Ukraine. Furthermore, when Ukraine's regulations differ from EU substantive environmental standards, EBRD projects are still expected to meet whichever is more

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181 *Id.* The Biogas plant PSD notes that: Formal Project information disclosure was undertaken through public hearings required under the national permitting process. This included a joint public hearing addressing the requirements of both the Detailed Territory Plan and the preliminary EIA of the Biogas Complex EIA held on 29th June 2017. Further formal information disclosure will include the public hearing of the Project CHP facility EIA. Project information disclosure provided in the frame of above indicated meetings addressed only the aspects associated with the development of the Biogas Complex facility. Overall information disclosure pertaining to all Project components (including the linear infrastructure Project elements) and associated overall impacts have not been performed to date.

182 OPIC Environmental and Social Policy Statement, p. 4, available at https://www.opic.gov/sites/default/files/consolidated_esps.pdf. The slight language variation between the two standards – "likely to have significant" impacts rather than "could result in potentially significant" impacts – suggests that OPIC may in fact set a slightly higher standard for Category A projects than the EBRD, making the EBRD's lower categorization of the Project that much more difficult to justify.

183 OPIC Initial Project Summary, p. 1.

stringent.[184] This is particularly relevant for MHP, a client that has received generous investment from EU financiers and exports to a number of EU countries, practically using up the whole quota for poultry exports under the Deep and Comprehensive Free Trade Agreement under the broader EU – Ukraine Association Agreement.[185]

The missing or weak implementation of Ukrainian regulation is another reason why the EBRD should ensure through its investments the implementation of European standards and best international practices. For example Ukraine adopted in 2015 an Act on by-products of animal origin to regulate one of the biggest challenges of industrial animal farming – manure generation, storage and disposal. However, the supporting bylaws and technical requirements are not yet established, thus leaving the problem without an actual solution.[186]

The EBRD's Environmental and Social Policy and Performance Requirements 1 and 3 additionally specify that "*Projects involving new facilities and operations are expected to meet EU substantive environmental standards or other agreed environmental standards, and national regulatory requirements from the outset.*"[187] This requirement should apply to the latest EBRD investment in 2017, the Biogas Plant project, which is a greenfield project.

The European Commission published in 2015 the guidance document *Implementation of definitions of project categories of Annex I & II of the EIA Directive*, which summarises relevant experience from the Court of Justice of the EU. The Court has highlighted the difficulties raised by projects that are subject to multistage consent procedures and has reiterated the need to assess such projects as a whole. The Court has ruled that the assessment must be of a comprehensive nature, so as to relate to all the aspects of a project that have not been assessed or which require a fresh assessment. In the case law with regard to the EIA Directive, the Court has systematically stressed that the purpose of the Directive cannot be circumvented by the splitting of projects. Where several projects, taken together, may have significant effects on the environment within the meaning of Article2(1) of the EIA Directive, their environmental impact should be assessed as a whole. The court ruled that it is necessary to consider projects jointly, in particular where they are connected, follow on from one another, or their environmental effects overlap. Furthermore, in order to avoid misuse of EU rules by splitting projects that, when taken together, are likely to have significant effects on the environment, it is necessary to take into account the cumulative effect of such projects where they have an objective and chronological link between them.

In this regard Performance Requirement 1 specifies that "#8. *The assessment process will be commensurate with and proportional to the potential impacts and issues of the project and will cover, in an integrated way, all relevant direct and indirect environmental and social impacts and issues of the project, and the relevant stages of the project cycle (for example, preconstruction, construction, operation, and decommissioning or closure and reinstatement). It*

184 EBRD Environmental and Social Policy #7; PR3 #9 adds that Certain projects that, due to their nature and scale, would be subject to the EU Industrial Emissions Directive and will be required to meet EU Best Available Techniques (BAT) and related emission and discharge standards, regardless of location.

185 See more information here: http://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine/

186 Arnika, Ecodia, Transition, 2018, Policy Paper "How to Bring European Environmental Standards to Ukraine's Livestock Production"

187 EBRD's Environmental and Social Policy #37, as well as PR1 #6, PR3 #11.

may be appropriate for the client to complement its environmental and social assessment with further studies focusing on specific risks and impacts, such as climate change, human rights and gender."

In line with the EC's approach and the Court's rulings regarding the implementation of the EIA Directive, Performance Requirement 1 #9 goes on to instruct that environmental and social assessment should identify associated facilities that are essential to the viability of the project, as well as cumulative impacts "*of the project in combination with impacts from other relevant past, present and reasonably foreseeable developments as well as unplanned but predictable activities enabled by the project that may occur later or at a different location.*"

The EBRD policy includes limited requirements to the client to assess project alternatives[188], as the requirements are stronger for category A projects[189], however, the EIA Directive Article 5 requires that the developer will provide information on "*(d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment*".

Last but not least Performance Requirement 1 #23 specifies that a client is required to identify as risks associated with its supply chain, and especially in cases like MHP, where the client can exercise control over the supply chain, "*the environmental and social assessment process will also consider whether the primary supply chains central to the project's core operational functions are likely to be associated with environmental and social risks.*"

As discussed in the previous section, this Project was clearly likely to generate significant impacts. The EBRD should have recognized this and required MHP to develop and disclose an ESIA covering all facilities of both the VPF and Zernoproduct Farm.[190]

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188 With regards to Greenhouse Gases PR3, #14: The client's environmental and social assessment process will consider alternatives and implement technically and financially feasible and cost-effective options to avoid or minimise project-related greenhouse gas (GHG) emissions during the design and operation of the project. These options may include, but are not limited to, alternative project locations, techniques or processes, adoption of renewable or low carbon energy sources, sustainable agricultural, forestry and livestock management practices, the reduction of fugitive emissions and the reduction of gas flaring.

189 Environmental and Social Policy PR 1 #10

190 The operations and impacts of the Zernoproduct Farm and VPF should have been considered together for the purposes of developing a comprehensive ESIA. The PSD of the 2017 EBRD loan states that it was provided to manage chicken manure and other agricultural residues in the Vinnytsia region, which include both the VPF and Zernoproduct Farm: http://www.ebrd.com/work-with-us/projects/psd/mhp-biogas.html Moreover, the operations of the Zernoproduct Farm and VPF, and their social and environmental impacts, are so interconnected that they can only usefully be viewed as one operation for the purposes of assessing social and environmental impacts. The manure produced by VPF chicken brigades is currently transported directly to the manure storage facility in Hordivka, which is owned by Zernoproduct Farm, or alternatively deposited on fields leased by Zernoproduct Farm. Grains grown on Zernoproduct lands are transferred to a processing facility near Olyanytsya, which is owned by the Vinnytsia Poultry Farm Branch Complex for Manufacturing Feeds LLC, a branch office of Vinnytsia Poultry Farm LLC. This processing facility turns the Zernoproduct harvest into chicken fodder and chicken bedding, which is then used to sustain chickens in the VPF brigades. Some local MHP facilities, such as a water intake facility that draws water from the Bug River and a water treatment facility, are likely being used to benefit the operations of both entities.

For example, the main road through Olyanytsya is currently the only logical route between many of MHP's slaughterhouse, fodder plant and many chicken brigades on one side and their manure storage facility in Hordiivka on the other. As a result, impacts from heavy vehicle traffic through Olyanytsya are inextricably linked to the operations of both the VPF and Zernoproduct Farm. MHP's approach of producing separate environmental assessments for each facility resulted in these road use impacts being missed entirely. Likewise, pollution impacts can only be meaningfully understood through an examination of all Project facilities together, to identify how impacts from each facility may add up and interact. Again, MHP's approach of assessing impacts separately for each facility, at the time it is constructed, prevents any comprehensive understanding of pollution impacts.

Absent a comprehensive ESIA, MHP has failed to provide us with relevant information on the Project's scope, scale, risks, impacts and relevant mitigation measures.[191] We are still uncertain about the exact size and scope of VPF Phase 2 – including basic questions, such as the final number of chicken brigades that will be included in Phase 2 – even though MHP has been planning on building out Phase 2 since at least 2010. MHP has never provided us with total figures for the pollution impacts or resource use of the whole Project, let alone updated, forward-looking information on Phase 2.

In the case of the Biogas plant project there is uncertainty about the size and scope of the project. It is unclear if MHP is intending to build one biogas plant of 10MW or two to three plants with greater capacity[192]. This points to non-compliance with Performance Requirement 1 #7 that "*environmental and social assessment process will be based on recent information, including an accurate description and delineation of the project and the client's associated activities, and social and environmental baseline data at an appropriate level of detail*", as well as with failure to ensure implementation of EIA Directive Article 5.[193]

2. ***Even if a comprehensive ESIA was not required, MHP disclosure practices fell short in numerous other respects***

MHP's disclosure practices have been deficient in a number of other ways as well. Most notably, MHP has failed to provide easy access to Project documents. The environmental assessment documents that have been disclosed did not provide adequate information on Project risks and potential negative impacts, and no documents that we have seen provided any

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191 The OPIC Supplemental ESIA gives the impression that even the drafters of that document did not have access to comprehensive information on the cumulative impacts of the VPF, but were instead forced to estimate total impacts and resource use based on piecemeal figures provided in separate environmental assessment documents for each facility, some of which are themselves no more than calculated estimates from before a facility was constructed.

192 We recently learned that MHP is now considering doubling its size, to produce as much as 24 MW of power Annex 2 to the Biogas Plant ESIA, available at http://eia.menr.gov.ua/uploads/documents/521/reports/2f173006088809f80aec56da3b8950b80.pdf.

193 EIA Directive Article 5: 1. The information to be provided by the developer shall include at least: (a) a description of the project comprising information on the site, design, size and other relevant features of the project; (e) a non-technical summary of the information referred to in points (a) to (d) [on project alternatives];

information on the EBRD's environmental and social action plan (ESAP) for this Project, which we understand was a required condition of the EBRD investments.

EBRD clients are expected to deliver Project information to affected communities recognising that "effective community engagement, appropriate to the nature and scale of the project, promotes sound and sustainable environmental and social performance, and can lead to improved financial, social and environmental outcomes, together with enhanced community benefits. Stakeholder engagement is central to building strong, constructive and responsive relationships which are essential for the successful management of a project's environmental and social impacts and issues. To be effective, stakeholder engagement should be initiated at an early stage of the project cycle."[194]

In contrast to the Performance Requirements, the Company typically does not make its environmental assessments publicly available, and it has an inconsistent record of disclosure to directly to affected people. On a number of occasions, MHP has failed to provide documents even in response to a direct request or has advised community members to request them from public authorities instead. Local public authorities have been equally unresponsive to requests for information, leading to frustration and confusion regarding how and where to obtain basic information about MHP facilities. Further, many of the documents that we have received were only made available after it was too late to influence the location or design of a given facility, and long after the EBRD's investments. For example, the Preliminary EIA for Brigade 43 still has not been shared with local community members, despite multiple requests. The Preliminary EIA for Brigade 47 was only disclosed after intervention by MHP's Public Relations and CSR Director, who has since left the position. This meant that the document was disclosed many months after the public hearing on the facility, and only to community members who requested it persistently multiple times. It is still unclear what is the scope and size of the new Biogas Plant, with the EIA process starting after the plant construction is well advanced.

When we have managed to obtain environmental assessment documents, these have not provided enough information to answer our questions about the Project's risks and negative impacts. Far from the comprehensive ESIA that community members and our NGO advocates have requested, MHP's practice has been to produce piecemeal environmental assessment documents for each new facility it develops, at the time of development. Many of the environmental assessment documents we have seen are brief excerpts of larger documents, providing little more than a mention of negative risks or impacts, far from the level of detail needed to allow us a meaningful understanding of the Project and wholly inadequate to provide the full scope and amount of information envisioned by Performance Requirement 1. More recent documents, such as the Preliminary EIAs for Brigade 47 and the ESIAs for the biogas plant and Brigade 55, are an improvement on these excerpts, but still suffer from significant gaps, failing to provide a meaningful baseline assessment or a sufficiently detailed analysis of air pollution impacts, or any assessment of cumulative impacts.[195]

Further, we have not received any information or updates about the status of MHP's Environmental and Social Action Plan ("ESAP") for EBRD's projects. The Biogas plant

194 EBRD Environmental and Social Policy, Performance Requirement 10, #1.

195 These issues are discussed further in the following sections.

project's summary provided by the EBRD states that "an ESAP is being developed for the Project," however the Bank does not consistently disclose ESAPs and does not require disclosure for category B projects. MHP has not shared with us locally in Ukrainian or consulted with us any ESAPs, nor have we received any update from MHP on progress in completing the described actions.

As mentioned above, MHP's information disclosure practices have improved somewhat in the past year, as have the disclosure practices of government representatives. In particular, with a new, more robust law governing EIAs in Ukraine in effect as of December 2017, environmental assessment documents for future new constructions will be made publicly available on the website of the Ministry of the Environment. However, many local community members do not have internet access and are not well-informed of the implications of the new EIA law, so simply posting environmental assessment documents on the Ministry of Environment's website is not enough.

Moreover, even with these recent changes, affected people still do not have effective access to information about the full impacts of MHP's local farming operations. The new law only applies to new constructions and will play no role in filling existing and past gaps in MHP's document disclosure. For information about existing and currently under construction facilities, community members will still have to petition MHP and/or the local government. Forcing community members to file a request with MHP in order to access basic information about the impacts of the Company's operations creates a risk that MHP will use its discretion to decide when and to whom to release documents. Even if this discretion is never abused, forcing affected people to file a request for information acts as a deterrent for many community members, who may fear repercussions if such requests are seen as raising questions or seeking information about the VPF's impacts. We believe that MHP's poor record of information disclosure does not comport with the requirements of Performance Standard 1.

3. Consultations have not met the requirements of the EBRD Performance Requirements, the EIA Directive, the Industrial Emissions Directive and the Aarhus Convention

MHP's process of consultation on the development and expansion of the VPF falls short of the EBRD's policy and Performance Requirements in many respects. The improper categorization of MHP projects as Environmental Category B means that improperly lax standards were applied to the consultation process, which has exacerbated these consultation violations.

The EBRD is committed to the principles of transparency, accountability and stakeholder engagement and the promotion of similar good practices amongst its clients.[196] It requires from its clients to engage with relevant stakeholders, in proportion to the potential impacts associated with the project and the level of concern, as stakeholder engagement should be carried out bearing in mind the spirit and principles of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the

196 EBRD Environmental and Social Policy #15

Aarhus Convention).[197] The bank's appraisal requires identification of stakeholders potentially affected by and/or interested in the projects, followed by disclosure of sufficient information about the impacts and issues arising from the projects, consultations with stakeholders in a meaningful and culturally appropriate manner[198] and opportunity for impacted parties to raise grievances[199] and look for redress for harm done. Performance Requirement 10 # 1 specifies that, to be effective, stakeholder engagement should be initiated at an early stage of the project cycle.

MHP's consultations have consistently lacked prior disclosure of adequate information to allow for meaningful participation in discussions about the impacts of VPF facilities and about necessary avoidance or mitigation measures, in violation of EBRD policy, EU standards and Aarhus Convention principles[200] Even during meetings, facilitators have not provided necessary information on a facility's potential risks and negative impacts and have avoided responding to questions about negative impacts. For example, in the September 2016 consultation meeting about Brigade 43, an MHP representative provided no substantive response to concerns raised about the environmental impacts of the VPF, calling these concerns groundless and unsubstantiated accusations.[201] The overall discussion was imbalanced: village council leaders controlled the meeting and as a result only one person with questions and comments about negative impacts was able to speak.[202] The company representatives responded by publicly calling that person's comments "groundless and non-substantiated," without further explanation.[203]

Further, consultations have not always been free of manipulation, interference or intimidation, in violation of PR 10 #5.[204] As described above, employees have experienced pressure to vote in favor of a new construction, including receiving encouragement from MHP to attend community consultation meetings and implications that their job may be endangered if they do not vote in favor of new developments. Non-employees have also experienced pressure to support MHP project plans, including pressure to remove their names from a petition opposing the construction of Brigade 47. Employees have reported experiencing pressure related to family members voicing negative opinions about MHP's operations. MHP's practice of having only one consultation meeting per facility, hosted by a local village council, amounts to avoidance of its

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197 EBRD Environmental and Social Policy #34

198 EBRD Environmental and Social Policy on meaningful consultations with stakeholders: #34; PR1 #1, #7; PR2 #13; PR5 #40; PR10 #2, #3, #18-20

199 EBRD Environmental and Social Policy, PR2 on labour grievances; PR5 #2 on economic displacement and livelihood restoration; PR10 #2, #3, #6, #16, #20, #26, #28.

200 "Effective community engagement, appropriate to the nature and scale of the project, promotes sound and sustainable environmental and social performance, and can lead to improved financial, social and environmental outcomes, together with enhanced community benefits. Stakeholder engagement is central to building strong, constructive and responsive relationships which are essential for the successful management of a project's environmental and social impacts and issues. To be effective, stakeholder engagement should be initiated at an early stage of the project cycle." EBRD Environmental and Social Policy, Performance Requirement 10, para. 1.

201 Minutes of Olyanytsya Village Council Public Hearing (21 Sep. 2016), p. 12, included in Annex 8.

202 *Id.*

203 *Id.* This situation directly violates PS 1, GN 103, which requires that the client's representatives "meet with the Affected Communities and explain the project information, answer questions and listen to comments and suggestions."

204 Consultations must "be free of external manipulation, interference, coercion, or intimidation." PS 1 at para. 30.

responsibility to consult with local affected people. Moreover, as described above, it has also effectively excluded many affected people from attending consultations.

MHP's consultation practices have at times fallen below the requirements of Ukrainian law as well. Up until a new EIA law came into effect in December 2017, Ukrainian law required developers to first publicly disclose an Announcement of Intent before developing a new facility.[205] The public had to be given an opportunity to comment on that intent, and only after receiving those comments, the developer was permitted to publish and allow comments on an Announcement of Consequences for the new development.[206] This was the relevant law in effect for all MHP facilities that have been constructed to date, yet this sequencing was not always followed. For example, for Brigade 43, comments were invited on the Announcement of Intent and the Announcement of Consequences at the same time. This accelerates the approval timeline and may diminish the Company's ability to incorporate input received during the public comment period, contrary to the intention of the law.

These deficient consultation practices are even more egregious in light of the EBRD's miscategorization of the Project. As discussed above, this Project should have been classified as Category A, subjecting it to heightened consultation requirements. Specifically, all local people affected by the Project should have been subject to an informed consultation process. Consultations should have been held on the entire Project since the time of EBRD's investments and before. Consultation should have been an iterative process, providing more than one opportunity for community members to discuss Project plans with the Company, and MHP should have listened to community members' feedback and incorporated it into relevant aspects of Project plans, including the development of mitigation measures to reduce impacts for local people. None of the public hearings we have witnessed have come close to the required informed and meaningful participation process.

The EBRD has also failed to ensure adequate implementation of the EIA Directive, specifically of Article 5 (2) (4) (5) and (7). Importantly, in the case of the Biogas Plant the EBRD has not ensured respect for the right of affected people to "*be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.*" Decisions on the Biogas Plant by the competent authorities, by the EBRD and its client were taken in breach of Article 8 of the EIA Directive, as they did not result from consultations and the stakeholder input gathered was not duly taken into account in the development consent procedure.

With regards to the Industrial Emissions Directive (EID) the biogas plant PSD mentions best available technique with regards to waste management, however, it is unclear if the EBRD has assessed compliance with the IED[207] and relevant BREFs.[208] It is worth reminding that

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205 Law of Ukraine on ecological expertise.

206 *Id.*

207 Endustrial Emissions Directive http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010L0075&from=EN

208 BREF on Intensive Rearing of Poultry and Pigs: http://eippcb.jrc.ec.europa.eu/reference/irpp.html

giving the public an early opportunity to participate in the permitting process is key to the meaningful implementation of the Directive in line with the Aarhus Convention.[209]

The spirit and substantive provisions of the Aarhus Convention were breached as affected people were not provided with the opportunity to participate early in the decision-making process "*when all options are open and effective public participation can take place*" (Article 6 #4) and the EBRD client was not encouraged "*to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit*" (Article 6 #5) or to "*ensure that in the decision due account is taken of the outcome of the public participation*" (Article 6 #8).

c. Significant risks and impacts from heavy vehicle traffic were not properly identified or mitigated

The PSD for the Biogas Plant project states that "*Road traffic-related risks represent an issue of community concern. This was considered by MHP and addressed by including a new access road as an additional Project component. The new road is designed to ensure that the main Project traffic will bypass communities. In spite of the bypass it is expected that Project-related road traffic will still need to use the existing road network. Provision of associated mitigation measures and related management planning are therefore included within the ESAP.*"

As discussed above, the permit of the authorities, the investment decision by the EBRD, as well as the client's decision to proceed with the construction of the Biogas plant were not based on clear information about the parameters of the project (10MW or more) and lacking assessment of alternatives (location, size) and potential negative impacts of the biogas plant, the linear infrastructure, the wider VPF phase 2 Project and cumulative impacts (nearby thermal power plant and ash disposal site). A new ESIA was recently initiated when the biogas construction was well underway and it is not clear how this assessment and the input from the affected communities will make any difference to the above decisions. For example, selecting a better location for the plant and thus new supply routes is no longer possible. Furthermore, as it was also pointed out, MHP does not disclose ESAPs in Ukrainian and does not meaningfully consult them with us. Consultations usually do not provide for discussion of negative impacts or related mitigation measures.

We believe that local road use by Project-related heavy vehicles has led to impacts that were not properly assessed and identified in the Project's environmental assessment documents, in violation of Performance Requirements 1, 3, 4 and 10[210] as well as the EIA Directive. As a result, we believe that the EBRD has not required, and the Company has not developed, appropriate measures to avoid or mitigate those impacts.[211] As discussed above, MHP has disclosed only limited information about the risks and negative impacts of Project operations, making it difficult to know exactly how this assessment and impact management process has

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209 EID preamble #27 on Aarhus Convention and Article 24 on Access to information and public participation in the permit procedure

210 EBRD Environmental and Social Policy PR 1 #7, 8, 9; PR 3 #6, 14; PR 4 #2, 29-30; PR10 #1,2,4, 5-7, 9-10.

211 EBRD Environmental and Social Policy #31, but also #6, #10, #25, #29; PR 4 #2, #29-30

been conducted internally. However, even the few measures to lessen heavy vehicle impacts that have been promised to local community members have not been carried out as planned. As a result, impacts from MHP's heavy vehicle road use persist.

As described above, MHP's heavy vehicle traffic –transport of live and dead chickens, chicken fodder, manure and other waste products, and workers' buses – has drastically increased overall heavy vehicle traffic on local roadways. This has led to a range of impacts for local residents, including property damage, safety concerns, foul odors, noise and dust pollution. These impacts have been particularly severe on the main road through Olyanytsya, which has for years served as a major artery for transportation to, from and between many key Project facilities, and they remain unaddressed despite repeated promises by MHP, dating back to 2010, that it would build a bypass road.

Local roads and buildings were built long before MHP began its operations in the region, and before anyone had reason to foresee the type of heavy vehicle traffic that has continuously inundated the village since the arrival of MHP, so it stands to reason that they were not built to withstand MHP's heavy road use. This does not relieve MHP from responsibility for mitigating the foreseeable impacts of its operations. While Olyanytsya is a particularly severe example, people in other communities also feel the impacts from MHP heavy vehicle traffic and fear that these impacts will worsen as the Company doubles VPF operations through the development of Phase 2.

The significant impacts on local roads and infrastructure from heavy vehicle traffic should have been identified in environmental assessment documents. Measures like the planned bypass road around Olyanytsya and additional road safety measures should have been identified as necessary to relieve road dust, pollution and odor impacts, as well as safety risks.[212] These measures should have been treated as a requirement of the EBRD's financing and included in the Project ESAP. The EBRD should have followed up with the Company to ensure that such measures were implemented in a timely manner, or that the Company developed alternative solutions to address these impacts. MHP should not have proceeded with development of new Project facilities that will aggravate these road-related impacts for Olyanytsya residents until after the planned bypass road, or a similar measure to avoid or mitigate impacts from heavy vehicle traffic, was in place.

Despite extreme delays in its construction, residents in Olyanytsya continue to believe that the planned bypass road will serve as an effective measure to avoid or mitigate future traffic-related impacts.[213] MHP should complete the bypass road immediately, communicate directly with community members and the public about its progress, and compensate for the damages and inconvenience caused by the years-long delay in constructing this critical mitigation measure.[214] MHP should likewise proactively address impacts from heavy vehicle traffic in other local villages. Environmental impact assessments should be updated to include road-related impacts,

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212 Such measures are required by the EBRD Environmental and Social Policy PR 1 #1, #7-9 and PR 4 #29-30.

213 Completing the bypass road in the shortest possible time was also a recommendation of the November 2016 Road Commission report (see Commission report at 2), included in Annex 8.

214 See Section V for a more complete explanation of proposed actions to resolve this complaint.

and lenders should actively monitor and supervise the Company's efforts to address these impacts.

d. We fear that MHP's operations have reduced or will reduce our access to water, without adequate identification, mitigation or monitoring

As discussed above, community members fear that MHP's operations and its extensive water use have caused or will cause water levels in residents' wells to drop and have or will contribute to reduced downstream flow in the Pivdenny Bug River. Phase 1 of the VPF has been estimated to use over 3.4 million m^3 of water per year, and this estimate does not include the additional water needs of the Zernoproduct Farm's agricultural operations.[215] The VPF Phase 2 has been estimated to add another 2.6 million m^3 of water use per year.[216] Yet, despite the Company's high water needs, this is not an impact that was identified or adequately discussed in environmental assessment documents, in violation of Performance Requirement 1.

Additionally, Performance Requirement 3 (#1) recognises that that increased economic activity can generate increased levels of pollution to water and consumption of finite resources in a manner that may threaten local people. Therefore PR3 requires the EBRD clients to adopt measures for minimising its consumption and improving efficiency in its use of water and other resources, as "*the key focus will be on activities that are considered the project's core functions, but similar opportunities in the client's other business activities that are not part of the project will also be considered.*"[217] Moreover the EBRD client is required to consider the potential cumulative impacts of water abstraction upon third party users, to assess the impacts of its activities on the water supply to third parties, to demonstrate that its proposed water supply will not have adverse impacts on the water resources crucial to third parties, and as part of the its environmental assessment process to identify and implement appropriate mitigation measures that favour the prevention or avoidance of risks and impacts over minimisation and reduction in line with the mitigation hierarchy approach and GIP.[218]

Communities fear that MHP has not effectively undertaken such water conservation measures and that its operations may be at least partly responsible for the reduced water availability experienced by many community members. Given that the VPF Phases 1 and 2 are estimated to need more than 6 million m^3 of water per year,[219] in addition to the water needs to the Zernoproduct Farm, this Project should have been identified as a significant water user. In line with the requirements of PR 3 #18 for projects with water demand greater than 5,000 m3/day, a detailed water balance should have been developed, maintained and reported annually to the EBRD. The bank should have actively supervised the Project to ensure that MHP assessed local water availability and sustainable yields and tracked its impacts on river flow and groundwater resources, including its cumulative impacts from all expansions.[220] Had the EBRD

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215 OPIC Supplementary ESIA at p. 139.

216 *Id.*

217 EBRD Environmental and Social Policy, PR3 #6

218 EBRD Environmental and Social Policy, PR3 #19

219 OPIC Supplementary ESIA at p. 139.

220 Such tracking would have been in line with recommendations in the EBRD's 2016 monitoring report. Monitoring Assessment Summary Report, Assessment Subject: MHP Group, WSP Parsons Brinckerhoff (Feb. 2016), Sec. 5.3, available at

been properly supervising this situation, it would have been able to identify if MHP's local water use is contributing to significant impacts on local water resources, at which point the EBRD should have directed the Company to implement necessary mitigation measures immediately, including considering alternative locations for new Project facilities that will not cause additional strain on the same local water resources. Instead it appears, based on information currently available to us, that no one knows the extent to which MHP's water use is affecting local water resources.

While MHP has taken some action to address the real or potential impacts of its water consumption on local residents, for example by offering to provide main water hook-ups to some towns, these initiatives cannot be considered an effective mitigation measure. MHP has approached these initiatives as a voluntary community benefit projects, and as a result has not designed the initiatives to ensure access to the most vulnerable users or those most likely to be impacted by MHP's activities. Additional resources would be needed to connect water lines up to the homes of all impacted or potentially impacted residents before this measure can address potential water impacts on local residents. Moreover, even if MHP were to take additional action to connect each individual house to the main water line, this measure would still not be enough on its own to address all potential impacts to community water supply from MHP's operations. The mitigation hierarchy discussed in Performance Requirement 1, and the limits on water use required by Performance Requirement 3, dictate that the Company must first attempt to avoid or reduce its water use before it turns to other mitigation measures, such as providing alternative methods of water access for local residents.

e. We fear that MHP's operations have polluted or will unreasonably and unnecessarily pollute our local environment, which may lead to health impacts

We fear that MHP's operations in the area have caused or will cause pollution to our soil, groundwater and air, in violation of Performance Requirements 3 and 4. Specifically, we fear that the long-term storage of large quantities of manure on agricultural fields in the open air, and the use of a manure storage facility that does not have a roof or walls on all sides, causes unreasonably high emissions to our air, soil and groundwater. We are also concerned that MHP's use of pesticides on local crop lands, its application of used water from poultry brigades to irrigate croplands, as well as the disposal of treated wastewater in the Pivdenny Bug River, may lead to unknown pollution impacts. We fear that the rearing, slaughter and processing of millions of chickens near our villages also contributes to air pollution and that the total air pollution impacts from all Project operations may currently, or in the future, exceed health standards.

1. It is not clear that MHP has implemented all necessary mitigation measures

Performance Requirement 3 requires that EBRD clients identify, assess and apply technically and financially feasible and cost-effective pollution prevention and control techniques that are best suited to avoid or minimise adverse impacts on human health and the environment, as measures for the prevention or avoidance of risks and impacts will be favoured over measures for minimisation and reduction, in line with the mitigation hierarchy approach and

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http://www.ebrd.com/cs/Satellite?c=Content&cid=1395250435187&d=&pagename=EBRD%2FContent%2FDownloadDocument.

consistent with GIP.[221] Given the information disclosure challenges discussed above, we do not have full information on the anticipated or actual pollution impacts of MHP's operations. The EBRD claims that "*MHP Group's facilities were generally operating to a level consistent with national and EU standards for environment, occupational health and safety, animal welfare and bio security*"[222] but based on our own experience and observations and the information that has been disclosed, we remain concerned that MHP has not implemented standard practices needed to protect the local environment and safeguard the health of local people.

The Company's operations involve storing large quantities of chicken manure for extended periods of time and eventually applying the manure directly onto Company-controlled fields as fertilizer. These activities naturally carry risks of environmental pollution and foul odors, which is why the European Unions Best Available Techniques include measures such as reducing the ratio of the manure heap surface and volume, covering the manure heap, storing it in a barn, reducing the transportation of manure etc.[223] [224][225][226]The European Union's best available techniquesBAT decision lists as the last and least preferable technique for manure storage: "store the manure in a field heap placed away from surface and/or underground watercourses which liquid run-off might enter."[227] It recommends that manure be stacked on fields prior to land spreading for not more than "a few days or several weeks."[228] The World Bank's EHS Guidelines further recommend that manure piles can be covered with a geotextile material to help reduce dust and odor impacts.[229]

MHP's manure storage facility does not have a roof or other covering overhead, nor is it

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221 EBRD Environmental and Social Policy, PR3 #8

222 EBRD PSD for the MHP Corporate Support Loan: http://www.ebrd.com/work-with-us/projects/psd/mhp-corporate-support-loan.html

223 COMMISSION IMPLEMENTING DECISION (EU) 2017/302, of 15 February 2017, establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the intensive rearing of poultry or pigs (notified under document C(2017) 688) http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017D0302&from=EN

224 World Bank Environmental, Health and Safety Guidelines for Poultry Production, World Bank Group (30 Apr 2007), p. 3, available at http://www.ifc.org/wps/wcm/connect/26baaf004886581fb43ef66a6515bb18/Final%2B-%2BPoultry%2BProduction.pdf?MOD=AJPERES.

225 World Bank Environmental, Health and Safety Guidelines for Poultry Production, World Bank Group (30 Apr 2007), p. 4, 6, available at http://www.ifc.org/wps/wcm/connect/26baaf004886581fb43ef66a6515bb18/Final%2B-%2BPoultry%2BProduction.pdf?MOD=AJPERES.

226 *Ibid.* For example, the European Union has established similar standards in its established best available techniques. See BAT CONCLUSIONS FOR THE INTENSIVE REARING OF POULTRY OR PIGS, COMMISSION IMPLEMENTING DECISION (EU) 2017/302 (15 Feb 2017), BAT 13-15, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0302&from=EN.

227 *Id.* While this may provide support for MHP's practice of heaping manure in fields for long time periods, it is not clear in this case whether MHP completed the necessary assessments of groundwater resources to be able to safely place these heaps. Moreover, the EHS Guidelines contain no such provision.

228 BAT CONCLUSIONS FOR THE INTENSIVE REARING OF POULTRY OR PIGS, COMMISSION IMPLEMENTING DECISION (EU) 2017/302 (15 Feb. 2017), BAT 15, sec. 5.4.5, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0302&from=EN.

229 World Bank Environmental, Health and Safety Guidelines for Poultry Production, World Bank Group (30 Apr 2007), p. 7, available at http://www.ifc.org/wps/wcm/connect/26baaf004886581fb43ef66a6515bb18/Final%2B-%2BPoultry%2BProduction.pdf?MOD=AJPERES.

walled on all sides. Absent a full enclosure, the facility does not appear to have the capacity to control the temperature or humidity of manure, which can lead to unnecessary air emissions and odors.

Further, local residents have witnessed manure piles stored in fields for months at a time. When asked about its manure storage practices in the context of another large farm, MHP has explained that it places a layer of straw or wood shavings under manure before placing the manure in open fields, and it believes this measure to be adequate to address pollution concerns.[230] The OPIC Supplemental ESIA reports that manure is stored in fields for "up to two months before spreading" and that its location takes into account "proximity to water courses."[231] However, local residents have witnessed manure piles stored in fields for much longer,[232] and to our knowledge groundwater resources have not been fully assessed to determine exactly how close manure piles are in relation to groundwater aquifers relied on by local communities.[233]

An additional concern is the lack of barrier between many poultry brigades and local residences. While MHP does in most cases ensure a sanitary protection zone of at least 1200 meters between its poultry brigades or other facilities and local residences, these empty zones do not provide as much protection for MHP's residential neighbors as would a "natural barrier" of dense trees or shrubs.[234] Natural barriers are required under Ukrainian law and recommended by the European Union's best available techniques for intensive poultry rearing.[235] This matter has been raised many times by local residents dating back to the construction of the VPF Phase 1 in 2010 and 2011, but such natural barriers have still not been constructed near local brigades that were the subject of those requests.

Likewise, it is unclear to us whether MHP is following best practices for pesticide use and management. As discussed above, community members have witnessed MHP's use of pesticides near residences without prior warning, which we fear may pose potential health risks. Performance Requirement 3 dictates that chemical pesticides should only be applied as a last resort,[236] but because MHP has not shared its pesticide management plan with us, we do not know whether it is following this requirement, what type of pesticide it is using, or what its

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230 MHP in-line responses to issues raised in letter from CEE Bankwatch Network (26 Jul. 2017). This letter and MHP's comments were in relation to the Company's operations in the Cherkasy region of Ukraine.

231 OPIC Supplementary ESIA at 124.

232 For example, community members and NGO representatives observed the same pile of manure on a field near Olyanytsya from August 2016 through March 2017.

233 A 2016 EBRD Monitoring Report recommended that MHP undertake "a robust assessment of water availability and sustainability yields across the Vinnytsia region." Monitoring Assessment Summary Report, Assessment Subject: MHP Group, WSP Parsons Brinckerhoff (Feb. 2016), Sec. 5.3, available at http://www.ebrd.com/cs/Satellite?c=Content&cid=1395250435187&d=&pagename=EBRD%2FContent%2FDownloadDocument. It is not clear whether this assessment was ever carried out.

234 Additionally, MHP has at times elicited exceptions to the 1200 m sanitary protection zone requirement and placed its brigades closer to residential buildings. See, e.g., Environmental Impact Assessment for Brigade 55, "Spektr" Separate division of PJSC MHP (2018), included in Annex 7.

235 Section 5.13 of the State Sanitary Regulations, the rules and regulations of the Ministry of Education and Science of Ukraine, and the building of the Ministry of Health, 19.06.96 No 173; BAT CONCLUSIONS FOR THE INTENSIVE REARING OF POULTRY OR PIGS, COMMISSION IMPLEMENTING DECISION (EU) 2017/302 (15 Feb. 2017), BAT 13(c), available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0302&from=EN.

236 EBRD Environmental and Social Policy PR 3 # 23-27

environmental and health risks may be. While EBRD project summary documents do not mention pesticides, the IFC ESAP for this Project called for MHP to update its policy and procedures to avoid use of products that fall under Class II (moderately hazardous) of the WHO Recommended Classification of Pesticides.[237] However, that ESAP does not appear to have been updated since the IFC approved its investment, and we are unaware of any publicly available monitoring reports that cover this issue. Further, as discussed above, in the excerpted information we have been able to access from state inspections of MHP facilities, there is a reference to a violation of pesticide monitoring requirements.

We fear that by failing to apply necessary avoidance and mitigation measures, MHP's operations cause unnecessary pollution to local air, water and land.

2. Feared risk of water-related diseases

We are concerned that MHP's operations may be reducing groundwater quality in the area, with potential detrimental impacts on our health. Performance Requirement 1 requires EBRD clients to establish environmental and social management systems and plans.[238]Additionally, Performance Requirement 4 requires EBRD clients to avoid or minimize any potential for community exposure to diseases.[239]

Despite these requirements, we are not aware of any regular testing of the quality of local groundwater surrounding MHP facilities and MHP-operated agricultural fields. Instead, water monitoring appears to have been conducted on a one-off basis, as requested by local government administrations, and local people do not always have access to the results of such testing.[240]

Even if groundwater is in fact being monitored regularly, we fear that MHP has not taken adequate steps to respond to pollution. We fear that MHP's poor manure storage practices and other polluting aspects of its operations, such as its pesticide use, may be negatively impacting groundwater or may do so in the future. As discussed above, some public wells in our community have been found to contain e. coli and dangerously high nitrate levels. The cause of these water problems has not been investigated, and we fear that MHP's operations may be responsible, at least in part, for this poor water quality, especially given the known relationship between large-scale poultry farming and these types of water pollution.

To provide a specific example, in Olyanytsya, local well water was only subject to state inspection once in 2016, following a specific request that was prompted by the concerns of local villagers. To our knowledge, this was a one-off assessment and the well water in Olyanytsya has not been subject to any further testing since, despite the troubling results of the 2016 tests, which are described above. Without sufficiently detailed and reliable data, it is difficult to understand how the EBRD can have met its obligations to monitor and measure the effectiveness of MHP's pollution management program, or its compliance with relevant standards.

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237 "PS 3: Resource Efficiency and Pollution Prevention," IFC Project 34041 ESAP.

238 EBRD Environmental and Social Policy PR 1 #15-20.

239 EBRD Environmental and Social Policy PR 4 #9, #11, #33-34

240 For example, residents of Zaozerne are aware of recent testing of well water quality, but have not been permitted to see the results.

3. *Fear that Project operations have caused or will cause air pollution to exceed international health standards, without adequate monitoring*

We fear that the Project's environmental monitoring practices are not adequate to ensure emissions stay within healthy levels. Neither the EIAs produced for local MHP operations nor Ukrainian state environmental inspections have produced adequate data to enable meaningful monitoring of the Project's air pollution impacts or ensure that the air quality surrounding MHP brigades is within healthy levels. This is in violation of Performance Requirement 1, which requires EBRD clients to establish procedures to monitor the environmental and social performance of the project, in order to determine whether the project is being implemented in accordance with the PRs and learn lessons, allocate resources and identify opportunities for continuous improvement.[241]

Nonetheless, in the environmental assessments we have seen for individual Project facilities, information on air quality is inadequate to determine the health-related impacts from Project pollution. The recent EIA disclosed by the Ukrainian Ministry of Environment for Brigade 55 is a pertinent example. To date, this is the longest and most comprehensive environmental assessment that has been publicly disclosed for any of the Project's poultry brigades. The assessment includes information on the maximum concentrations of total suspended particulate (TSP) expected to be produced at the planned site of Brigade 55 and at the edge of the sanitary protection zone,[242] but it does not provide information on the prevalence of smaller particles – PM 10 or PM 2.5. TSP is an outdated measure of health risks from particulate matter, whereas the more focused measures of PM 2.5 and PM 10 are the best indicators of health risks from dust, which are specifically linked to exposure to these finer dust particles.[243] Moreover, the predicted TSP levels at the edge of the sanitary protection zone are high enough that it seems entirely possible, and even likely, that PM 2.5 levels will be higher than recommended levels, and high enough to cause health impacts. For example, the EIA indicates that at the edge of village of Vasylivka expected TSP levels would reach 362 µg/m3.[244] The World Health Organization's Ambient Air Quality Guideline Value for exposure to PM 2.5 on an annual average basis is 10 µg/m3,[245] and we understand that while the ratio of TSP to PM 2.5 can vary widely, average associations between the two may place PM 2.5 levels well above that safe standard.[246]

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241 EBRD Environmental and Social Policy PR 1 #24-30

242 Brigade 55 EIA at Sec. 5.1.3., p. 99.

243 See WHO Air quality guidelines for particulate matter, ozone, nitrogen dioxide and sulfur dioxide: Global Update 2005, World Health Organization (2005), p. 9-10, available at http://apps.who.int/iris/bitstream/handle/10665/69477/WHO_SDE_PHE_OEH_06.02_eng.pdf?sequence=1 (explaining that PM 10 and PM 2.4 particles are small enough to enter the respiratory tract and these are the types of particulate matter considered to contribute to health effects. This publication also discusses the link that has been shown between long-term exposure to PM 2.5 and mortality).

244 The ESIA indicates that TSP levels at the edge of the sanitary protection zone near Vasylivka is 0.7375 of the maximum allowable concentration, which is 0.5 mg/m3. Brigade 55 EIA at Sec. 5.1.3., p. 99.

245 WHO Air quality guidelines, p. 9.

246 See *The Relationship Among TSP, PM_{10}, $PM_{2.5}$, and Inorganic Constituents of Atmospheric Participate Matter at Multiple Canadian Locations*, Jeffrey R. Brook , Tom F. Dann & Richard T. Burnett Journal of the Air & Waste Management Association, 47:1 (1997), 2-19, DOI: 10.1080/10473289.1997.10464407, available

Air quality monitoring by the Tulchyn branch laboratory of the Ministry of Health has suffered from the same lack of specificity. The monitoring results we have seen do not provide separate measurements for PM 2.5 or PM 10, instead relying on TSP as the only quantitative dust measurement.[247] Once again, the measurements are high enough that it is seems possible, and maybe even likely, that dust particles in the air have already reached a level high enough to impact human health, particularly in circumstances of prolonged exposure.[248] Further, the methodology used to arrive at these monitoring results is not clear. The documents disclosed to us do not indicate whether they are the result of multiple readings over a period of time, taken at different times of day and in varying wind conditions, or if each figure is based on a single reading.

Taken together, these problems call into question whether the Project's air pollution impacts are being adequately monitored, and we fear that the Project's emissions may cause or may already have begun to cause, negative health impacts in our communities.

4. Fear that MHP has not adequately assessed GHG emissions

We fear that MHP's measures to assess GHG emissions are not adequate. Performance Requirement 3 requires EBRD clients to implement any feasible measures to reduce GHG emissions during the design and operation of a project.[249] For all projects that produce more than 25,000 tonnes of CO2- equivalent annually, the client must quantify emissions annually in accordance with EBRD Methodology for Assessment of Greenhouse Gas Emissions and reported to the EBRD. The scope of GHG assessment should include all direct emissions from the client's facilities, activities and operations that are part of the project or system, as well as indirect emissions associated with the production of energy used by the project.[250]

MHP should have assessed the cumulative GHG emissions of all VPF and Zernoproduct Farm facilities, including emissions related to the storage and spreading of manure as fertilizer. The PSD for the Biogas project reports that according to emissions calculation performed by MHP, it is expected that the project will be associated with GHG emission reduction of approximately 85,500 tonnes of CO2 equivalent yearly[251]. However, as discussed above, no comprehensive assessment of environmental and climate impacts related to EBRD's investment has been publicly disclosed by either the EBRD or MHP. Even the 2016 OPIC Supplemental ESIA, which attempts to quantify the total impacts of the Phase 2 expansion of the VPF, provides no current estimate of total GHG emissions for MHP's operations in the region. Instead,

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at https://www.tandfonline.com/doi/pdf/10.1080/10473289.1997.10464407, showing that on average across a large sample set of locations, PM 2.5 made up approximately 25% of TSP.

247 Included in Annex 9.

248 The WHO sets a different significantly lower recommended standard of exposure to particulate matter in the case of prolonged exposure, compared to short-term exposure. It justifies this with reference to multiple studies that have demonstrated "robust associations" between long-term exposure to PM2.5 and mortality. WHO Air quality guidelinesat 9-10.

249 EBRD Environmental and Social Policy PR3 #4, #14-15.

250 EBRD Environmental and Social Policy PR3 #15

251 Project Summary Document for MHP Biogas plant (Project No. 49301), available at http://www.ebrd.com/work-with-us/projects/psd/mhp-biogas.html.

it notes that in 2015, MHP benchmarked GHG emissions of the VPF and reported emissions of 787,870 tonnes of CO2 equivalent.[252] The document recommends that MHP should calculate a GHG inventory using actual data, not estimates, and should monitor and report this information on an annual basis, to allow for benchmarking of actual emissions against international standards.[253] We understand that manure produced by VPF chicken houses is immediately sent to Zernoproduct Farm for storage and treatment. It is therefore unclear whether the GHG emissions from stored manure were included in the Company's 2015 VPF GHG benchmarking exercise.

Further, the claim that the biogas plant will significantly reduce GHG emissions is not well supported and we fear that the plant may even increase overall GHG emissions, if there are fugitive losses of methane, or if manure is still stored for long periods in the open air before it enters the plant, or if the conversion into biogas is less efficient than the Company expects. As the biogas plant ESIA makes clear, the air emissions from the biogas plant are significant (estimated as 2,102 tonnes per year of methane, 4.157 t/year of ammonia and 2.4883 t/year of hydrogen sulfide) and any claim of reduced overall GHG emissions requires further substantiation and context.[254]

The EBRD should have required an initial ESIA that included actual GHG emissions numbers for the whole VPF and the local operations of Zernoproduct Farm, in addition to annual monitoring and reporting on actual GHG emissions data since the time of its investment. Any weaknesses in the Company's assessment and monitoring of GHG emissions will be particularly relevant as the planned biogas plant comes into operation, in order to provide context for the claimed "*significant reduction in GHG emissions*"[255] resulting from the Biogas plant.[256][257]

f. The disclosed environmental assessment documents do not include necessary baseline data

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252 OPIC Supplemental ESIA, Appendix C: Best Available Techniques, Section 2.4.

253 OPIC Supplemental ESIA at 101.

254 Preliminary EIA for Biogas Plant at sec. 6.1.2.

255 Project Summary Document for MHP Biogas plant (Project No. 49301), section on Transition Impact, available at http://www.ebrd.com/work-with-us/projects/psd/mhp-biogas.html.

256 Preliminary Environmental Impact Assessment, New construction for the processing of organic agricultural waste and biomass of plant and animal origin into biogas (Jun. 2017), sec. 6.1.2, included in Annex 7. This claim of significantly reduced GHG emissions is not well supported and we fear that the plant may even increase overall GHG emissions, if there are fugitive losses of methane, or if manure is still stored for long periods in the open air before it enters the plant, or if the conversion into biogas is less efficient than the Company expects. As the ESIA makes clear, the air emissions from the biogas plant are significant (estimated to equal 2,102 tonnes per year of methane, 4.157 t/year of ammonia and 2.4883 t/year of hydrogen sulfide) and any claim of reduced overall GHG emissions requires further substantiation and context. Preliminary EIA for Biogas Plant at sec. 6.1.2.

257 The air emissions from the biogas plant are estimated to equal 2,102 tonnes per year of methane, 4.157 t/year of ammonia and 2.4883 t/year of hydrogen sulfide. Biogas Plant ESIA at sec. 6.1.2. The total air emissions methane amount (for 6 cycles/year) from open-air storage of manure from poultry brigades equals to 1789,4 t/year, ammonia and ammonium sulfate – 1,656 and 0,520 tons per year accordingly. Preliminary EIA for the biogas plant (Jun. 2017), sec. 6.1.2, included in Annex 7. While the ESIA for the biogas plant claims that it will reduce the overall GHG emissions of the VPF, this claim is not well supported in project documents and we fear that the plant may even increase overall GHG emissions, if there are fugitive losses of methane, or if manure is still stored for long periods in the open air before it enters the plant, or if the conversion into biogas is less efficient than the Company expects.

We are concerned that Project baseline data is not sufficiently detailed to form the basis of an accurate impact assessment. Performance Requirement 1 requires that the process of identifying a project's risks and impacts must be based on "*on recent information, including an accurate description and delineation of the project and the client's associated activities, and social and environmental baseline data at an appropriate level of detail.*"[258] Performance Requirement 3 further specifies that a client must consider the project's geographical location and local ambient environmental conditions in order to address a project's potential adverse pollution impacts.[259] This in turn requires the collection of adequate recent environmental baseline information.[260]

Available environmental assessment documents do not demonstrate that adequate baseline data was collected on critical questions, such as local air, soil and water quality, prior to construction of the VPF. For example, the environmental assessment for the biogas plant project did not include adequate baseline information, although we have alerted the EBRD and its client that there are already significant sources of emissions in the area, such as the Ladyzhyn thermal power plant and its ash disposal site.

Similarly an environmental assessment document for Brigade 13,[261] which was shared by one of MHP's international financial supporters, Atradius, does not discuss any baseline information whatsoever. The environmental impact assessment document for Brigade 47, which was shared in 2012, long after a public hearing on the facility, includes an air monitoring assessment from 2015 for a location over 15 km from the project site.[262] Likewise, an Environmental Impact Assessment for Brigade 55, disclosed in 2018, uses air quality information from a meteorological station in the city of Haysin, located more than 10 km from the proposed site of the Brigade.[263]

Further, these air quality baseline assessments suffer from many of the same methodological deficiencies and lack of specificity discussed in the previous section. For example, the EIA for Brigade 55 does not provide sufficient information to determine whether the assessment of baseline air quality followed a sound methodology. Specifically, it is not clear whether the baseline numbers provided were collected from single measurements or an average of measurements, and if so, how many measurements were averaged over what period of time, what the minimum and maximum readings were during that period of time, and how frequently readings were collected over the given period. A robust and reliable baseline assessment would typically account for spatial and temporal variations to ensure that impacts to air quality levels are not underestimated.[264]

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258 EBRD's Environmental and Social Policy PR 1 #7.

259 EBRD's Environmental and Social Policy PR 3 #8.

260 EBRD's Environmental and Social Policy PR 1 #7.

261 Included in Annex 7.

262 Preliminary EIA for Brigade 47 at Annex 3, included in Annex 7.

263 Environmental Impact Assessment Report, Brigade 55 (2018), sec. 5.1.3.

264 Guiding Principles for Air Quality Assessment Components of Environmental Impact Assessments, International Association for Impact Assessment (Feb. 2017), sec. 2.6.1. The biogas plant ESIA contains similar issues. See "Not Fit for Purpose: MHP Biogas Plant," a briefing by CEE Bankwatch Network (11 Dec. 2017), p. 3, included in Annex 4.

Moreover, the Brigade 55 EIA does not provide sufficiently detailed information to understand whether air pollution impacts meet international standards for safe air quality, nor whether they are significant enough to cause health impacts. The EIA provides baseline air quality data, but it provides a value for total suspended particulate (TSP) without specifying the amount of PM 10 or PM 2.5 in the air.[265] As discussed above, TSP is an outdated parameter for assessing the burden of particulate matter on ambient air. Nonetheless, the stated value of 0.2 milligrams/m3 (= 200 µg/m3) of TSP suggests that the ambient levels of PM 2.5 likely exceed international guidelines for safe and healthy air quality.[266]

Thus, even in the limited instances in which we have seen some baseline air quality data, it is questionable whether the information is sufficient to allow the EBRD to determine whether the Project is being carried out at the best location given ambient environmental conditions and existing sources of pollution.[267] Moreover, we have not seen any baseline data regarding groundwater quality and are not sure whether MHP has ever collected such data.

g. A cumulative impact assessment has not been conducted

The EBRD should have required MHP to conduct and disclose a cumulative impact assessment covering all existing and planned polluting activities, including all local operations related to MHP and other major polluters. Performance Requirement 1 requires assessment of a Project's risks and impacts, including " cumulative impacts of the project in combination with impacts from other relevant past, present and reasonably foreseeable developments as well as unplanned but predictable activities enabled by the project that may occur later or at a different location.."[268] Further, Performance Requirement 3 requires a client to consider "the potential cumulative impacts of water abstraction upon third party users and local ecosystems."[269]

Existing industrial operations in the area were already impacting air quality at the time MHP began Project construction and should have been subject to a cumulative impact assessment. Most notably, the 1800 MW Ladyzhyn coal-fired power station is located within 5 km of some components of the VPF.[270] The air pollutant emissions from the coal-fired power station and from the Project's chicken brigades, hatchery, slaughterhouse, and manure storage piles likely affect overlapping land areas. We have heard public officials suggest that the

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265 Brigade 55 EIA, Table 3.6.1.

266 See *The Relationship Among TSP, PM_{10}, $PM_{2.5}$, and Inorganic Constituents of Atmospheric Participate Matter at Multiple Canadian Locations*, available at https://www.tandfonline.com/doi/pdf/10.1080/10473289.1997.10464407 showing that on average across a large sample set of locations in Canada, PM 2.5 made up approximately 25% of TSP. The WHO recommended guideline value for long-term exposure to PM 2.5 is just 10 µg/m3 (WHO Air quality guidelines, p. 9).

267 This is of course putting aside the question of whether such an assessment would have been possible given MHP's practice of releasing piecemeal environmental assessment documents for individual facilities at the time of construction, which makes any holistic assessment of total Project impacts at a single point in time exceedingly difficult.

268 EBRD's Environmental and Social Policy PR 1 #9.

269 EBRD's Environmental and Social Policy PR 3 #19.

270 Source Watch, https://www.sourcewatch.org/index.php/Ladyzhyn_power_station.

baseline assessment of air quality is the same as a cumulative impact assessment,[271] but this is not the case. A baseline assessment of air quality and GHG emissions, even if done properly, would not be enough to fully anticipate and understand cumulative pollution impacts. Dispersion modeling would be needed to establish the full extent of cumulative air pollution impacts, as would a detailed assessment of the interaction of emissions from the Project facilities and the power plant together. For example, each chicken brigade is a substantial source of ammonia emissions. By itself, this may not present a significant danger, but when ammonia interacts with sulfate (SO2) and nitrates (NOs), it can form secondary particulates (ammonium sulfate and ammonium nitrate), adding to the total levels of particulate matter in the air.[272] The EBRD should have required MHP to conduct dispersion modeling to quantify cumulative air pollution impacts from MHP's operations and the nearby power station before it provided any funding for the construction or expansion of the VPF, yet the environmental assessment documents that we have seen provide no evidence that this has been done.[273]

Far from properly considering the cumulative impacts of existing industrial operations in the area, we believe, as discussed in the previous section, that MHP has failed to adequately assess and disclose to affected people even the cumulative impacts of the various local MHP facilities. The environmental assessments we have seen have been carried out individually for each Project component, which does not provide adequate information to affected people about the overall impacts of the whole Project. This piecemeal assessment process has resulted in some impacts – such as impacts from heavy vehicle traffic on the main road through Olyanytsya – being left out of environmental assessment documents entirely. Other impacts, such as air pollution or impacts on local water resources, simply cannot be meaningfully assessed without understanding the cumulative impacts of the VPF and the local Zernoproduct Farm operations as a whole. A 2016 Monitoring Report commissioned by the EBRD confirmed the need for a robust assessment of cumulative impacts,[274] but since that time MHP has not publicly indicated any plan to conduct such an assessment. Moreover, the new EIA law in Ukraine clearly requires a cumulative impact assessment,[275] yet no such assessment is included in the ESIA for Brigade 55.

h. Impacts on vulnerable people were not adequately assessed

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271 The minutes of the Sept 2016 meeting re brigade 43 says that cumulative impacts were taken into account in calculating GHG emissions from Brigade 43 because they were included in the background concentrations of pollutants.

272 See, e.g., Sharma, M., Kishore, S., Tripathi, S. N., & Behera, S. N. (2007). Role of atmospheric ammonia in the formation of inorganic secondary particulate matter: a study at Kanpur, India. Journal of atmospheric chemistry, 58(1), 1-17; Erisman, J. W., & Schaap, M. (2004). The need for ammonia abatement with respect to secondary PM reductions in Europe. Environmental Pollution, 129(1), 159-163; Schlesinger, R. B., & Cassee, F. (2003). Atmospheric secondary inorganic particulate matter: the toxicological perspective as a basis for health effects risk assessment. Inhalation toxicology, 15(3), 197-235.

273 This requirement is reflected in internationally accepted best practice in the area of cumulative impact assessment. *See* International Association for Impact Assessment, February 2017, Guiding Principles for Air Quality Assessment Components of Environmental Impact Assessments, https://www.iaia.org/uploads/pdf/Guiding%20Principles %20for%20Air%20Quality_2.pdf.

274 "The assessments of potential impacts are not considered to be fully robust within the OVNS, in particular in relation to cumulative impacts across a whole farm scale development." EBRD Monitoring Report 2016, sec. 4.3 (in reference to VPF-wide water impacts).

275 Ukraine EIA law, Article 6 on the content of the EIA report and Article 9 about the conclusion on the EIA report.

The presence of vulnerable people in the Project area, and the particular ways in which the Project may impact them, has not been adequately addressed. Performance Requirement 1 requires EBRD clients to identify vulnerable stakeholders[276] and plan differentiated mitigation measures so that adverse impacts do not fall disproportionately on vulnerable people and they are able to take advantage of opportunities to benefit from the project..[277] In meeting other obligations of the Performance Requirements, such as the need to consult with affected people, to avoid or minimize impacts to community health and to avoid potential exposure to diseases, the client must pay particular attention to the needs and sensitivities of vulnerable groups.[278]

The EIA for Brigade 55 is the only instance we have seen in which MHP attempted to address the question of vulnerability, but even this cannot be considered a meaningful assessment of the issue. The one-page section on vulnerable populations simply identifies all local people as "vulnerable" and maintains that they will not experience any negative impacts due to their distance from the facility.[279]

Our communities have a high incidence of elderly people and elderly households,[280] who are particularly susceptible to some of the feared and actual impacts from this Project. For example, damage to homes from MHP-related heavy vehicle traffic is particularly challenging for this population due to low income-earning potential and limited funds to fix the damage, and the vibrations are particularly bothersome as this population may spend a higher percentage of their time at home and experience vibrations throughout the day. Pollution impacts may also hit elderly people especially hard, as they may be more likely to experience negative health impacts, and health impacts are more likely to escalate into a more serious condition or exacerbate existing health problems.[281] Accordingly, convenient access to clean drinking water is especially important, yet, elderly people may be less likely to be able to afford paying for the water hook-ups (that they had understood MHP would pay for), potentially preventing them from accessing MHP-installed water systems.

Female-headed households may be another potentially vulnerable group relevant to this Project, but MHP has not included gender-disaggregated assessments in ESIA documents, making it impossible to determine how many such households are located near the Project area, or how they may be impacted.[282]

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276 EBRD's Environmental and Social Policy PR 10 #10.

277 EBRD's Environmental and Social Policy PR 1 #18.

278 EBRD's Environmental and Social Policy PR 4 #33.

279 The planned location is less than a kilometer away for the nearest local residences.

280 For instance, Zaozerne community consists of 1043 villagers, out of which 365 are elderly/retired (approx. 35%). Brigade 55 ESIA at p. 60.

281 See, e.g., "Adverse Effects of Outdoor Pollution in the Elderly," M. Simoni, S. Baldacci, S. Maio, S. Cerrai, G. Sarno, G. Viegi, Journal of Thoracic Disease (Jan. 2015), DOI: 10.3978/j.issn.2072-1439.2014.12.10, available at https://www.ncbi.nlm.nih.gov/pubmed/25694816

282 Studies have shown, however, that a significant number of rural households in Ukraine are female-headed, and many of those households are likely headed by elderly women. For example, according to the Complex research of the state of women living in the rural areas of Ukraine (2015, http://www.ombudsman.gov.ua/files/alena/Doslidzhennya%20Sil's'ki%20zhinky.pdf), women made up 52.3% of the rural population at the time of the study, with 38% retired and up to 45% typically unemployed. Women tend to live around 10 years longer than men (average age of 75.19 compared to 64.61 years) and the study revealed that 19% of

Children are another potential vulnerable group in the area. Some community members have noticed an increased incidence of asthma in the local community, which has particularly affected children. If this health impact is indeed related to MHP's local activities, it suggests particularized impacts on children that should have been identified from the outset.

The EBRD should have required MHP to properly identify vulnerable households and to tailor specific mitigation measures to the needs of any vulnerable groups identified.

i. Employment conditions

As discussed above, we are concerned that MHP has not taken appropriate measures to provide employees with reasonable working conditions and terms of employment and a safe and healthy workplace, in violation of Performance Requirement 2.[283] We also fear that the Company has failed to put in place appropriate measures to meet the Performance Requirement 2 requirements related to preventing and addressing instances of intimidation.[284] Numerous past and present employees have raised concerns regarding MHP's workplace safety standards, the long hours that drivers are expected to work, and other health and safety concerns. Employees have also reported pressure or intimidation related to the activities of family members who have raised concerns about the Company's health and environmental impacts on local communities, and one employee also reported having been asked to leave after asking for a transfer to a position with more hospitable working conditions.

j. Grievance mechanism

We are concerned that MHP does not have an appropriate, local grievance mechanism to resolve community concerns. Performance Requirement 1 requires clients to actively engage with stakeholders, including setting up a grievance mechanism to receive and resolve concerns from affected communities about the client's environmental and social performance.[285] The grievance mechanism should be scaled to the risks and adverse impacts of the project and should seek to resolve concerns promptly and effectively, in a transparent manner that is culturally appropriate and readily accessible to all segments of the affected communities at no cost and without retribution to the party that originated the issue or concern.[286] MHP's grievance mechanism must protect the confidentiality of anyone raising a complaint.[287]

The 2016 Stakeholder Engagement Plan for VPF Processing Complex says that anyone can submit a complaint either by physically filling out a form and putting it in a complaint box at the Project site, submitting a complaint via an online form or through email, mail, fax, or phone. It says that anonymous complaints will be registered and sent to the responsible managers, but it explains that "[a]ccording to the Law of Ukraine 'On citizens' appeals' the company reserves the

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families in rural areas had only one parent and in 91% of cases it was the mother. About half of all households in rural areas are female-headed households.

283 EBRD's Environmental and Social Policy PR 2 #1, #2, #14-16

284 EBRD's Environmental and Social Policy PR 2 #12.

285 EBRD's Environmental and Social Policy PR 10 #6, #26.

286 EBRD's Environmental and Social Policy PR 10 #28.

287 EBRD's Environmental and Social Policy PR 2 #20.

right not to respond to such requests."[288] This explanation creates uncertainty about MHP's treatment of anonymous complaints, discouraging potential complainants from raising their concerns unless they are willing to disclose their identity. The referenced law does specify that enterprises are not required, under that law, to review and consider anonymous complaints,[289] but this does not relieve MHP of its obligations under the EBRD Performance Requirements to provide a culturally appropriate and accessible grievance redress mechanism.

Accepting anonymous complaints – from both workers and communities - is particularly important in the context of MHP's local operations because many community members do not feel comfortable filing a complaint unless they know that their identity will not be disclosed.[290]

Further, beyond listing various ways to submit a complaint and providing timeframes for responding, the Stakeholder Engagement Plan does not provide any further explanation of processes or procedures for responding to a complaint. The lack of a clear process is an additional deterrent, leaving local people uncertain as to the value of raising complaints through the company's formal process. It is also unclear whether every complaint from affected people has been properly recorded, and we are aware of some complaints that have not been adequately addressed.[291]

IV. Prior attempts to raise these issues

Throughout the years since we first began experiencing impacts from MHP's local operations, we have raised our concerns not only through local public hearing processes, but also through letters and other communication directly with MHP, with local, regional and national government bodies, and with international lenders. Below is an overview of some of the steps we have taken. Please note that this is not a comprehensive list, but is meant to provide a general sense of some of our communications to date.

Kleban

In 2011, when the Company was still making plans for Phase 1 of the VPF, 465 villagers from Kleban signed a letter rejecting the planned placement of MHP facilities to the Northwest of their village, due to fears that pollution and bad odors from the facilities would affect their village.[292] Through this petition and other efforts, villagers succeeded in eliciting agreements from local government and MHP to erect a natural barrier around MHP facilities constructed

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288 VPF Processing Branch 2016 Stakeholder Engagement Plan, p. 12-13, included in Annex 10. A similar process is outlined in MHP's company-wide Stakeholder Engagement Plan. MHP Stakeholder Engagement Plan, Kiev (2017), p. 11, available at https://www.mhp.com.ua/library/file/mkh-eng-small.pdf.

289 Law of Ukraine 'On citizens' appeals', Bulletin of the Verkhovna Rada, 1996, No. 47, p. 256, Article 8, available at http://zakon2.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80.

290 For further explanation of this potential discomfort, see Annex 3.

291 For example, the Zaozerne Village Council and at least one individual community member have raised concerns on multiple occasions about the impacts of MHP's pesticide spraying upwind, close to residences, and without prior notification, yet the practice continues. Letter from Zaozerne Village Council to Zernoproduct (5 May 2017), included in Annex 4.

292 Letter from Kleban villagers with comments and suggestions on territorial plan (undated), included in Annex 4.

near Kleban, as part of the required Sanitary Protection Zone.[293] However, MHP has not ultimately followed through on these commitments.

In October 2014, Kleban villagers sent a complaint letter to Ukraine's Minister of Ecology raising concerns with MHP's local operations, including a lack of natural barriers to block pollution and odor emanating from poultry brigades and odors and feared pollution impacts from MHP's practice of storing manure piles in open fields for extended periods.[294] The State Environmental Inspection of Ukraine responded, per the Minister's request, explaining that it would not be possible to conduct an inspection of MHP as requested because inspections can only be carried out with the permission of the Cabinet of Ministers of Ukraine or at the request of the entity to be audited, plus budget allocations for state supervision of compliance with environmental regulations had been reduced.[295]

In February 2017, following a local meeting to discuss the potential construction of two new brigades near the village of Kleban, residents sent a collective appeal to the Tulchin District Administration.[296] The appeal demands respect for local residents' right to decide whether the Company can build a new development on their village council land and respect for the sanitary protection zone requirement that provides for a physical barrier surrounding polluting facilities such as MHP's brigades.[297] Community members also raised this matter during meetings with MHP representatives in February, March and November 2017,[298] yet still have seen no action taken to construct the promised barrier.

Olyanytsya

In June 2012, villagers from Olyanytsya sent a letter to the People's Deputy of Ukraine raising concerns regarding decreasing water levels in local wells and damage to houses along the main village road, claiming that both issues began shortly after MHP began construction of Phase 1 of the VPF.[299] A few months later, in September 2012, Olyanytsya villagers held an environmental protest to publicly express their frustration with the impacts they were experiencing. In conjunction with the protest, villagers sent a letter to the Trostyanets Rayon Administration and Council, again raising concerns about water depletion and damage to houses from heavy vehicle traffic.[300] As discussed above, some progress has been made on demands related to mitigating road impacts, but after years of delay, some of the primary demands – for a bypass road and compensation for damage to houses – still have not been implemented and concerns regarding water depletion still have not been investigated.

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293 Letter from Vinnytsia Broiler to Kleban Village Council (22 Jun. 2011), included in Annex 4.

294 Letter from Kleban villagers to Minister of Ecology (19 Oct. 2014), included in Annex 4.

295 Ukrainian law on environmental inspections has since been changed to allow for regular state inspections without an invitation from the Company to be audited. Community members have not been able to access full inspection documents, although authorities have provided some excerpts.

296 Letter from Kleban residents to Tulchin District Administration (24 Feb. 2017), included in Annex 4.

297 *Id.*

298 See, e.g., Minutes of meeting between MHP representative, MHP-hired consultant, local community members and local NGO representatives (16 Nov. 2017), included in Annex 4.

299 Letter from residents of Olyanytsya to the People's Deputy of Ukraine (25 Jun. 2012), included in Annex 4.

300 Letter from the "Rescue Committee of the Village of Olyanytsya" to Trostyanets Rayon Administration and Trostyanets Rayon Council (21 Sep. 2012), included in Annex 4.

In April 2016, over 1800 residents of Trostyanets Rayon, including residents of Olyanytsya, sent a letter to President Poroshenko, raising concerns about MHP's inadequate consultation processes and compliance with international environmental standards.[301] These concerns are still outstanding and unaddressed. In September 2016, 225 villagers signed a petition opposing construction of Brigades 43 and 44. As discussed above, this was presented at the Olyanytsya Village Council meeting to no effect.[302]

Zaozerne

In January 2017, villagers in Zaozerne met with an MHP representative and presented a letter requesting disclosure of certain documents and a petition signed by nearly 350 community members in opposition to the development of Brigade 47, absent further consultations.[303] The Company responded by refusing all of the community members' requests and accusing them of illegally violating the Company's right to conduct business.[304]

In May 2017, Zaozerne community members filed a case in the Vinnytsia Administrative Court demanding cancellation of the Ruling of the Tulchyn Administration to develop the documentation and permits for construction of Brigade 47.[305] The petition argues that the public hearing for Brigade 47 did not satisfy the requirements of Ukrainian law, and that the facility was therefore improperly approved. MHP is also a party to the case. The court ruled against the petitioner in March 2018, and the decision was recently appealed.

In May 2017, Zaozerne villagers made phone calls and sent MHP a letter raising concerns about alleged spraying of pesticides too close to a residence and without prior notification.[306] Community members who raised this concern to the Village Council have not been satisfied by the Company's response to date and concerns about pesticide spraying continue.[307]

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301 Letter from residents of Trostyanets rayon of Vinnytsya oblast to President Poroshenko (6 Apr. 2016), included in Annex 4. Of the three villages involved in this complaint, only Olyanytsya sits within Trostyanets Rayon, but the letter raised concerns similar to those of neighboring communities as well. Project activities span across multiple rayons, including Trostyanets and Tulchyn.

302 Minutes of Olyanytsya Village Council Public Hearing (21 Sep. 2016), included in Annex 8.

303 Letter from community members to Vinnytsia Broiler Director (27 Jan. 2017); Petition, "Residents of the Zaozerne Village Council who opposed the construction of the brigade for the cultivation of chickens #47 within Vasylivka" (Undated), included in Annex 4.

304 Letter from Vinnytsia Broiler Director addressed to a local community member (14 Feb. 2017), included in Annex 4.

305 See National Ecological Centre of Ukraine (NECU) "Прокуратура почала досудове розслідування щодо підробки рішення громадських слухань по будівництву курника МХП" (17 May 2017), http://necu.org.ua/prokuratura-pochala-dosudove-rozsliduvannya-schodo-pidrobky-rishennya-hromsluhan-mhp/ and Вінницьким Окружним Адміністративним Суд "УВАГА! ПОВІДОМЛЕННЯ ЩОДО РОЗГЛЯДУ СПРАВИ!" (26 Jul. 2017), http://voas.gov.ua/news/podiy/uvaga_pov_domlennya_shchodo_rozglyadu_spravi/.

306 Letter from Zaozerne Village Council to Zernoproduct (5 May 2017), included in Annex 4.

307 For example, on 4 May 2018, a local community member again noticed Zernoproduct Farm spraying pesticides close to their residence and without prior notice. This recent incident was again raised through a phone call to MHP's Corporate Social Responsibility team, and after that the spraying did eventually stop, but we fear such incidents may continue to occur.

In June 2017, Zaozerne community members signed a petition opposing the construction of the planned biogas plant and submitted comments on a draft Detailed Spatial Plan of the facility.[308] Construction of the plant has moved forward nonetheless, and we have not seen any updated version of an EIA or Detailed Spatial Plan with our comments incorporated.

International Lenders

We have also made numerous attempts to communicate our concerns to international lenders, including the EBRD. In 2012, community members contacted national and international environmental NGOs requesting support to resolve the issues detailed in this complaint. The CEE Bankwatch Network and its Ukrainian member organizations, currently the Centre for Environmental Initiatives Ecoaction, have since assisted us to raise concerns through a series of in-person meetings, emails and letters.[309]

Communication with the EBRD dates back to 2012 and 2013, when NGO advocates first reached out to the lender to request better information disclosure and later to raise concerns prior to a planned increase in financing to MHP.[310] Following the release of the Black Earth report in 2015, the EBRD planned a monitoring trip to the VPF and another large MHP farming operation in 2016.[311] This visit was welcome. While we believe that the trip report downplayed some community concerns, it made useful recommendations regarding topics such as impacts to water resources, discussed above. More recently, we and our NGO advocates have corresponded with representatives of the EBRD about its 2017 investment in the planned VPF Phase 2 biogas plant, raising concerns regarding consultation, information disclosure and feared environmental impacts.[312] While the EBRD has responded to our communications,[313] we have still not seen significant changes in the majority of issues raised above.[314]

Communication with the IFC, another MHP lender, dates back to 2015, when our NGO advocates met with IFC representatives prior to publishing a detailed report on the VPF and its impacts on local communities.[315] The NGO team sent a follow-up letter to the IFC after the publication of that report, highlighting the social and environmental concerns identified in the report and requesting increased attention from the IFC to ensure MHP's compliance with the

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308 Letter and petition from Zaozerne community members (29 Jun. 2017); Letter from Zaozerne community member to Zaozerne Village Council, Tulchin District Administration and Vinnytsia Broiler and the VPF (16 Jun. 2017); Letter from NECU to Zaozerne Village Council, Tulchin District Administration and Vinnytsia Broiler and the VPF (Jun. 2017); all included in Annex 4.

309 See Annex 4 for a record of this correspondence.

310 Email correspondence between CEE Bankwatch Network and the EBRD (May-Jun. 2012); Letter from NECU, Ladyzhyn civil council, Public centre of ecological control and "Voice of Nature" to the EBRD (21 Oct. 2013), included in Annex 4.

311 EBRD Monitoring Report 2016.

312 See Annex 4 for a record of this correspondence.

313 Letter from EBRD to CEE Bankwatch Network (30 Aug. 2017); Letter from EBRD to CEE Bankwatch Network (12 Dec. 2017); both included in Annex 4.

314 One possible exception is the issue of information disclosure. We have noticed recent improvements in Project disclosure practices, however there are still significant gaps, as discussed above.

315 *Black Earth*.

Performance Standards.[316] The IFC did not respond. Our NGO advocates also sent further communications to the IFC in 2017, including comments on MHP's new SEP and on the planned biogas plant.[317] IFC did not respond to either of these communications.

V. No conflict between the Brigade 47 court litigation and the present complaint

As discussed above, a local community member recently filed an appeal in a court case challenging the approval process for Brigade 47 under Ukrainian law. Although this case is ongoing, community members do not see a conflict between the court case and a potential problem solving initiative with the PCM, as the present complaint raises issues of a much broader scope and complainants hope that it will serve a different role in resolving community concerns. The court case is focused on allegations regarding disclosure and public consultation requirements for approval of a single facility. Meanwhile, the present complaint discusses issues of information disclosure and consultation across all of MHP's interconnected local farming operations, in addition to fears of cumulative environmental and health impacts that may not have been properly identified, and cumulative social impacts, such as impacts from heavy vehicle traffic, that have not been properly identified or addressed. The complaint aims to facilitate a dialogue process with MHP in order to discuss and address issues across MHP's operations. A primary goal is to implement forward-looking changes that will avoid and mitigate the cumulative impacts to local communities and ensure better incorporation of community concerns and viewpoints in all future operations, which is not possible through the ongoing Brigade 47 litigation.

VI. What we want from this process

We believe that many or all of the concerns discussed in this complaint can be addressed through an independently-facilitated dialogue process with the Company. Many of our concerns relate to a lack of information and poor consultation with MHP about its planned developments, which limit our ability to understand and assess environmental or other potential impacts to our communities. We therefore believe that a well-facilitated information sharing process is the first step to resolve these issues. While further needed actions may become clear only after an initial process of information sharing, we generally believe that resolution of our concerns would require the following actions:

1) Publicly release information, in an appropriate form and language, about the Project and its local impacts. This should include, but not be limited to, information on the total water use of the VPF and Zernoproduct Farm, impacts on surrounding groundwater and other water resources and cumulative pollution impacts on air, water and soil. Information should also explain the cumulative impacts of the Project together with other polluting activities in the area. Finally, it should include information about all currently envisioned new MHP operations in the area, including construction of VPF Phase 2 facilities, new

316 Letter from NECU to [redacted], Principal Investment Officer, Manufacturing, Agribusiness and Services, IFC (30 Sep. 2015), included in Annex 4.

317 Email from [redacted] NECU and CEE Bankwatch Network, to [redacted] IFC, and representatives of the EIB, EBRD and OPIC (18 Apr. 2017); Email from [redacted] NECU and CEE Bankwatch Network, to [redacted] IFC, and representatives of the EIB, EBRD and OPIC (27 Jun. 2017).

land acquisitions by Zernoproduct Farm and other local Project operations.

2) Work with local communities to develop improved consultation processes that enable all affected people to meaningfully consult on the entire planned farm expansion, and on any specific facilities that may affect them;
3) Commission an independent investigation into the Project's local air, water and soil pollution impacts and any potential links to health impacts in local residents;
4) Implement, and ensure strict adherence to, effective mitigation measures to address odor and pollution impacts;
5) Implement necessary measures to address and minimize impacts from Project-related heavy vehicle road use, including by constructing necessary bypass roads, implementing and effectively enforcing vehicle speed and safety measures, repairing and strengthening roads along primary MHP thoroughfares and funding repairs for property damage caused by heavy vehicle road use;
6) Commission an investigation into reported employment issues and work with independent experts to make any necessary improvements to workplace policy, practice and/or culture; and
7) Suspend construction of Phase 2 facilities until a comprehensive assessment of social and environmental impacts is disclosed and meaningful, inclusive consultations are held.

VII. Conclusion

We remain optimistic that a constructive dialogue with MHP is possible. We request the PCM's support to provide a structured and independently facilitated framework for such a dialogue, to move past our current pattern of unfulfilled promises and towards a lasting resolution and more positive future engagement with the Company.

Should such a dialogue fail, we alternatively request that the PCM conduct an independent and thorough compliance investigation into all of the concerns raised in this complaint.

Please do not hesitate to contact our advisors and us with any questions regarding this complaint.[318] We look forward to hearing from you about this important matter.

Sincerely,

[signature page confidential]

318 Contact information is included in Annex 1.

ANNEX 2: BANK MANAGEMENT RESPONSE TO THE COMPLAINT

EBRD management welcomes the proposed problem solving initiative presented by community members from the villages of Olyanytsya, Zaozerne and Kleban in Vinnytsia Oblast, Ukraine. The complainants contend that they have been impacted in various ways by the operations of PJSC Myronivsky Hliboproduct ("MHP" or the "Company") and its subsidiaries, namely Vinnytska Ptahofabryka LLC, Vinnytsia Poultry Farm Branch Complex for Manufacturing Feeds LLC and PrJSC Zernoproduct MHP.

MHP is a long-standing client of EBRD. The Bank has undertaken 4 projects with the Company as follows:

- July 2010: loan for financing working capital associated with expanding operations and the construction of a biogas plant at the poultry farm Oril Leader.
- November 2013: financing to support the acquisition of agricultural and grain infrastructure in Russia and capital expenditures related to agricultural equipment for MHP Group's agricultural farming operations in Ukraine.
- November 2015: the loan to support the agricultural working capital needs of MHP associated with the growing of grains and oilseeds and the processing of these grains and oilseeds into raw material for fodder production. The capex component of the loan supported the purchase of new agricultural equipment for crop farming as well as oilseed processing activities after the launch of a new soy processing plant.
- December 2017: loan for the construction of a Greenfield 10 MW biogas plant in Vinnitsa region of Ukraine.

As of today, only part of the 2015 loan and the loan for the biogas plant remain outstanding. It should be clearly noted that under all four transactions with MHP Group, EBRD provided financing to PJSC Myronivsky Hliboproduct, a sub-holding Company of the Group in Ukraine, as the Borrower. Vinnytska Ptahofabryka LLC, Vinnytsia Poultry Farm Branch Complex for Manufacturing Feeds LLC and PrJSC Zernoproduct MHP, mentioned in the complaint letter dated 5 June 2018, were not direct borrowers under EBRD loans, although being involved in farming and fodder activities could have indirectly benefited from EBRD funds. However, the Bank has never directly financed the poultry production activities of the Company.

In respect of the MHP Biogas project signed in 2017, a number of specific issues have been raised. The project was categorised B by the Bank as impacts from project elements were judged to be site specific and readily addressed through well-understood mitigation measures. Environmental and social due diligence on the project was undertaken by independent consultants and a number of issues were identified which need to be addressed by the Company. Key amongst these was the lack of a cumulative environmental and social impact assessment, and the Bank therefore agreed with the Company that the Environmental Impact Assessment (EIA) for the CHP Complex should include consideration of the linear infrastructure components of the Project (pipeline transmissions lines) and relevant cumulative impacts, in line with the revised national EIA requirements effective December 2017 and best practice. These requirements, along with other identified issues, were addressed within an ESAP which was agreed with the Company and is currently under implementation.

The EIA report is now complete and has been released by the Company for public consultation.

http://eia.menr.gov.ua/uploads/documents/521/reports/5fc51ce7e0b58a9137ac310da3480f98.pdf. The public consultation process and analysis by the relevant regulatory bodies is expected to be completed in September-October 2018.

The Bank has long been aware of the complaints raised against MHP by local and international civil society organisations and by local communities. Allegations made included:

- Poor labour and land acquisition practices;
- Shortcomings in environmental impact assessment processes;
- Lack of transparency in terms of document release and public meetings;
- Unaddressed E&S impacts from facility developments including reduced water availability, traffic impacts from lorries and local nuisance and health issues associated with manure storage facilities; and
- Intimidation of activists and opponents of MHP development plans.

Since the first complaints which were received in 2013, the Bank has endeavoured to work with all parties by:

- Facilitating communication between parties through written documents, phone calls, and meetings within EBRD Headquarters, the Kiev Resident office and at the Bank's Annual Meetings;
- Initiating face-to-face meetings between local communities, CSOs and the Company;
- Soliciting improvement of key Company policies and practices particularly in the areas of stakeholder engagement and management of complaints received;
- Insisting on improvements in information dissemination through better access to documents and updating of the Company's website;
- Engaging external experts through a consultant –led monitoring mission to assess project implementation and development of a revised ESAP to address key issues raised by CSO and local communities;
- Ensuring better information provision by EBRD, particularly in the context of the recently approved MHP biogas project.

The Bank has also worked with other IFI colleagues to help address the issues raised and to present a harmonised approach to enforcing standards within the Company.

Overall, the Bank believes that there have been substantial improvements in the environmental, social and stakeholder engagement practices of the Company. Improvements have included the hiring by the Company of specific expertise in corporate social responsibility and stakeholder engagement, the updating and enhancement of a variety of Company policies and procedures, improvements to transparency and openness and implementation of an improved complaint

register and grievance handling mechanism. The Bank has, on a number of occasions, raised the identified issues at the highest levels within the Company and believes that the Company fully understands the seriousness of the allegations and is fully committed to addressing these.

In spite of these efforts and actions, the Bank understands that deep concerns clearly remain in respect of the on-going developments of the Company. The Bank therefore welcomes the opportunity for an independent review of the issues raised. The Bank will work with the appointed PCM expert, the Company and the complainants to ensure full disclosure of required information and to accelerate dialogue to try to resolve the issues raised.