

CAO DISPUTE RESOLUTION CONCLUSION REPORT – AXZON-01/HALYCH AND KALUSH, MARCH 2017

This report summarizes CAO's dispute resolution process in relation to the IFC-supported Axzon A/S project (project #31990) in Ukraine.

BACKGROUND

The IFC investment

Axzon A/S (“Axzon”) is a pig farming and meat processing company with operations in Poland, Ukraine, and Russia. Axzon, through its Ukrainian subsidiary, Danosha (“the Company”), currently has seven pig production farms, one cattle farm, a biogas plant, and over 11,000 hectares of farming land in the Ivano-Frankivsk region of western Ukraine. According to IFC project documentation, IFC's investment supports Axzon's operations in the region and expansion of its operations in Ukraine.

The total IFC Axzon A/S project cost is estimated at EUR148 million. IFC is providing an investment of EUR36 million loan and EUR16 million in equity. The project is classified as category B.

The complaint

In February 2014, CAO received a complaint lodged by members of communities from Deliyeve, Sivka-Voynylivska, and Lany of Halych and Kalush districts of the Ivano-Frankivsk region (the “Complainants”), with the support of the National Ecological Centre of Ukraine (NECU). The Complainants raised issues regarding odors, land and water pollution related to the Company's use of manure, improper use and compensation for land, lack of information disclosure and consultation, impacts to road infrastructure, and environmental impacts to natural parks and other areas. The Complainants also expressed concerns about the project being in violation of national law, as well as IFC Performance Standards.

CAO ASSESSMENT

The case was determined eligible for further assessment in March 2014, and assessment trips were conducted by CAO between April and

May 2014. The purpose of the assessment process is to clarify the issues and concerns raised by the Complainants and to help the parties determine whether and how they might be able to resolve the issues in the complaint. CAO does not gather information to make a judgment on the merits of the complaint in the assessment phase.

Based on stakeholder discussions conducted as part of CAO's assessment, the Complainants and Company agreed to engage in a voluntary CAO-facilitated dispute resolution process to address the issues raised in the complaint.



CAO meets with Deliyeve village residents during the assessment

DISPUTE RESOLUTION PROCESS

The main objective of CAO's Dispute Resolution role is to help resolve the environmental and/or social impact issues raised by complainants to the satisfaction of both parties. As a non-judicial, non-adversarial, and neutral forum, CAO's Dispute Resolution function provides a process through which parties may find mutually satisfactory solutions.

In this complaint, once the parties decided to engage in a dispute resolution process, CAO

provided separate training in conflict resolution, negotiation, and communication skills for the Complainants and the Company. After the trainings, an official “Agreement to Mediate” (“Agreement”) was signed in October 2014. With consent of the parties, the Agreement was publicly disclosed on CAO’s website:

http://www.cao-ombudsman.org/cases/document-links/documents/MoUfinaldraft_ENG-redacted.pdf). The parties to this agreement were:

- Danosha LLC
- Representatives of the following communities
 - Sivka-Voynylivska
 - Moshkivtsi
 - Lany
 - Vodnyky
 - Deliyeve
- A single land-owner who wished to keep his identity confidential

The Agreement describes, amongst other things, the stakeholders and participants, their roles and responsibilities, the purpose of mediation, issues to be addressed, and process ground rules and principles.

Prior to the signing of the Agreement, the village representatives of Dovhe, Poberezhya, and Stryhantsi (Mariampyl pig farm) successfully resolved their concerns directly with Danosha without the need for further CAO mediation. Thereafter, the remaining parties agreed to try to resolve the complaint issues through three separate and parallel mediation processes involving:

- 1) A single large land-owner dispute;
- 2) Representatives of Sivka-Voynylivska and Moshkivtsi communities (Kalush district)
- 3) Representatives of Deliyeve, Lany and Vodnyky communities (Halych district)

The single land-owner dispute was addressed and resolved after four mediation sessions. Subsequently, CAO convened multiple separate and joint meditation sessions with Danosha and community representatives from November 2014 through May 2016.



CAO training session with Danosha management and staff in Kopanky

In addition to NECU, over the course of the dispute resolution process, the Complainants also retained additional advisors and legal support from a Kiev-based attorney and Eco-Pravo-Liudyna (“Environment-People-Law”) NGO based in Lviv. These additional advisors were also able to participate directly in joint mediation sessions, as well as separate meetings with the mediators.

In June 2016, the Kalush communities formally informed CAO that they wished to withdraw from the mediation and in July 2016, the Halych communities did the same, bringing both mediations to a close without a mutually satisfactory resolution to the complaint. However, one land owner from Vodnyky (Halych district) requested to continue mediation for his individual situation, but that mediation also ended in August 2016 without an agreement.



Joint mediation session in Ivano-Frankivsk with Danosha and Kalush complainants

DISPUTE RESOLUTION OUTCOMES

Mariampyl Agreement

As noted above, the complainants from Dovhe, Poberezhya, and Stryhansti villages resolved their issues with Danosha. Their main concern had been that they felt left out of community engagement and consultation conducted by Danosha. They were able to agree on a format for ongoing engagement, the communities received their requested information from Danosha, and Danosha agreed to include them as eligible communities who could apply for support from the Company's Social Fund.

Land-owner Agreement

In November 2014, the large land-owner dispute was resolved and resulted in a written, signed agreement, which the parties requested to keep confidential.

Unrealized Water Supply for Two Kalush Villages

In March 2016, parties reached tentative agreement on building new water supply lines for Sivka-Voynylivska and Moshkivtsi villages. Danosha offered to co-finance the project, village residents were prepared to contribute to the funding from individual contributions, and the parties discussed working together to secure additional third-party funding. The parties conducted an open tender competition to jointly select an environmental engineering firm to draft the pipeline design and cost estimate. However, during the selection process, the complainants, Sivka village council, and Danosha reached an impasse and the work never proceeded.

Review of Land Lease Agreements

In March 2016, the parties also agreed to jointly review land agreements and which individual tracts were cultivated by Danosha. However, in the process of reviewing documents, the parties reached an impasse over the legality of the compensation terms of the lease agreements and were unable to reach agreement on which tracts were, in fact, used by Danosha. The parties were also unable to reach an agreement regarding complainants' allegations that some community members were due compensation by Danosha for using land plots without lease agreements.

Enhanced Capacity

Danosha management and staff noted that the training provided by CAO helped them improve not only how they engage with the complainant communities, but communities around all their farms. Danosha informed CAO that as a result of the mediation process, they undertook changes to make the planning and design of their Social Fund and other programs more participatory and transparent. Staff also reported that they had improved their communication and conflict management skills, resulting in better relationships with communities.

Community representatives also reported that they learned from the process and improved their skills and knowledge. However, they were largely disappointed that their efforts had not resulted in resolution of their complaint.

CLOSURE MEETINGS

In October 2016, CAO held separate final closure meetings with the parties, to solicit feedback and questions, and to explain the next steps in the CAO complaint process, including the transfer to CAO's Compliance function for appraisal of IFC's due diligence.

At the closure meetings, several complainants reported feeling pressured or even under physical threat. They were concerned that they might be targeted as "troublemakers" for their actions against Danosha. While CAO is unable to make a determination about the veracity of the perceived threat, CAO takes the safety of complainants and others that cooperate in a CAO process seriously. At the time of writing, CAO is still in discussions with the complainants regarding possible appropriate responses. The complainants have also informed IFC directly about their concerns.



CAO meeting with complainants in Ivano-Frankivsk

LESSONS AND INSIGHTS

Impact of Long Breaks Between Meetings

In this case, although there may have been valid reasons, all parties noted the negative impact of the infrequency of meetings, especially in 2015. In many mediations, as in this case, long breaks between meetings can cause the process to lose momentum. When parties are able to meet more frequently and make some progress in negotiations—such as interim or tentative agreements, the sharing of relevant information and exchange of documents, acknowledgment of each others' positions, trust-building, etc.—the process tends to create a positive momentum which builds on itself. On the other hand, when parties spend too much time apart in between sessions, details may be forgotten, relationships may deteriorate, and the risk of rumors and misinformation may increase. The Company and community representatives may also begin to experience pressure, or even resentment, from their respective constituencies for lack of tangible progress.

Co-Mediator Teams

Taking into account overall resource constraints, CAO will occasionally work with a co-mediation team where needed, relevant, and feasible.

CAO hired two local Ukrainian mediators to assist with this case. Initially, this was to backstop the lead mediator while she was on maternity leave. However, co-mediation can have other advantages, especially when mediating with multiple parties and participants, for example: improved meeting management and support for the parties (e.g. one can be mediating the discussion while the other takes notes or deals with logistical matters or they can

hold separate meetings with different parties in parallel), schedule flexibility if one mediator is unavailable, ability to share additional professional insight with each other and the parties, gender balance, and different mediator styles and personalities may be preferable to different parties.

In other cases, it can be immensely valuable to have a more experienced mediator act as a mentor for a newer mediator in order to improve and expand CAO's global network of dispute resolution professionals. This helps CAO to provide more responsive and cost-effective services.

CONCLUSION AND NEXT STEPS

CAO's Dispute Resolution function has concluded its involvement in this case, and the case will be transferred to CAO Compliance for appraisal of IFC's performance related to the project. This is standard practice as per CAO's Operational Guidelines for complaints that are not amenable to, or cannot be resolved through, dispute resolution.

Other documentation relevant to the case is available on the CAO website:

www.cao-ombudsman.org