

Kharkiv Metro Extension Project

Complaint SG/E/2019/01

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

INITIAL ASSESSMENT REPORT

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The EIB Complaints Mechanism

The EIB Complaints Mechanism is intended to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases where the public feels that the EIB Group has done something wrong, i.e. if a member of the public considers that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants who are not satisfied with the outcome of the procedure before the EIB-CM or with the EIB Group's response have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as cited by the EO, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is intended not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by Complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism, please visit our website: <https://www.eib.org/en/about/accountability/complaints/index.htm>

Initial Assessment

The objectives of the initial assessment are fact finding-oriented and aim to:

- clarify the concerns raised by the Complainant(s), to better understand the Complainants' position and the views of other project stakeholders (project Promoter, national authorities, etc.) and establish a position on the situation in the field;
- understand the validity of the concerns raised for those projects that cause substantial concerns regarding social or environmental outcomes and/or seriously question the governance of EIB financing;
- assess whether and how the project stakeholders (e.g. Complainants, the Bank's services and the project Promoter) could seek resolution of the issues under complaint;
- determine if further work by the EIB-CM is necessary and/or possible (investigation, compliance review or mediation between the parties) to address the allegation or resolve the issues raised by the Complainant(s).

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EXECUTIVE SUMMARY

In January, February and April 2019, the EIB-Complaints Mechanism (EIB-CM) received complaints from five different individuals. They all relate to the involuntary resettlement process in the context of the construction of a 3.5 km extension of the existing Green Metro Line and associated stations, as part of the Kharkiv Metro Extension project in Ukraine (hereafter called the "Project"). The Project is co-financed by the EBRD.

The allegations mainly concern the inadequacy of the monetary compensation received/proposed to be able to purchase alternative housing that is adequate and of equal or better quality (Complainants No. 1, 2, 3 and 5 who are owners of a flat/residential buildings), and the absence of compensation and assistance (Complainant No. 4 who is a user). The allegations also include issues related to the effectiveness of the grievance mechanism (GRM) and the stakeholder engagement in the context of resettlement. The EIB standards relevant to the case under review are mainly Standards 6, 7 and 10.

With regard to the allegation of exclusion from compensation and assistance (Complainant No. 4), the EIB-CM has found that Complainant No. 4 is a person who is negatively affected by the Project and as such *"is eligible for compensation, livelihood restoration and/or other resettlement assistance"* as per Standard 6. In addition, Standard 7 requires the Promoter to take appropriate measures and provide assistance as may be necessary to vulnerable persons, which is most likely applicable in her case. A careful assessment of her particular situation must be carried out in order to determine what exactly (compensation and/or resettlement assistance and other assistance as necessary) Complainant No. 4 is entitled to.

With regard to the allegations of inadequate compensation (Complainants No. 1, 2, 3 and 5), the initial assessment identifies some gaps related to compensation. It indicates the need to further clarify some aspects related to the valuation method and, more importantly, assess whether the paid/proposed compensation is fair and sufficient to purchase alternative housing that provides an adequate standard of living, as understood under Standard 6.

With regard to the GRM and the stakeholder engagement in the context of resettlement: The initial assessment indicates some areas related to the establishment of an independent and effective GRM at project level and meaningful stakeholder engagement and consultation regarding resettlement that are not fully aligned with EIB Standards 6 and 10.

Proposed way forward

With regard to the allegations related to compensation, the Bank services should guide the Promoter/City Council in redressing the situation for Complainant No. 4 in line with EIB Standards 6 and 7 as soon as possible. The EIB- CM will be following up in the coming weeks/months with the services and Complainant No. 4 in this respect. In addition, the EIB-CM will mobilise external expertise to carry out an independent review of the valuation method(s) that was (were) used to determine the compensation (in general), as well as an assessment of how the method(s) was (were) applied to the individual cases concerned. The objective is to determine whether the paid/proposed compensation in those particular cases is fair and at full replacement cost, and sufficient to purchase alternative housing that provides an adequate standard of living as understood under EIB Standard 6.

With regard to the other concerns and for ensuring full compliance of the resettlement process with the EIB's standards: The EIB-CM underscores the need for the services to continue and further strengthen its own monitoring of implementation of the environmental and social plans. This includes providing continuous technical guidance to both the City Council/Promoter and the local consultancy firm hired for monitoring implementation of the resettlement action plan (RAP) as to what EIB Standards 6, 7 and 10 entail. Moreover, the report highlights the importance of external monitoring and evaluation of the RAP as good practice for resettlement, and the need to ensure its independence and responsiveness to EIB needs. This is especially true with regard to the RAP completion audit. It is advisable for the services to pay special attention to the process and/or arrangements that need to be put in place in order to ensure the said independence at the time of the resettlement completion audit.

INITIAL ASSESSMENT REPORT**Complainants:**

Date received by the EIB-CM: 23 January 2019, 29 January 2019, 20 February 2019, 15 April 2019

Confidentiality requested: No

Main subject of complaints: Inadequate compensation or lack of compensation

1. THE COMPLAINT

- 1.1 In January, February and April 2019, the EIB-Complaints Mechanism (EIB-CM) received complaints from five different individuals (hereafter the "Complainants") that were registered under the reference SG/E/2019/01. All five complaints relate to the involuntary resettlement process that takes place in the context of the construction of a metro line extension and associated stations as part of the Kharkiv Metro Extension project in Ukraine (hereafter the "Project"). The allegations mainly concern the inadequacy of the monetary compensation received/proposed (Complainants No. 1, 2, 3 and 5), and the lack of compensation (Complainant No. 4). Complainants No. 1, 2, 3 and 5 are owners while Complainant No. 4 is a user. The allegations are further outlined in Table 1 below. All five Complainants waived confidentiality regarding their complaint.

Table 1 – Allegations (based on the information contained in the written complaints and shared via email and in telephone conversations with the EIB-CM)

The allegations raised by the Complainants relate to the adequacy/absence of compensation as well as the effectiveness of the grievance mechanism and the stakeholder engagement. The main issues are the following:

- 1) Four of the five Complainants who are owners are questioning the **adequacy of the compensation** that was paid/proposed to them. The Complainants state that with the paid/proposed compensation, they **cannot purchase alternative housing of equal or better quality**;
- 2) More specifically, Complainants No. 2 and 3 allege that the **proposed compensation does not take into account the current market price** of comparable properties. They also argue that the **value of the perennial plants** located on their land plot has **not been estimated and included** in the proposed compensation. Complainant No. 5 argues that the valuation did not take into account numerous factors and refers to a valuation carried out by an alternative expert that resulted in a sum that was 40% higher;
- 3) Complainants No. 2 and 3 are questioning the **independence and objectivity of the private company AS-TERRA**, which was contracted to undertake the valuation. They provide some concrete examples in order to substantiate this. Amongst these, they highlight the fact that the company did not have a legal basis to undertake the valuation at the time the appraisers inspected their premises (the inspection took place on 15 May 2018 while Contract No. 295 for property valuation services was concluded on 21 May 2018);
- 4) Complainant No. 1 has raised additional concerns: i) **stress** caused by the (indirect) threats of court action and eviction and as a result of physical displacement (especially for his elderly mother who is living with him and needs to adjust to a new place and area after 18 years of living in their apartment); ii) **lack of assistance** by the City Council; iii) **hotline ignoring his calls**; and, iv) **lack of information, misinformation, and poor communication**. He is claiming compensation for **moral damage** of 100,000 Hryvnia (UAH), which he says has not been considered in the compensation. Similarly, Complainant No. 5 refers to the lack of real dialogue and to threats of court action and forced eviction;
- 5) Complainants No. 1, 2 and 3 point to **possible corruption**;
- 6) All four Complainants express their **wish to receive adequate compensation**. Complainants No. 2 and 3 are asking for an **audit of AS-TERRA's valuation report and a revaluation if needed**;
- 7) Complainant No. 4 (who is a user) complains about **not having received any compensation and/or any assistance from the City Council**. She was told by the City Council that she has no rights. She has been living in the apartment of her ex-husband and his sister (who are co-owners and are those who received monetary compensation from the City) for more than 40 years. With her small pension, she cannot afford to rent or buy other accommodation and has no place to go. She is claiming her **right to adequate housing, and in-kind or monetary compensation from the City Council**. She is complaining about the **lack of information and consultation** about the resettlement process.
- 8) In addition, the Complainants shared **(possible) negative impacts of inadequate and lack of compensation**: Complainant No. 1 argues that his **housing and living conditions have deteriorated** as a result of resettlement (including the fact that the new apartment is smaller and that he had to take out a loan to renovate it because the compensation was inadequate, which worsened his already bad financial situation); Complainant No. 3 claims that the purchase of new housing will result in the loss of her right to housing subsidy; and, Complainant No. 4 stated that the fact of **not being registered at any location anymore** (since she had to leave the apartment without having another place to stay on a long-term/permanent basis) **may have an impact on her rights and entitlements**.
- 9) Complainants No. 2, 3 and 4 sent a letter to the Mayor with their grievances prior to submitting their complaint to the EIB-CM. Four Complainants told the EIB-CM that they **were not aware of a grievance redress mechanism established for the Project**.

- 1.2 Complainants No. 1, 2 and 3 sent the same complaint to the European Bank for Reconstruction and Development (EBRD).
- 1.3 In accordance with Article 4.3.7 of the EIB Group Complaints Mechanism Policy, the EIB-CM cannot handle allegations of prohibited conduct (in this case, possible corruption); these have been handed over to the competent services.

2. BACKGROUND INFORMATION

- 2.1 The Bank is providing a loan of EUR 160 million to finance the Kharkiv Metro Extension Project, which involves financing of the following components:
 - Construction of a 3.5 km extension of the existing Green Metro Line in the southern part of the City of Kharkiv, including construction of two new underground metro stations (Derzhavinska and Odeska);
 - Construction of a new metro wagon depot for the Green Metro Line; and,
 - Procurement of 85 new rolling stock units for the Green Metro Line.
- 2.2 The Borrower of the Bank's loan is Ukraine. Communal Enterprise "Kharkivskyi Metropoliten" (Kharkiv Metro Company – KMC; the Promoter) will implement the Project, with financial assistance from the Borrower and support from Kharkiv City Council. The Project is co-financed by the EBRD.
- 2.3 The construction and operation of the Green Metro Line extension involves involuntary resettlement. As part of the due diligence process, an environmental and social impact assessment was completed. The following documents were prepared: Environmental and Social Analysis Report¹, Environmental and Social Action Plan (hereafter called the "ESAP")², Resettlement Action Plan and Livelihood Restoration Plan (hereafter called the "RAP")³; and, Stakeholder Engagement Plan (hereafter called the "SEP")⁴. **The ESAP, RAP and SEP were approved by the City Council in June 2017.** The RAP, SEP and the Non-Technical Summary⁵ are available on the EIB website.

3. WORK PERFORMED BY EIB-CM

- 3.1 On 6 February, 5 March and 3 May 2019, the EIB-CM acknowledged receipt of the complaints and informed the Complainants that it was carrying out a review of their cases and notified them of the date by which they could expect a formal reply.
- 3.2 The EIB-CM held a first meeting with the EIB services involved in the Project on 1 March 2019 in order to obtain further information related to the Project, the allegations and the

¹ Revision 02 of 18 August 2017. <https://www.eib.org/attachments/registers/77797384.pdf>

² Revision 02 of 24 April 2017

³ Revision 03 of 28 April 2017. <https://www.eib.org/attachments/registers/77663332.pdf>

⁴ <https://www.eib.org/attachments/registers/77674115.pdf>

⁵ Of 7 July 2017. <https://www.eib.org/attachments/registers/76892801.pdf>

resettlement process in general. Subsequently, the EIB-CM requested additional information and documents from the EIB services.

3.3 The EIB-CM had a telephone call and email exchanges with four of the five Complainants. The Complainants shared additional information and documentary evidence with the EIB-CM.

3.4 In the course of the initial assessment, the EIB-CM conducted a desk review of project-related documentation as well as information and documents available from the Complainants, the Bank's services and in the public domain.

4. REGULATORY FRAMEWORK

4.1 *The EIB-CM mandate*

4.1.1. The EIB-CM Policy and Procedures⁶ approved in November 2018 apply to complaints of alleged maladministration lodged against the EIB Group (Article 1.1 of the EIB Group Complaints Mechanism Policy, hereafter called the "Policy"). Complaints may concern any alleged maladministration by the EIB Group in its decisions, actions and/or omissions (Article 4.3.1 of the Policy). The concept of maladministration includes failure by the EIB Group to comply with human rights, with applicable law, or with the principles of good administration. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB Group (Articles 3.2 and 3.3 of the Policy).

4.1.2 In connection with the handling of admissible complaints and pursuant to Article 6.1.1 of the Policy, the EIB-CM gathers and reviews existing information on the subject under complaint, and endeavours to resolve the issues giving rise to complaints in cooperation with internal and external stakeholders. It also conducts appropriate inquiries with a view to assessing whether the EIB Group is complying with the applicable regulatory framework, including its own policies, procedures or standards. The EIB-CM is independent from operational activities in order to ensure that each complaint is dealt with by applying the highest standards of objectiveness whilst safeguarding the interests of all internal and external stakeholders of the EIB Group (Articles 2.2 and 5.1.4 of the Policy). The EIB-CM assists the EIB Group by advising on possible improvements to the implementation of its activities for the common purpose of good administration (Article 5.1.9 of the Policy).

4.2 *EIB standards*

4.2.1 The EIB Statement of Environmental and Social Principles and Standards (2009)⁷ requires that financed projects be acceptable in environmental and social terms (paragraph 1). In line with paragraph 2: *"Promoters are responsible for preparing, implementing and operating projects financed by the Bank; they are also responsible for the fulfilment of Bank requirements,*

⁶ <https://www.eib.org/en/infocentre/publications/all/complaints-mechanism-policy.htm> ;
https://www.eib.org/attachments/consultations/eib_complaints_mech_procedures_en.pdf

⁷ http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

especially for legal compliance. The Bank will assist the promoter to fulfil these responsibilities.”

- 4.2.2 The EIB’s Environmental and Social Handbook (2013 version)⁸ (hereafter called the “Handbook”) requires all operations to comply with national legislation and regulations and obligations and standards set out in the relevant international conventions and multilateral agreements to which the host country is party. Projects outside the EU will also be subject to an environmental and social impact assessment if, among other things, they may interfere with human rights. For projects that are co-financed, adequate implementation of co-financiers’ environmental and social policies may prove enough to meet the EIB’s standards; however, this does not relinquish the EIB’s own environmental and social due diligence duty and any gaps between that and other lenders’ shall be duly accounted for (paragraphs 7-12, Chapter 1, Volume I of the Handbook).
- 4.2.3 The EIB standards relevant to this complaint are, in particular, Standards 6, 7 and 10. The objectives of Standard 6 on Involuntary Resettlement are, amongst others, to: *“Respect individuals’, groups’ and communities’ right to adequate housing and to an adequate standard of living, as well as other rights that may be impacted by resettlement; Ensure that resettlement measures are designed and implemented through the informed and meaningful consultation and participation of the project-affected people throughout the resettlement process; and, Give particular attention to vulnerable groups, including women and minorities, who may require special assistance and whose participation should be vigilantly promoted”*. Resettlement is defined as *“a process to assist those displaced to replace their housing, assets, livelihoods, land, access to resources and services and to improve or at least restore their socioeconomic and cultural conditions to those levels existing prior to the project”*.
- 4.2.4 Standard 6 applies to *“affected persons, groups and communities subjected to involuntary resettlement as well as host communities at relocation sites. It applies to all such persons, whether or not they hold a legal title to their home or property under domestic law. To ensure respect for this right in practice, certain procedural safeguards must be in place, such as involvement of affected persons in decision-making processes and access to grievance mechanisms, as further described in this Standard”* (paragraph 23, Chapter 6, Volume I of the Handbook). Paragraph 33 clearly states that *“[a]ny person negatively affected by the project is eligible for compensation, livelihood restoration and/or other resettlement assistance”* (Chapter 6, Volume I of the Handbook).
- 4.2.5 Standard 7 sets out to avoid or minimise, or otherwise mitigate and remedy, potential harmful effects of EIB operations to vulnerable individuals and groups whilst seeking that these populations duly benefit from such operations. *“Within the context of EIB operations, individuals and/or groups who are at a higher risk of being unable to anticipate, cope with, resist and recover from project-related risks and/or adverse impacts are considered vulnerable. Vulnerable individuals or groups may include women, children, the elderly, the poor, ethnic, religious, cultural or linguistic minorities, or indigenous groups.”* (paragraphs 1 and 4, Chapter 7, Volume I of the Handbook).

⁸ The 2013 version is available in hard copy. A revised version of October 2018 is available online at: http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf

4.2.6 Because resettlement is often a complex process, consultation with all persons and communities involved in the resettlement process is crucial. *“All relevant stakeholders must be given the opportunity for informed participation in resettlement planning with the goal that the mitigation of the adverse project impacts is appropriate and the potential benefits of resettlement are sustainable. Consultation will continue in accordance with Standard 10 on Stakeholder Engagement and during the implementation and monitoring of the resettlement process.”* Moreover, *“[w]ide consultation within each household unit is critical in cases of extended families, if conflicts are to be effectively mitigated.”* (paragraphs 50 and 52, Chapter 6, Volume I of the Handbook). As per Standard 10, *“[w]here communities are, or are likely to be, affected by adverse impacts from a project, the promoter will undertake a process of meaningful consultation in a manner that provides the affected parties with opportunities to identify and express their views on project risks, impacts, and mitigation measures, and engage in a collaborative process with the project in responding to, and addressing considerations raised.”* (paragraph 35, Chapter 10, Volume I of the Handbook).

4.2.7 Standards 6 and 10 refer to the obligation for the Promoter to set up and maintain a grievance mechanism at project level that is independent and free. They outline the major characteristics of such a mechanism, which aims to identify and remedy undesirable or unforeseen impacts and other concerns arising out of the execution of the project in a timely manner.

4.3 **National law in Ukraine**

4.3.1 Based on information included in the due diligence documents and shared by the Complainants, national legislation that may be relevant to the case under review includes:

- the Constitution of Ukraine (1996 with amendments);
- Law of Ukraine on Alienation of Land Plots and Other Objects of Immovable Property located on them in Private Ownership for the Social Needs and on the Grounds of Social Necessity (No 1559-VI, 2009);
- Law of Ukraine on Appraisal of Property, Property Rights and Professional Appraisal Activity in Ukraine (No. 2658-III, 2001);
- Civil Code of Ukraine (No. 435-IV, 2003);
- Housing Code of Ukraine (No. 5464-X, 1983);
- Code of Administrative Procedure of Ukraine (No. 2747-IV, 2005 with subsequent amendments); and,
- The Family Code of Ukraine (No. 2947-III, 2002).

5. **INITIAL ASSESSMENT**

5.1 The EIB-CM considers that the allegations made by the Complainants can be characterised as falling under three main groups of issues, which relate to: (i) inadequate monetary compensation and exclusion from compensation and assistance; (ii) absence of an effective grievance redress mechanism; and, (iii) limited stakeholder engagement, in particular meaningful engagement and adequate consultation with project-affected people (PAP)

regarding resettlement. They are addressed in turn below. The last part of this section will deal with the role of the Bank in the environmental and social appraisal and monitoring of the Project.

5.2 ***Alleged issues related to inadequate monetary compensation and exclusion from compensation and assistance***

- 5.2.1 Four Complainants (Complainants No 1, 2, 3 and 5) claim that the paid/proposed compensation is not sufficient to purchase alternative housing that is adequate and of equal or better quality. Moreover, the same Complainants point to a possible lack of objectivity in the process of property valuation and some of them also refer to possible corruption. Furthermore, Complainant No. 1 claims compensation for moral damage. Complainants No. 2 and 3 argue that there is no estimated cost of the perennial plantings located on their land plot. Complainant No. 5 argues that the valuation (carried out by the expert hired by the local authorities) does not take into account numerous factors and that the valuation undertaken by an alternative expert resulted in a sum that was 40 percent higher. Complainant No. 4 affirms that despite having her permanent residence in the concerned property for more than 40 years, she is being excluded from any compensation and/or any form of assistance; she claims her right to adequate housing as per the Constitution and national legislation.
- 5.2.2 The EIB Environmental and Social Handbook refers to **Standard 6 as being of particular relevance** where *“(a) there are identified gaps between national land-acquisition, expropriation and compensation standards and practices and the present Standard; (b) the institutional responsibilities regarding resettlement are complex with several different governmental or non-governmental agencies involved in the process; and (c) there is a risk of underestimating the scope of the required resettlement.”*⁹
- 5.2.3 The CM notes that in the case under review the **institutional set-up for project implementation is complex**. The roles and responsibilities of the different stakeholders involved in project implementation, and more particularly in the implementation of actions/activities regarding resettlement, need to be clarified. These stakeholders include the Promoter KMC, City Council Executive Committee, various departments of the City Council and others like the Metro Construction Company.
- 5.2.4 Moreover, the RAP reflects that the **scope of the provisions of the national legal framework applicable to land acquisition, resettlement and related issues is generally less favourable than the Bank’s requirements**. The RAP includes a gap analysis between the EBRD ESP/EIB requirements and the national legislation, and identifies measures to bridge these gaps. The most significant gaps relate to eligibility, valuation, consultation, grievance mechanism, and monitoring requirements.

Allegation of exclusion from compensation and assistance by Complainant No. 4

- 5.2.5 **As far as eligibility is concerned**, the RAP clearly mentions that **persons who have no recognisable legal right or claim to the land they occupy are not eligible for compensation**

⁹ Paragraph 22 of Chapter 6 on Involuntary Resettlement in Volume I of the EIB Environmental and Social Handbook (2013 version).

as per the national legislation.¹⁰ On the other hand, **Standard 6** states that the **right to adequate housing of those affected by involuntary resettlement under EIB-supported projects shall be respected with non-discrimination as a central human rights principle. It applies to all such persons whether or not they hold a legal title to their home or property under domestic law.**¹¹

- 5.2.6 The RAP – including the entitlements matrix – does not cover cases such as the specific case of Complainant No. 4. The RAP refers to “owners”; “tenants registered in the municipality-owned flats” as formal users; and, “tenants not registered” and “squatters” as informal users. For “informal users”, the RAP indicates the following measure to bridge the gap between national legislation and the Bank’s requirements, and compensate the loss of housing: “The interests and needs for housing and assistance of people who have no recognized legal property right will be considered during the negotiation procedure”. It further states: “Relocation assistance that meets the needs of each group of displaced persons (with special attention to the needs of poor and vulnerable groups) will be considered during negotiations”.¹² From the EIB-CM’s perspective, these statements are vague. Although some provisions were made to ensure the right to adequate housing and resettlement assistance for PAP with no recognised legal property rights, the **measures identified in the RAP should have been more concrete.**
- 5.2.7 Complainant No. 4 has submitted documentary evidence with regard to the registration of her permanent residence in the affected flat since 4 August 1980 until now.¹³ While she is not an owner or registered tenant, **Complainant No. 4 is a person who is negatively affected by the Project and as such, she “is eligible for compensation, livelihood restoration and/or other resettlement assistance”** as per Standard 6 (see paragraphs 33 and 34, Chapter 6, Volume I of the Handbook)¹⁴. In addition, the requirement for the Promoter to take appropriate measures and provide assistance as may be necessary to **vulnerable persons** is most likely applicable in her case (**EIB Standard 7**). Several elements of the particular situation of Complainant No. 4 point to the likelihood of her qualifying as a vulnerable person (among others, she is a female head of the household, and an older woman with a limited income in the form of pension). Each person has a right to housing and to a place to live as per the Constitution of Ukraine and the Civil Code of Ukraine. Similarly, EIB Standard 6 supports the promotion, respect and fulfilment of the human rights to adequate housing and an adequate standard of living. As per Standard 6, the **Promoter is required, as a minimum, to restore the living conditions of those affected by the Project and ideally to work on the continuous improvement of their living conditions.**¹⁵ Therefore, it is **recommended that the Bank closely guides the Promoter in**

¹⁰ Gap analysis table, Table 3, pages 18 to 22 of the RAP (Revision 03 as of 28 April 2017).

¹¹ Paragraph 23 of Chapter 6 on Involuntary Resettlement in Volume I of the EIB Environmental and Social Handbook (2013 version).

¹² Pages 18, 19, 20 and 30 of the RAP (Revision 03 as of 28 April 2017).

¹³ The CM is in possession of her proof of permanent residence in the affected premises since 1980.

¹⁴ See also paragraph 4.2.4 earlier.

¹⁵ Paragraph 26 of Chapter 6 on Involuntary Resettlement in Volume I of the EIB Environmental and Social Handbook (2013 version).

redressing the situation for Complainant No. 4 in line with EIB Standards 6 and 7 as soon as possible.¹⁶

Allegations of inadequate compensation by Complainants No. 1, 2, 3 and 5

5.2.8 As far as the valuation is concerned, the RAP identifies the need to have an external independent professional valuation conducted by entities that are not belonging or affiliated to the City Council Executive Committee.¹⁷

5.2.9 Regarding compensation: As per Standard 6, all affected persons will be paid fair compensation in good time for expropriated assets. Where land has been taken, affected persons should be compensated with land of commensurate quality, size and value, or better. The Promoter is required to offer to the affected persons an informed choice of either compensation in kind or monetary compensation at the outset. Monetary compensation shall take into account full replacement cost based on market value, productive potential, or equivalent residential quality, including crops and trees, any administrative charges, title fees, or other legal transaction costs. In cases of loss of housing, replacement-housing offers must satisfy criteria of adequate housing. Compensation for houses and other structures should be equivalent to replacement cost plus relocation costs. The "replacement cost" also needs to take account of any removal costs, utility connection costs, taxation costs imposed on new housing/re-established businesses, etc.

5.2.10 Based on the initial assessment, the EIB-CM observes the following:

- **In-kind compensation has not been offered** by the City to any of the Complainants (or any of the owners affected by loss of housing in general). As per EIB Standard 6, compensation in kind should be offered to the PAP as an option¹⁸;
- The **value of the trees** that are located on the land plot of Complainants No. 2 and No. 3 has not been estimated as part of the valuation of their properties. This may entail non-compliance with provisions of the Law of Ukraine on Alienation of Land Plots and Other Objects of Immovable Property located on them in Private Ownership for the Social Needs and on the Grounds of Social Necessity. Also, it is not in compliance with EIB Standard 6¹⁹ and the approved RAP²⁰.
- The company AS-TERRA that was contracted by the City Council²¹ conducted an inspection of the premises of Complainants No. 2 and 3 on 15 May 2018.²² However, the City Council signed

¹⁶ It appears that the sales agreement of the City with the co-owners of the flat (ex-husband of Complainant No. 4 and his sister) would include a special clause about their obligation to provide Complainant No. 4 with alternative housing. The CM is of the opinion that the validity and effectiveness of such clause needs to be carefully assessed: whether or not the inclusion of the concerned clause can be considered an adequate measure, and if yes, (i) how it will be executed, and (ii) whether this measure can be considered sufficient, in order to assure the rights and interests of Complainant No. 4 are respected and protected and ensure improvement of her living conditions.

¹⁷ Gap analysis table, Table 3, page 20 of the RAP (Revision 03 as of 28 April 2017).

¹⁸ Paragraph 41 of Chapter 6 on Involuntary Resettlement in Volume I of the EIB Environmental and Social Handbook (2013 version).

¹⁹ See paragraph 5.2.9 above describing full replacement cost. See also paragraphs 17 and 42 of Chapter 6 on Involuntary Resettlement in Volume I of the EIB Environmental and Social Handbook (2013 version).

²⁰ As per the RAP (pages 22-23), full costs of perennial plants are included in the value (repurchase price).

²¹ More particularly the Construction and Road Sector Department of the Kharkiv City Council.

²² As per the date indicated on the Inspection Act for 5, 3rd Zmiivskiy Vzd in Kharkiv.

the contract with AS-TERRA on 21 May 2018 for the valuation assignment that includes these particular premises in the list of valuation objects.²³

- In compliance with legal requirements, the valuation reports prepared by AS-TERRA were reviewed by the “Ukrainian Society of Appraisers”, which confirmed the reliability of the valuation (despite minor shortcomings).
- As per Standard 6, **moral damage** is included in the list of other “*economically assessable damage*” that **must be compensated**.²⁴ Furthermore, the relevance of Article 23 of the Civil Code of Ukraine will need to be looked into as the provision deals with indemnification for moral damage. Whether or not moral damage has adequately been taken into consideration in the paid/proposed compensation (as part of the ‘compensation factor’) will need to be further assessed.
- As of 4 December 2018, **only 11 out of 134 owners** who provided consent for negotiations (8%) **purchased alternative housing. No further information** is provided in the progress reports on the RAP implementation about the following: (i) whether these owners were able to purchase alternative housing that is adequate and of equivalent or better quality with the received compensation, and (ii) why the 18 other owners who have already signed the sales agreement with the City have not purchased alternative housing (yet).²⁵ The **latest quarterly progress report** (revised version of 11 April 2019) does not provide any new information in terms of more qualitative information; it just provides an **update with regard to the number of owners who purchased alternative housing (75 out of a total of now 122 owners who signed the sales agreement with the City)**.²⁶

5.2.11 The preliminary review of the EIB-CM indicates a **need to further assess/clarify** the following:

- **Whether or not current market value has been used** to estimate the replacement cost, and if yes, whether it was **estimated properly**.
- **Other elements that were taken into consideration for calculating the estimated value for compensation such as the “compensation coefficient”**. More concrete information is needed in this respect.
- **Whether the paid/proposed compensation is fair and at full replacement cost, and sufficient to purchase alternative housing that provides an adequate standard of living**, as understood under EIB Standard 6.

5.3 *Absence of an effective grievance redress mechanism*

5.3.1 Four Complainants told the EIB-CM they were not aware of a grievance redress mechanism (GRM) established for the Project. Complainants No. 2, 3 and 4 sent a letter to the Mayor with their grievances prior to submitting their complaint to the EIB-CM, considering submission to

²³ As per Contract No. 295 of 21 May 2018 between the Construction and Road Sector Department of the Kharkiv City Council and AS-TERRA Private Enterprise. See also Appendix 1 to the service contract for the list of valuation objects.

²⁴ Paragraph 42 of Chapter 6 on Involuntary Resettlement in Volume I of the EIB Environmental and Social Handbook (2013 version).

²⁵ Third Quarterly Report submitted by the local consultancy firm that was hired for monitoring the RAP implementation.

²⁶ Fourth Quarterly Report (revised version no. 1 dated 11 April 2019) submitted by the local consultancy firm hired for RAP monitoring.

the Mayor of the City as the regular channel to raise such issues. They affirm that requests for a meeting with the Mayor were refused several times. Complainant No. 1 complains that his calls to the hotline were ignored.

5.3.2 As per **Standard 6**, the Promoter has the obligation to set up and maintain a **GRM that is independent, free and in line with the requirements set out in Standard 10**. It should be easily accessible, culturally appropriate, **widely publicised**, and well integrated into the Promoter's project management system. The GRM should enable the Promoter to receive and promptly resolve specific concerns and grievances related to compensation and relocation by PAP, and use the grievance log to monitor cases and improve the resettlement process.

5.3.3 Standard 10 further underlines the importance of a GRM at the project level as a critical means for the early identification and remedy of undesirable or unforeseen impacts and other concerns arising out of the execution of the Project. It reiterates the **obligation of the Promoter to introduce a GRM at project level irrespective of other complementary linkages or access to existing public grievances channels** and it further describes the major characteristics of such a GRM.

5.3.4 Based on the initial assessment, the EIB-CM observes the following:

- The due diligence documents underline the need to establish an effective GRM and to inform the PAP about it.
- Nevertheless, there are discrepancies in the description of the GRM between the RAP and the SEP. The RAP makes reference to the *"Working Group [or Taskforce] on clearing of the construction zone of the Green Line ...[that] is in charge for processing of all complaints and suggestions relating to acquisition of privately owned land and other immovable property that fall within construction zone of the Extension"*. It also mentions that *"Issues that cannot be resolved in the negotiations will be resolved in accordance with the applicable law in an administrative court"*. Apart from referring to the Decree of Kharkiv City Mayor No. 29 of 3 March 2017, the RAP does not provide any further information on the composition and mandate of this Working Group, which would have been useful information to ensure for example broad representation. The RAP then refers to chapter 8 of the SEP. In the SEP, the Metro Construction Company (MCC) appears as the entity to be receiving complaints and there is explicit reference to the possibility for both parties to resort to a mediator/arbitrator in cases when the Complainant is not satisfied with the proposed resolution by the MCC.
- The Public Consultation Report of May 2018 highlights that *"The grievance mechanism established by the SEP does not fit the needs of land acquisition and resettlement process"*, and goes on to mention that the grievance mechanism was not communicated to the PAP. It proposes to re-establish the GRM and communicate it to residents of the Project area and owners through publication of the amended SEP on the City Council website and personal dialogue with the PAP.
- The first and second quarterly progress reports submitted in July and September 2018 by the local consultancy firm hired for monitoring RAP implementation²⁷ propose measures related to the *"re-establishment"* of the GRM, including a revised GRM pending approval from the Bank. The revised GRM removes the possibility of resorting to a mediator/arbitrator, and is

²⁷ Refer to paragraph 5.5.5 below.

mainly about using the already existing administrative channels (i.e. written complaints to the District Authority and the City Council). It also refers again to the Working Group.

- The initial version of the third quarterly progress report (that was submitted in December 2018) contained only one piece of information regarding the GRM: *“The grievance mechanism has been agreed by the City and the Bank”*. This progress report covers the period of September, October and November 2018. Yet, it does not report on the fact that “formal” revision of the GRM took place during this period, does not present the revised GRM as was actually agreed by the City and the Bank, and does not include any information on grievances received so far, concerns of some PAP about fair compensation, assistance to vulnerable persons, or compliance with the Bank’s standards.
- The above information was provided in a revised version of the third quarterly progress report, which was submitted on 15 February 2019 following the explicit request of the EBRD’s social staff for more information among others on the GRM. The omission of such crucial information in the initial version of a quarterly progress report on RAP implementation raises concerns.
- More importantly, the EIB-CM notes that the GRM was actually revised in October 2018, i.e. in the middle of the resettlement process. And, as of December 2018, the revision of the GRM was yet to be communicated to the PAP.²⁸

5.3.5 Based on the above, the EIB-CM considers that the **establishment of a GRM for the Project has been difficult since the start. Moreover, the revised GRM cannot be considered as an effective GRM at project level as is understood under Standards 6 and 10 of the EIB.** It is expected that such a mechanism is introduced by the Promoter at the very outset of project design (paragraph 47 of Chapter 10, Volume I of the Handbook) and is widely publicised. Some of the major features of such a GRM are that it should be independent, free, legitimate and trusted, fair, transparent and inclusive, and guided by engagement and dialogue. Although the RAP and the revised GRM refer to the “Working Group”, it is still unclear what is its composition, mandate and capacity to deal with grievances submitted by the PAP in an independent and effective manner. The EIB-CM is also unclear about the actual role played by the Promoter KMC with regard to the RAP implementation in general and addressing grievances related to compensation and relocation in particular. **The City Council and the Promoter would benefit from further expertise and advice on the establishment of an independent and effective GRM. The EIB-CM therefore suggests to the services that they provide technical expertise and share good practices in this respect with the City Council/Promoter as soon as possible.**

²⁸ In terms of timeline, note that the formal Decision on Buyout of Land Plots, Other Real Estate Located on Them, which are Owned by Individuals/Legal Entities, for Public Needs was taken by the City Council on 21 February 2018, and was then notified by the Construction and Road Sector Department to Complainants No. 2 and 3 on 23 February 2018. AS-TERRA carried out the valuation of the properties in May 2018. The Registration Department shared information on the proposed compensation for Complainants No. 2 and 3 in November 2018.

5.4 **Limited stakeholder engagement in the context of resettlement**

- 5.4.1 The complaints include allegations related to the lack of information, misinformation, poor communication and consultation, and lack of real dialogue about the resettlement process and issues related to compensation.
- 5.4.2 The Bank's **due diligence of 2016/17 highlighted the need for renewed stakeholder engagement**. The documents refer to the public consultations on environmental and social impacts of the Project that were conducted in 2008 *"that did not guarantee the appropriate level of stakeholders' engagement by current standards"*. Hence, a SEP was developed. There were **strong recommendations to conduct a second round of public consultations** on the environmental and social impacts of the Project, **with an emphasis on land acquisition issues, and to implement the SEP**. Moreover, the monitoring plan presented in the RAP includes *"verification of relevant stakeholder engagement activities and public consultations with affected people, as well as verification of grievance issues and the functioning of grievance redress mechanisms by reviewing the processing of appeals at all levels and interviewing aggrieved affected people"*.²⁹
- 5.4.3 As mentioned earlier in paragraph 4.2.6, **Standards 6 and 10 affirm the need for meaningful stakeholder engagement**, which is understood as *"an inclusive and iterative process that involves, in varying degrees, stakeholder analysis and engagement planning, timely disclosure and dissemination of/access to information, public consultations and stakeholder participation, and a mechanism ensuring access to grievance and remedy."* Effective and meaningful engagement and consultation is a **two-way process that needs to be adequately documented**, in terms of both substance and process. As per Standard 10, the **Promoter is required to monitor the implementation of the SEP and the performance of the grievance redress mechanism and report on both**.³⁰ As per Standard 6, **affected persons will be consulted as part of the monitoring of the RAP implementation**.
- 5.4.4 The initial assessment indicates **possible limitations to the process of stakeholder engagement in the context of resettlement as is understood under EIB Standards 6 and 10**. In this respect, the EIB-CM observes the following:
- The Project progress reports contain limited information on the process of stakeholder engagement and consultation regarding resettlement;
 - A stand-alone Public Consultation Report that covers the period of one month only from 21 February to 30 March 2018³¹ was submitted in May 2018;
 - The Public Consultation Report refers to publication on websites, written notifications that were sent to owners, local media coverage as well as meetings that were arranged mostly with owners. The report is not clear about the extent to which a second round of actual public consultations on the environmental and social impacts of the Project, and more particularly on land acquisition issues, took place (i.e. in the form of meaningful consultation and

²⁹ Page 41 of the RAP (Revision 03 as of 28 April 2017).

³⁰ Paragraphs 2, 19 and 51 of Chapter 10 on Stakeholder Engagement in Volume I of the EIB Environmental and Social Handbook (2013 version).

³¹ i.e. one month after the official publication of the City Council Decision on the buyout of properties for public needs.

dialogue); it does not provide much substantive information about the nature of engagement with and active participation by the PAP in the process.

- Based on information provided by the Complainants, the meetings and “consultations” that took place since February 2018 about resettlement and compensation are more like one-way information-sharing sessions by the City Council than a real consultative process. There seems to have been limited “meaningful” engagement and consultation with the PAP. Complainants No. 1 and 5 even refer to (indirect) threats;
- There is limited involvement of the PAP in the monitoring of the resettlement process. The three first progress monitoring reports from the local consultancy firm responsible for “RAP monitoring” (covering the period from April to November 2018) appear to rely mainly on information provided by the City and local authorities;
- There are issues with the establishment and effective functioning of the GRM as presented in paragraphs 5.3.1 to 5.3.5 above.
- Verification of grievance issues and the functioning of the GRM has only started recently following a request for more information in this respect by the EBRD social staff at the beginning of January 2019. The local consultancy firm did not provide relevant information before 15 February 2019 when it submitted a revised version of the third quarterly progress report on RAP implementation.

5.5 ***Role of the Bank***

- 5.5.1 As per the Handbook, the role of the EIB is to support sound operations that have been designed and structured so as to meet EIB environmental and social standards and requirements as well as international best practice. This includes: (i) assessing the operation against EIB environmental and social principles and standards; (ii) advising and, if needed, assisting the Promoter in developing measures to manage the environmental and social impacts and risks of the operation consistent with the EIB’s standards; (iii) assessing the capacity of the Promoter to implement all the environmental and social requirements as well as the environmental and social institutional capacity of the relevant national authorities and agencies and providing technical assistance if needed; and, (iv) monitoring the operation’s performance in accordance with the EIB’s environmental and social standards throughout the duration of the loan (Paragraph 8, Volume II).
- 5.5.2 As mentioned above in paragraph 2.3, an environmental and social impact assessment was completed for the Project. An ESAP, RAP and SEP were prepared and approved by the City Council. The Bank has subjected disbursements to certain conditions, including conditions related to the ESAP and RAP implementation. The finance agreement between the EIB and Ukraine establishes the obligation for the Promoter to implement the Project in compliance with “Environmental and Social Standards”, and more particularly to implement the ESAP and the RAP and ensure that the Project Implementation Unit (PIU) has sufficient and suitably qualified staff, including environmental and social experts required to implement the ESAP and the RAP.
- 5.5.3 Moreover, it is important to note that several of the due diligence documents refer to external monitoring of the RAP, which is considered good practice for resettlement. As per the ESDS, *“An independent monitoring and evaluation consultant will be commissioned, who will*

periodically monitor and report on delivery of the ESAP and RAP as well as perform a mid and end of term evaluation of RAP implementation". The same document states that: "The EIB will condition its loan disbursements on: (i) implementation of ESAP and the RAP(s) as agreed with the Bank; and (ii) confirmation that the PIU includes environmental and social experts to implement the ESAP and RAP... In addition, the Bank will seek commitments from the Promoter to report regularly on the status of RAP and ESAP implementation; and present mid and end of term evaluation of RAP(s) implementation." This is in line with paragraph 133 of Volume II of the Handbook that clearly states: *"No involuntary resettlement or forced evictions shall take place before the promoter has addressed the involuntary resettlement in a manner consistent with these Standards and satisfactory to the EIB"*.

Project Implementation Unit (PIU) support for RAP implementation and monitoring vs. external monitoring of RAP implementation

- 5.5.4 There is a **need to clearly distinguish** between (i) ensuring that the PIU is sufficiently equipped in terms of capacity to fully implement, regularly monitor and report on the ESAP and the RAP (and if needed recruit technical assistance to this end – Project Implementation Consultant); and (ii) the commissioning of independent and external monitoring and evaluation of the RAP. The appraisal documents pointed out the need for both.
- 5.5.5 The EIB-CM is aware that a **local consultancy firm has been hired by the EBRD for "RAP monitoring"**. The objectives of the assignment are to monitor and review the Project's compliance with specific provisions and the overall objectives of the RAP *"as per EBRD Performance Requirement 5 (PR5) on Land Acquisition, Involuntary Resettlement and Economic Displacement"*. The assignment requires quarterly site visits for the duration of the RAP implementation and one or two site visits for a RAP completion audit.³² The EIB-CM notes that the same firm was involved in the due diligence. Without questioning the professionalism of the company, this may lead to a possible conflict of interest and could undermine the quality of the RAP completion audit.
- 5.5.6 The EIB-CM asked the EIB services on 1 and 6 March 2019 for **information on the PIU's permanent/temporary (with details) staffing with their respective responsibilities** in order to assess the level of expertise available within the PIU in relation to the environmental and social aspects.³³ At the time of drafting the report, this information was yet to be shared.
- 5.5.7 The EIB-CM assumes that the local consultancy firm hired by the EBRD for "RAP monitoring" (see paragraph 5.5.5 above) was hired for "external" monitoring and not in the context of PIU support. Nevertheless, this needs to be confirmed. There is also a **need for further information with regard to PIU support. Has another consultant (firm/individuals) been hired to provide technical support to the PIU for RAP implementation, regular monitoring and reporting?** In the latter case, the EIB-CM would need a copy of their TOR as well, and reports on their support/activities.³⁴

³² See TOR shared by the EIB services on 25 March 2019 following the CM's request for them on 1 and 6 March 2019.

³³ As mentioned earlier, this is one of the conditions for disbursement included in the finance agreement.

³⁴ Information available to the CM points to the recruitment of a Project Implementation Consultant. The invitation for expressions of interest issued on 9 February 2018 (with procurement reference 8979-R1-EOI-46411) clearly relates to PIU

6. **PROPOSED WAY FORWARD**

General Overview

- 6.1 The initial assessment identified some areas of the involuntary resettlement process, especially concerning compensation, that deserve particular attention. Those areas relate more specifically to: (i) eligibility for compensation, especially for users, (ii) method of valuation and (iii) adequacy of compensation, (iv) process to determine compensation, and (v) the provision of assistance to vulnerable persons.
- 6.2 The EIB-CM initial assessment also identified the lack of an independent and effective GRM established at project level as is understood under Standards 6 and 10 of the EIB, as well as limitations with respect to meaningful stakeholder engagement and consultation regarding resettlement as required under Standards 6 and 10.
- 6.3 It is important to ensure that the involuntary resettlement process is fully compliant with the EIB standards. In view of this, the EIB-CM notes that the EIB and EBRD services are in contact with the local consultancy firm hired for "RAP monitoring". Following the complaints received by the EIB-CM and EBRD, the services requested the consultant to gather additional information as part of his fourth quarterly monitoring visit.

Proposed way forward for addressing the allegations of inadequate compensation and exclusion from compensation and assistance

- 6.4 All the Complainants recognise the importance of the extension of the existing Green Metro Line for the development of urban transport in the City of Kharkiv. Complainant No. 1 has already purchased alternative housing (although he claims that it is not of equivalent conditions to his former property). Complainants No. 2 and 3 expressed their willingness to continue "negotiations" and search for alternative housing that is of at least comparable conditions and more generally meets the criteria of adequate housing. Complainant No. 4 is claiming for her right to adequate housing to be respected and fulfilled. It appears that the City Council shows signs of willingness to find an agreeable solution prior to the Court decision (at least as far as Complainants No. 2 and 3 are concerned)³⁵. Against this background, the EIB-CM considers that **with the committed engagement of all parties, there is a good potential to resolve the main issues raised by the Complainants in a reasonable timeframe.**
- 6.5 **As far as Complainant No. 4 is concerned, the evidence received by the EIB-CM indicates that she is a person who is negatively affected by the Project and as such "is eligible for compensation, livelihood restoration and/or other resettlement assistance" as per Standard 6 of the Bank. Moreover, she is in a situation where she can most likely be considered a**

support, including for rendering assistance to KMC in environmental and social aspects. The Project Implementation Agreement that was signed by the EBRD and the EIB in October 2018, whereby the EBRD is designated as the Lead Financier for the Project, includes a Procurement Plan that indicates procurement for PIU support. In this context, the CM would like to receive further information on any environmental and social experts hired and providing assistance to the PIU for the ESAP and RAP implementation.

³⁵ As per the site visit report submitted by the local consultancy firm for "RAP monitoring" on 8 March 2019, the City filed a case with the Court against 22 owners who did not consent to the proposed compensation. This information (as well as the willingness of the City Council to resolve the cases prior to the Court decision) is confirmed in the fourth quarterly progress report on RAP implementation of 27 March 2019.

vulnerable person (under Standard 7), and in which case needs to be provided with the **necessary support and assistance** by the Promoter. A careful assessment of her particular situation must be carried out in order to determine what exactly (compensation and/or resettlement assistance and other assistance as necessary) Complainant No. 4 is entitled to. It is **recommended that the Bank closely guides the Promoter in redressing the situation for Complainant No. 4 in line with EIB Standards 6 and 7 as soon as possible**. The EIB-CM will be following up in the coming weeks/months with the services and the Complainant in this respect. Given the urgency of the situation of Complainant No. 4, the EIB-CM expects that a satisfactory solution with a long-term perspective is found before the preparation of its Conclusions Report.

- 6.6 **Regarding the issues related to inadequate compensation**, the EIB-CM will **mobilise external expertise to carry out an independent review of the valuation method(s) that was (were) used to determine the compensation (in general), as well as an assessment of how the method(s) was (were) applied to the individual cases concerned**. The objective is to determine whether the paid/proposed compensation in those particular cases is fair and at full replacement cost, and sufficient to purchase alternative housing that provides an adequate standard of living as understood under EIB Standard 6. This is in line with paragraph 5.2.11 above.

Proposed way forward for addressing the other concerns and ensuring full compliance with EIB standards

- 6.7 As mentioned above, the EIB-CM takes note that the services are in contact with the local consultancy firm hired by the EBRD for "RAP monitoring" and are requesting additional information in relation to the resettlement process. The EIB-CM underlines the **need for the services to continue and further strengthen its own monitoring of implementation of the ESAP, RAP, and SEP** to ensure the processes are compliant with EIB standards. This includes providing **continuous technical guidance to both the City Council/Promoter and the local consultancy firm** on what EIB Standards 6, 7 and 10 entail. This is particularly relevant with respect to eligibility, assistance to vulnerable persons, the process for receiving and resolving concerns and grievances raised by the PAP, and process of communication, consultation and involvement of the PAP in decision-making about and monitoring of the resettlement process.
- 6.8 The following areas require **particular attention for the EIB's monitoring**:
- 1) **Independence of the local consultancy firm hired for "RAP monitoring"**. Ensuring the absence of unintended bias in RAP monitoring is of particular importance in this case given that the same firm was involved in the due diligence, including the preparation of the RAP. Equally important is to ensure the quality and comprehensiveness of the reporting on RAP implementation;
 - 2) **Accountability of the consultant to both the EBRD and EIB** and sound knowledge of both banks' Environmental and Social Standards. The TOR and the due diligence documents are mostly oriented towards EBRD performance requirements; the monitoring reports need to also refer and be responsive to EIB standards and requirements;

- 3) **Sufficient capacity within the PIU for implementation of the ESAP, RAP, and SEP, and if needed recruitment of an additional consultant (PIU support consultant – individuals/firm) – if not yet in place – for rendering assistance to the PIU regarding environmental and social aspects of project implementation. These responsibilities need to be clearly distinguished from the responsibilities related to external and independent monitoring and evaluation of the ESAP and RAP implementation, which cannot be carried out by one and the same consultant.**
- 6.9 **In line with the above, the EIB-CM suggests that the Bank takes steps to critically review current monitoring arrangements and identify best ways to ensure independent and external monitoring of the RAP that is responsive to EIB needs in the coming weeks/months. This is especially true with regard to the RAP evaluation/completion audit, for which it is essential that a fresh and independent view is provided on the whole process of resettlement and livelihood restoration, its compliance with EIB standards, and the remaining requirements/corrective actions for them to be met. The EIB-CM will be following up in the coming weeks/months with the services in this respect.**
- 6.10 **EIB-CM will continue to liaise with the services to obtain relevant information and documents that are deemed useful for further assessment and resolving the concerns raised in the complaints. Annex 2 contains a list of documents and information that were requested from the services on 1 and 6 March, which are yet to be shared.**

S. Derkum
Head of Division
Complaints Mechanism
13 May 2019

A. Abad
Deputy Head of Division
Complaints Mechanism
13 May 2019

ANNEX 1 – List of complaints

| No. of Complainants | Complaint number | Main subject matter |
|----------------------------|-------------------------|---|
| 1. | SG/E/2019/01 | Inadequacy of compensation paid |
| 2. | | Inadequacy of compensation proposed |
| 3. | | Inadequacy of compensation proposed |
| 4. | | Exclusion from any compensation and/or assistance |
| 5. | | Inadequacy of compensation proposed |

ANNEX 2 – List of documents and information requested from the services

On 1 March, with a follow-up email of 6 March 2019, the EIB-CM asked the services for a series of documents and additional information in order to be able to carry out its assessment. The services have already shared some of the documents requested. The following documents and information are yet to be shared.

Documents that are deemed useful to further assess the issues related to inadequate compensation:

- Valuation report of AS-TERRA or at least the part of the report that describes in detail the methodology/approach used for valuation (including more information on estimation of cost of property and “involuntary compensation” factor);
- Reports of the third party review of the valuation report (by NGO “Ukrainian Valuators Society” and Pan-Ukrainian Association of Valuation Specialists);
- Contract with AS-TERRA No 150 dd. April 13, 2018.

Additional information that is deemed useful to further assess the PIU’s capacity in dealing with environmental and social aspects and the governance of project implementation, more particularly with regard to RAP implementation:

- Information on the PIU staffing (as mentioned above in paragraph 5.5.6);
- Clarification of the different entities that are involved in project implementation and the implementation of the ESAP, RAP, SEP with details on their respective roles and responsibilities (as mentioned in paragraph 5.2.3).