

July 1 — September 30, 2019

REPORT

Q3 2019

Report focus:

raidership















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Business
Ombudsman
Council

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TABLE OF CONTENTS

Foreword of the Business Ombudsman	4
Q3 2019 at a glance	6

1. Complaints trends 8

1.1. Volume and nature of complaints received	9
1.2. Timelines of the preliminary review of complaints	14
1.3. Number of investigations conducted and grounds for declining complaints	14
1.4. Timelines of conducting investigations	16
1.5. Government agencies subject to the most complaints	17
1.6. Geographical distribution of complaints received	19
1.7. Complainants portrait	21
1.8. Report focus: raidership	25
1.9. Feedback	34

2. Summary of key matters and follow-up of recommendations 36

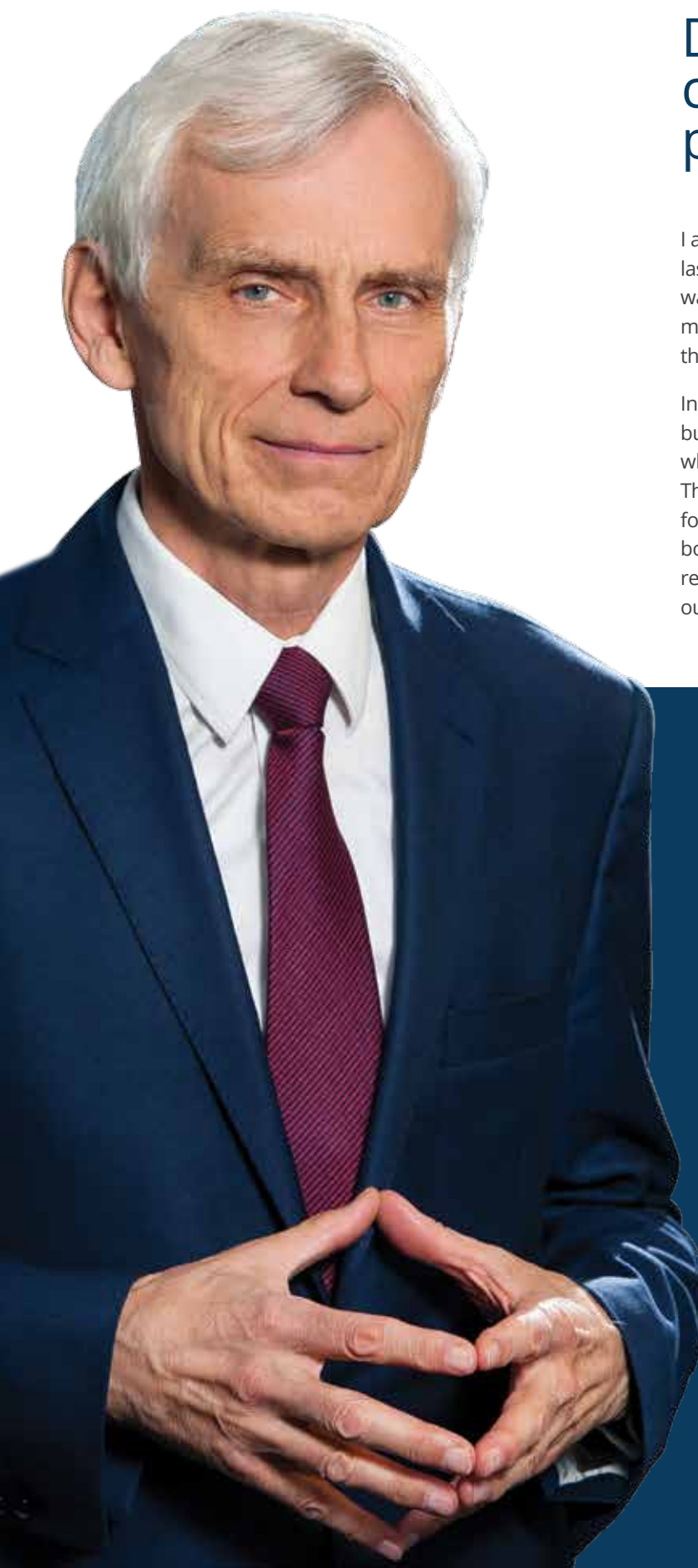
2.1. Information on closed cases and recommendations provided	36
2.2. Systemic issues identified and solved	46
2.3. Summary of important investigations	50

3. Cooperation with stakeholders 72

3.1. Cooperation with state bodies	72
3.2. Cooperation with business associations	75
3.3. Public outreach and communications	77

*The report contains illustrations
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*The BOC and the Council are used
interchangeably throughout the text to refer to
the Business Ombudsman Council.*



Dear friends, colleagues and partners,

I am pleased to present you the report for Q3 2019, the last period when the Business Ombudsman Council was managed by my predecessor Algirdas Semeta. It is my honour to take over the role and become a head of this reputable and effective institution.

In Q3 2019, we received 428 complaints from businesses concerning malpractice of state bodies, which is 8% more than in the previous period. The quarterly financial impact of our operations for companies amounted to UAH 564 mn. State bodies have implemented 91% of our case-by-case recommendations, while 95% of complainants said that our facilitation was helpful.

BACKGROUND NOTE

The Supervisory Board of the Business Ombudsman Council elected Marcin Świąćicki as the new Business Ombudsman on July 30, 2019. The Cabinet of Ministers confirmed this decision, and on October 12, 2019, Mr Świąćicki assumed the new position.

Marcin Świąćicki is a Polish politician and economist, the former Minister for Foreign Economic Relations and the Deputy Minister of Economy, as well as the Mayor of Warsaw. For the last 8 years he was a Member of Sejm in Poland, where he served as a Deputy Chair of the Ukrainian Parliamentary Group. He also consulted the Ukrainian government on the decentralization reform in 2014-2015 and chaired the EU-UNDP "Blue Ribbon" project in Kyiv in 2007-2011.

An increase in the number of complaints was mainly driven by a rise in tax appeals. In Q3 2019 we received more appeals concerning all key tax subjects. Most often companies have sought assistance in challenging results of tax audits. Entrepreneurs also complained more about suspension of VAT invoices. Electronic administration of VAT was the third most common tax problem for businesses. Complaints concerning initiated tax criminal cases, albeit at a slower pace, also increased in comparison with the previous period.

A positive trend for the second quarter in a row is that companies have been lodging less appeals concerning actions of law enforcement bodies. In particular, we received fewer cases of procedural abuse and inactivity of law enforcers, as well as unreasonable criminal cases against businesses. We received fewer complaints regarding the National Police and the Prosecutor's Office, while the number of appeals related to the State Security Service remained fairly low.

Companies also complained less about actions of state regulators compared to the previous period. We have received fewer appeals concerning the State Architectural and Construction Inspectorate, but more with regard to the Anti-Monopoly Committee. The number of appeals related to the State GeoCadastré and the NEURC remained flat.

We noticed an increase in the number of complaints on customs issues as compared to both Q2 2019 and Q3 2018. This was driven by an increased number of appeals regarding delays in customs clearance of goods. At the same time, the number of complaints about adjusting the customs value and refunding overpaid duties decreased.

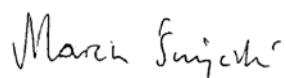
In Q3 2019, entrepreneurs submitted more appeals concerning malpractice of state registrars, which as a rule implied episodes of raidership. That is why we dedicated a separate section of the report to an

in-depth analysis of 108 complaints received on this matter since launch of the Council's operations. Over three fourths of all closed cases were closed with an immediate desirable result for the complainant, which is 9pp higher than our average success rate of 67%. The share of large companies in focus of state registrars' malpractice is 8pp higher than the total share of large enterprises, who submitted complaints to the Business Ombudsman Council. Four out of five appeals on malpractice of state registrars came from Ukrainian companies. Industries most vulnerable to raider attacks were real estate and construction, agriculture and mining and manufacturing.

In Council's systemic report on combatting raidership (2017) 22 recommendations were presented, out of which only 8 (36%) have been implemented so far.

We are pleased to point out several systemic wins of the quarter. As recommended by the Council, the threshold amount of actual sums due to be paid to the budget triggering treatment of such action at the part of taxpayer as a criminal offence was increased. Such changes should reduce the pressure on business by decreasing the number of groundless opening of criminal proceedings under Article 212 of the Criminal Code of Ukraine. As set forth in our systemic report on construction, the obligatory payment of 4% contribution for the development of the locality's infrastructure from the cost of housing construction and 10% from the cost of non-residential construction was cancelled.

Acknowledging our achievements over the years, we are excited about our plans for the future. We are committed to solving systemic business issues, as well as improving the dialog between entrepreneurs and the government. To complement this, we will continue to uphold the principles of the rule of law and high standards of business integrity, aiming to make our contribution into enhancing attractiveness of doing business in Ukraine.



Marcin Świącicki,

Business Ombudsman

Q3

at a glance

2019

428 +8% as compared to Q2 2019

complaints received



+1 case as compared to Q2 2019

287

cases closed



95%

of complainants surveyed are satisfied with working with the BOC

** read more on page 34*



91%

of individual recommendations implemented by state bodies

** read more on page 42*

Direct financial impact:

UAH 564

mn



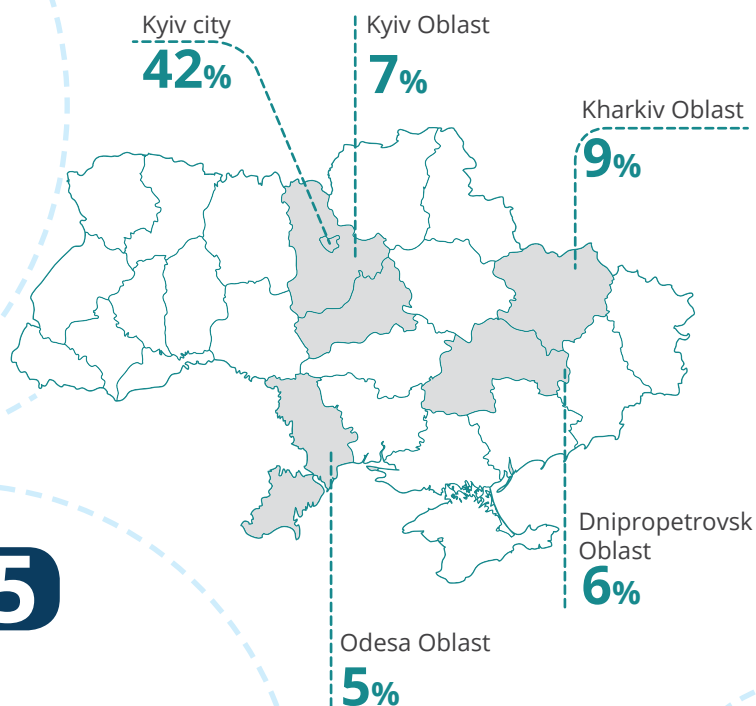
TOP-5

blocks of complaints

Tax issues	62%
Actions of law enforcement bodies	10%
Actions of state regulators	7%
Customs issues	6%
Actions of the Ministry of Justice	4%

TOP-5

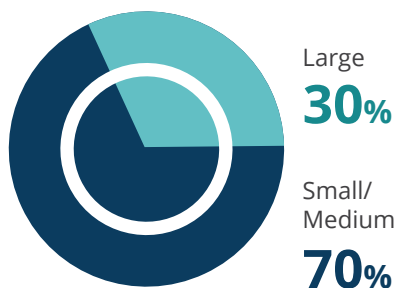
most active regions

**TOP-5**

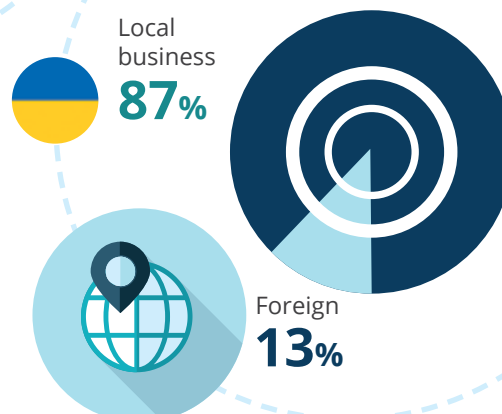
industries

Wholesale and Distribution	28%
Manufacturing	14%
Individual Entrepreneurs	9%
Agriculture and Mining	8%
Real Estate and Construction	8%

Size of business



Origin of investment



1. Complaints trends

Total number of complaints
received since May 2015:

6126



1.1. Volume and nature of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

In the reporting
quarter the Council
received

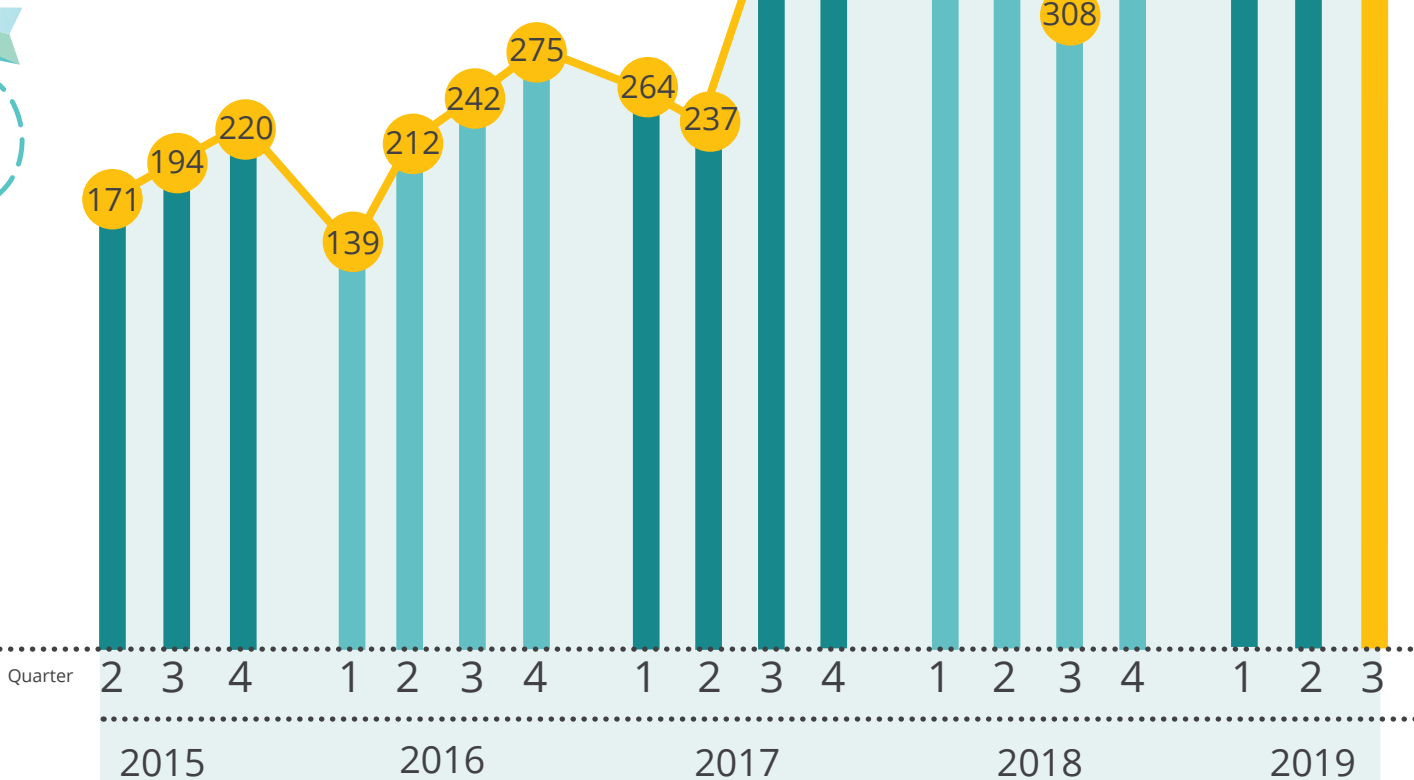
428

appeals from
entrepreneurs

which is

8%

more than
in Q2 2019



TOP-10

Subjects of complaints in Q3 2019

	Complaints received in Q3 2019	Change as compared Q2 2019	Change as compared Q3 2018
Tax issues	264	10%	78%
Tax inspections	97	8%	116%
VAT invoice suspension	89	33%	75%
VAT electronic administration	18	29%	200%
Tax criminal cases	14	17%	0%
Tax termination of agreement on recognition of electronic reporting	3	50%	-
VAT refund	2	0%	-78%
Tax termination/renewal/refusal of VAT payers registration	0	-100%	-
Tax other	41	-20%	78%
Actions of State Regulators	29	-19%	7%
StateGeoCadastre	4	0%	100%
State Architectural and Construction Inspectorate (DABI)	4	-20%	300%
Antimonopoly Committee (AMCU)	3	50%	50%
National Energy and Utilities Regulatory Commission (NEURC)	1	0%	-50%
Other state regulators	17	-29%	-15%
Customs issues	27	42%	170%
Customs clearance delay/refusal	9	80%	350%
Customs valuation	8	-11%	700%
Overpaid customs duties refund	2	-33%	0%
Customs other	8	300%	60%
National Police actions	21	-22%	-9%
National Police procedural abuse	8	-33%	-11%
National Police inactivity	7	-36%	40%
National Police criminal case initiated	3	200%	0%
National Police corruption allegations	1	-	-
National Police other	2	-33%	-67%

	Complaints received in Q3 2019	Change as compared Q2 2019	Change as compared Q3 2018
Prosecutor's Office Actions	19	-14%	-32%
Prosecutor's Office procedural abuse	14	27%	-18%
Prosecutor's Office criminal case initiated	2	-67%	-75%
Prosecutor's Office inactivity	2	-60%	-
Prosecutor's Office other	1	-	-67%
Ministry of Justice Actions	16	14%	45%
Malpractice of State Registrars	13	86%	86%
MinJustice Enforcement Service	3	-57%	-25%
Actions of local government authorities	13	-35%	-19%
Local government authorities — rules and permits	3	-25%	-40%
Local government authorities — land plots	1	-80%	0%
Local government authorities — other	9	-18%	-10%
Actions of state companies	4	-20%	-43%
State companies — abuse of authority	4	100%	-
State companies — other	0	-100%	-100%
Commercial and other courts actions	4	100%	-
Courts delayed trial proceedings	2	-	-
Courts other	2	0%	-
State Security Service Actions	3	0%	-63%
State Security Service procedural abuse	0	-100%	-100%
State Security Service criminal case initiated	0	-100%	-100%
State Security Service other	3	-	-

Tax issues

The number of complaints from businesses on tax issues went up by 10% as compared to Q2 2019 and by 78% (from 148 to 264 appeals) as compared to Q3 2018. This was driven by an increase in all major tax topics: tax inspections, VAT invoice suspension, VAT electronic administration and tax criminal cases.

Challenging results of tax inspections was the most widespread reason of companies' appeals in Q3 2019. This subject amounted to 38% of tax issues and 23% of all complaints received by the Council during the last three months. Moreover, this

matter continued to grow: +8% as compared to Q2 2019 and +116% (from 45 to 97 appeals) as compared to Q3 2018.

Complaints regarding suspension of VAT invoices were on a rise: +33% in comparison with Q2 2019 and +75% (from 51 to 89 appeals) in comparison with Q3 2018.

Electronic administration of VAT was the third most common tax issue faced by businesses in the reporting period.

Complaints regarding tax criminal cases, though at a slower pace, also performed growth as compared to the previous period.



Actions of law enforcement bodies

In the reporting period we observed a positive development in relations between businesses and law enforcers — for the second consecutive quarter the number of complaints on this block has been steadily decreasing. In particular, companies submitted considerably fewer appeals with respect to episodes of procedural abuse, unreasonable criminal cases as well as inactivity of law enforcers.

We received fewer appeals concerning actions of the National Police (-22% as compared to Q2 2019 and -9% as compared to Q3 2018) and the Prosecutor's Office (-14% as compared to Q2 2019 and -32% as compared to Q3 2018). The number of complaints against the State Security Service remained low and stable (only 3 appeals received) as compared to Q2 2019, but decreased by almost two thirds in comparison with Q3 2018.



Customs issues

A significant increase in the number of appeals was recorded with respect to customs issues (+42% as compared to Q2 2019 and +170% (from 10 to 27 appeals) as compared to Q3 2018). This was clearly driven by a growing number of reported episodes of customs clearance delay. At the same time, the number of appeals concerning customs valuation and overpaid duties refund went down by 11% and 33% respectively.



Actions of state regulators

Companies also lodged fewer appeals concerning actions of state regulators when compared with the previous period. We received less complaints regarding the State Architectural and Construction Inspectorate (DABI) (-20%), but more against the Antimonopoly Committee (AMCU) (+50%). The number of appeals related to actions of the StateGeoCadasre and the NEURC remained stable.

Actions of the Ministry of Justice

We noticed an increased quantity of appeals on this subject in the reporting quarter. This was specifically due to an 86% leap in the number of complaints against the Registration Service as compared to both periods in focus of comparison, which, as a rule, implies episodes of raidership. That is why we decided to devote a special section of the report to a deeper analysis of complaints on this issue.

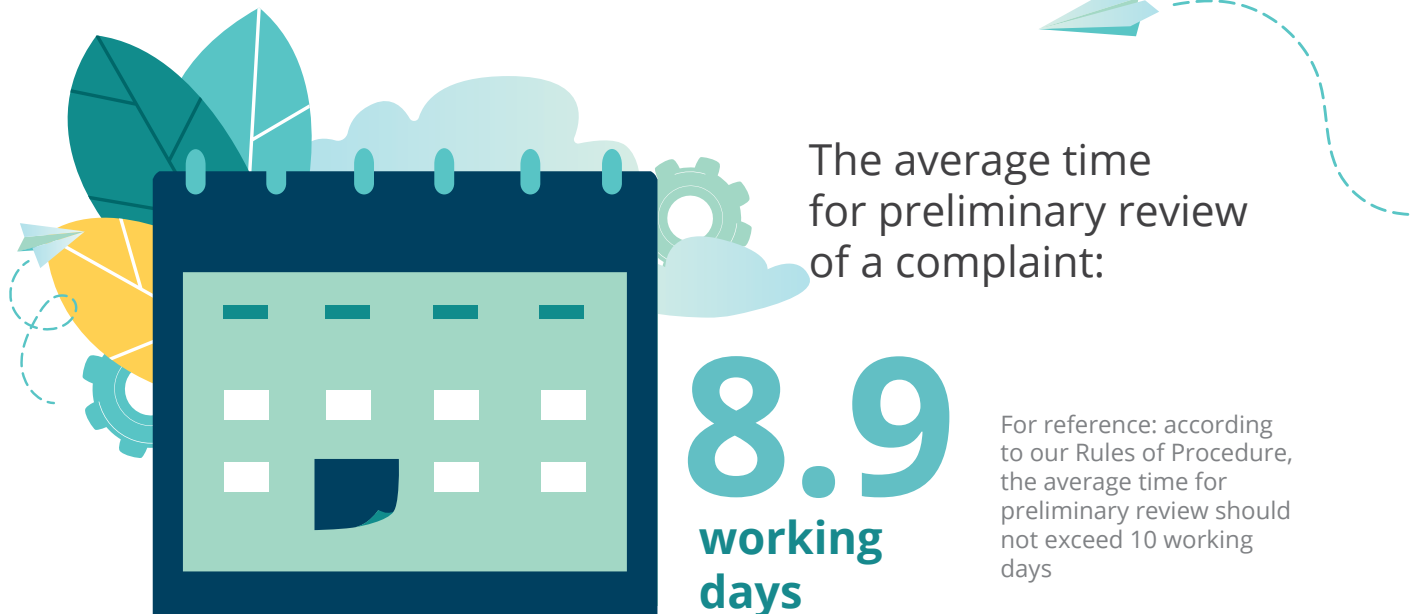
Other subjects

In comparison with Q2 2019, companies submitted less appeals concerning actions of local government authorities (-35%) and state companies (-20%). At the same time, we received 4 complaints challenging court actions (+100%), which goes beyond our competence according to the Rules of Procedure.



1.2. Timelines of the preliminary review of complaints

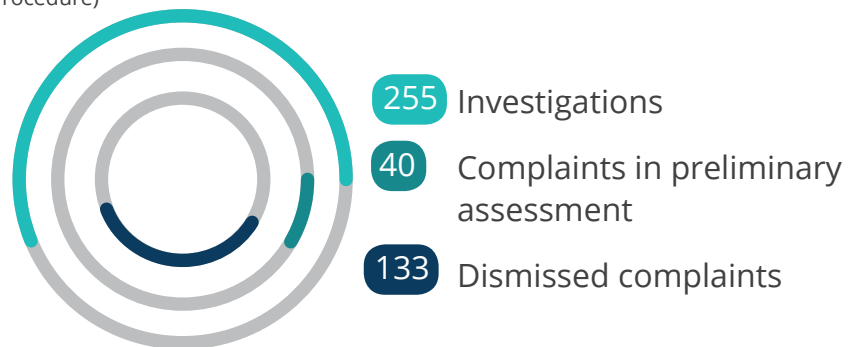
(Clause 5.3.1 (b) of the Rules of Procedure)



1.3. Number of investigations conducted and grounds for declining complaints

(Clause 5.3.1 (c) of the Rules of Procedure)

In the third quarter of 2019, the BOC undertook 255 (+18% as compared to Q2 2019) out of 428 complaints received (60%). The rest remained at the stage of preliminary assessment (9%) as of September 30, 2019, or was dismissed as not fitting the Council's eligibility criteria (31%).



Number of initiated investigations:

Ratio of dismissed complaints:



Main reasons for complaints dismissal in Quarter III 2019

	Q3 2019	Change as compared to Q2 2019	Change as compared to Q3 2018
Complaints outside Business Ombudsman's competence	57	12%	46%
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	34	55%	127%
The complaint had no substance, or other agencies or institutions were already investigating such matter	11	-15%	-8%
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	9	13%	50%
An investigation by the Business Ombudsman in a similar case is pending or otherwise on-going	3	200%	
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	3	0%	200%
Complaints arising in the context of private-to-private business relations	3	-25%	-25%
The party affected by the alleged Business Malpractice has not exhausted at least one instance of an administrative appeal process	3	200%	200%
A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration	2	-71%	100%
All other	8	-20%	-11%

The predominant reason (43%) for complaints dismissal — they were outside the Business Ombudsman's competence. Despite the Council being active in explaining its institutional capacity to potential applicants, this ground of dismissal has been increasing alongside the number of complaints received. Active court proceedings (26%) and absence of substance in appeals (10%) were also common in Q3 2019.

1.4. Timelines of conducting investigations

(Clause 5.3.1 (d) of the Rules of Procedure)

In the reporting quarter, the BOC closed 287 cases, which is 1 case more than in the previous quarter.

Average duration of these investigations was

67 days

which is

5 days less

than in the previous quarter and means that we perfectly fit our Rules of Procedure's investigation duration of 90 days.

Average time for conducting investigations:



Ratio of closed cases by days:



The majority of cases — 245, which is 85% of all closed investigations in quarter III 2019, was investigated within 90 days as envisaged by our Rules of Procedure.

1.5. Government agencies subject to the most complaints

TOP-10 Complainees

	Complaints received in Q3 2019	Change as compared to Q2 2019	Change as compared to Q3 2018
State Fiscal Service	291	12%	83%
National Police	21	-22%	-5%
Prosecutor's Office	19	-14%	-34%
Ministry of Justice	16	7%	23%
Local government authorities	14	-39%	-13%
Ministry of Regional Development	7	0%	75%
Ministry of Ecology and Natural Resources	6	50%	20%
State Enterprises	5	400%	-38%
Ministry of Infrastructure	4	100%	100%
National Bureau of Investigations	4	300%	-

The share of appeals concerning actions of the State Fiscal Service amounted to 68% in Q3 2019, which is +3pp as compared to the previous period.

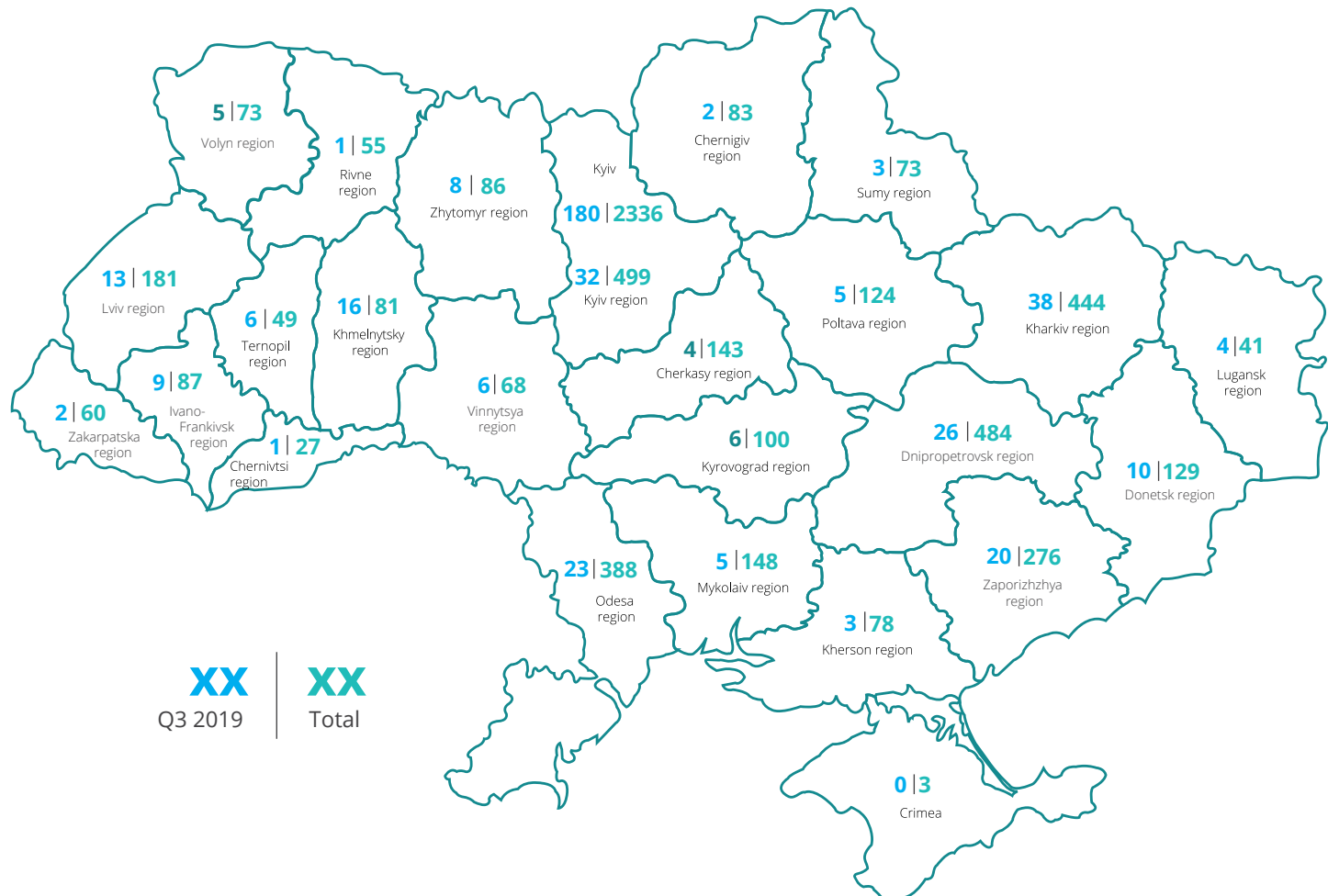
The number of complaints concerning law enforcement bodies either went down or remained stable as compared to both Q2 2019 and Q3 2018. Companies submitted fewer appeals concerning the National Police and the Prosecutor General's Office. With respect to the State Security Service we only received three complaints in Q3 2019 and that is why this state body didn't hit the TOP-10 list of complainees at all.

As compared to Q2 2019, businesses reported more episodes of malpractice by the Ministry of Justice (+7%), the Ministry of Ecology and Natural Resources (+50%), the Ministry of Infrastructure (+100%) and the National Bureau of Investigations (+300%). On the contrary, we received less appeals concerning local government authorities (-39%). The number of complaints regarding the Ministry of Regional Development remained flat.

Other complainees include:

	Complaints received in Q3 2019	Change as compared to Q2 2019	Change as compared to Q3 2018
Commercial and other courts	4	100%	-
Parliament, the Cabinet of Ministers, the President	4	100%	0%
Ministry of Social Policy and Labor	4	-43%	-33%
State Security Service	3	0%	-63%
Antimonopoly Committee	3	50%	200%
Ministry of Finance	3	-25%	0%
State Service on Food Safety and Consumer Protection	2	-	-
Ministry of Agrarian Policy and Food	2	-50%	100%
State Regulatory Service	1	-	-50%
National Commission for State Regulation of Energy and Public Utilities	1	0%	-67%
Ministry of Health of Ukraine	1	-50%	0%
Ministry of Economic Development and Trade	1	-50%	-86%
State Funds	1	-	-67%
Ministry of Defence	1	-	-
National Bank of Ukraine	1	-	-
State Emergency Service	1	-	-
Communal Services	1	-	-
NABU	1	0%	-
Other	6	50%	-40%

1.6. Geographical distribution of complaints received



In Q3 2019, the share of complaints from the Ukrainian capital has gained 1pp since the previous period and amounted to 42%. As compared to the previous quarter, businesses from Kharkiv and Odesa Oblasts also lodged more appeals. On the contrary, entrepreneurs from Kyiv Oblast lodged fewer complaints, while those from Dnipro Oblast remained stable.

TOP-5

most active
regions

Complaints
received
in Q3 2019

Change as
compared
to Q2 2019

Change as
compared
to Q3 2018



Kyiv

180

10%

57%



Kharkiv region

38

31%

52%



Kyiv region

32

-20%

78%



Dnipropetrovsk
region

26

0%

0%



Odesa region

23

15%

-15%

1.7. Complainants' portrait

Local vs Foreign Complainants

Number of complaints

	Complaints received in Q3 2019	Change as compared Q2 2019	Change as compared Q3 2018
Ukrainian companies	373	11%	45%
Foreign companies	55	-13%	10%

Structure

	Ukrainian companies	Foreign companies
Q3 2019	87	13
Q2 2019	84	16
Q3 2018	84	16

Foreign companies reported 13% less episodes of malpractice by state bodies as compared to Q2 2019. This resulted in their share decrease by 3 pp to only 13% of appeals.

Size of Businesses

Number of complaints

	Complaints received in Q3 2019	Change as compared Q2 2019	Change as compared Q3 2018
Large companies	129	8%	43%
Small/Medium companies	299	7%	37%






Structure

	Small/Medium companies	Large companies
Q3 2019	70	30
Q2 2019	70	30
Q3 2018	71	29

Although we received more complaints from both large companies and SMEs, the structure of appeals has remained stable since the previous quarter: 70% of appeals were submitted by small and medium companies and 30% — by large ones.

TOP-5

Complainants' Industries

	Complaints received in Q2 2019	Change as compared Q2 2019	Change as compared Q3 2018
 Wholesale and Distribution	119	34%	57%
 Manufacturing	62	17%	68%
 Individual Entrepreneurs	40	-5%	43%
 Agriculture and Mining	36	-3%	29%
 Real Estate and Construction	35	-19%	46%
Other	136	1%	18%

The majority of appeals was submitted by wholesalers (28%), manufacturers (14%), individual entrepreneurs (9%), agribusiness and mining (8%) and real estate and construction (8%).

Although the number of appeals from individual entrepreneurs went down by 5%, this group hit the third place in the TOP-5 list of industries due to a deeper decrease in the number of complaints submitted by representatives of other industries.

Other industries include:

Retail	20	Oil and Gas	2
Physical person	14	IT companies	2
Health, Pharmaceuticals, and Biotech	9	Accommodation services	2
Financial services	8	Waste collection and disposal	1
Auto transport	7	Energy and Utilities	1
Electric installation works	6	Public Organizations	1
Repair and maintenance services	5	Advertising	1
Technical testing and research	5	Information and Telecommunications	1
Consulting	4	Ground and pipeline transport	1
Printing and reproduction activity	4	Private security firms activity	1
Hire, rental and leasing	4	Restaurant business	1
Transportation and Storage	4	Forestry and logging	1
Processing Industry	4	Business services	1
Computer and Electronics	4	Software and Internet	1
Engineering, geology and geodesy areas activity	3	Insurance	1
Activity in the field of law	3	Activity in the field of architecture	1
Warehousing	2	Funds management	1
Education	2	Air Transport	1
Farming	2	Freight maritime transport	1
Activities in the field of culture and sports, recreation and entertainment	2	Non-profit	1
		Other	1

1.8. Report focus: raidership

Raidership comprises illicit alienation of ownership over real estate or corporate rights. Hence, for the purposes of this Report, we refer to the notion of “raidership” to analyze complaints lodged to challenge business malpractices at the part of state registrars while carrying out registration actions with the State Registry of Real Rights Over Immovable Property and the State Registry of Legal Entities.



State registrars with an access to the respective registers are represented by:

notaries

registrars employed by the accredited subjects of state registration (for instance, communal enterprises, which have already lost this status due to the adoption of the Draft Law #1056-1)

and, in some cases, state and private enforcers

It should also be noted that not every business malpractice on the part of a state registrar is connected with raidership. Occasionally, adverse implication may be faced by business as a result of a registrar's negligence.

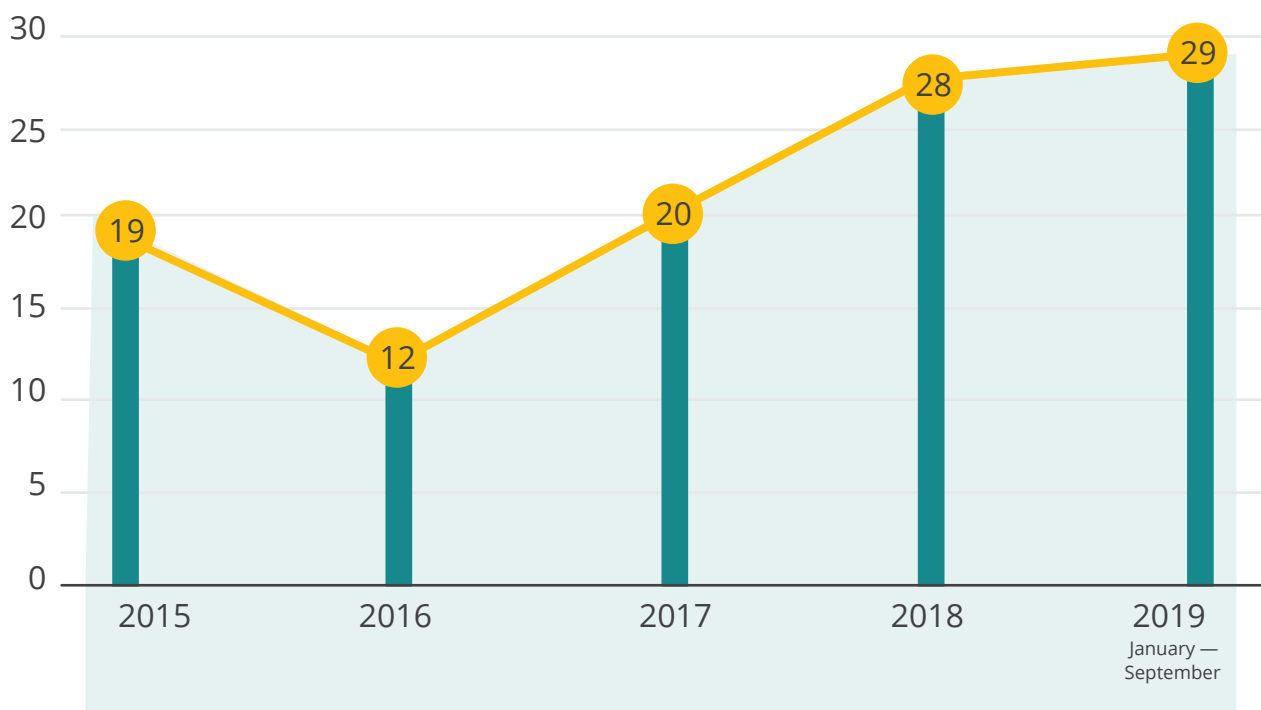
Raidership: number of complaints received

Since launch
of operations in May 2015
we have received

108

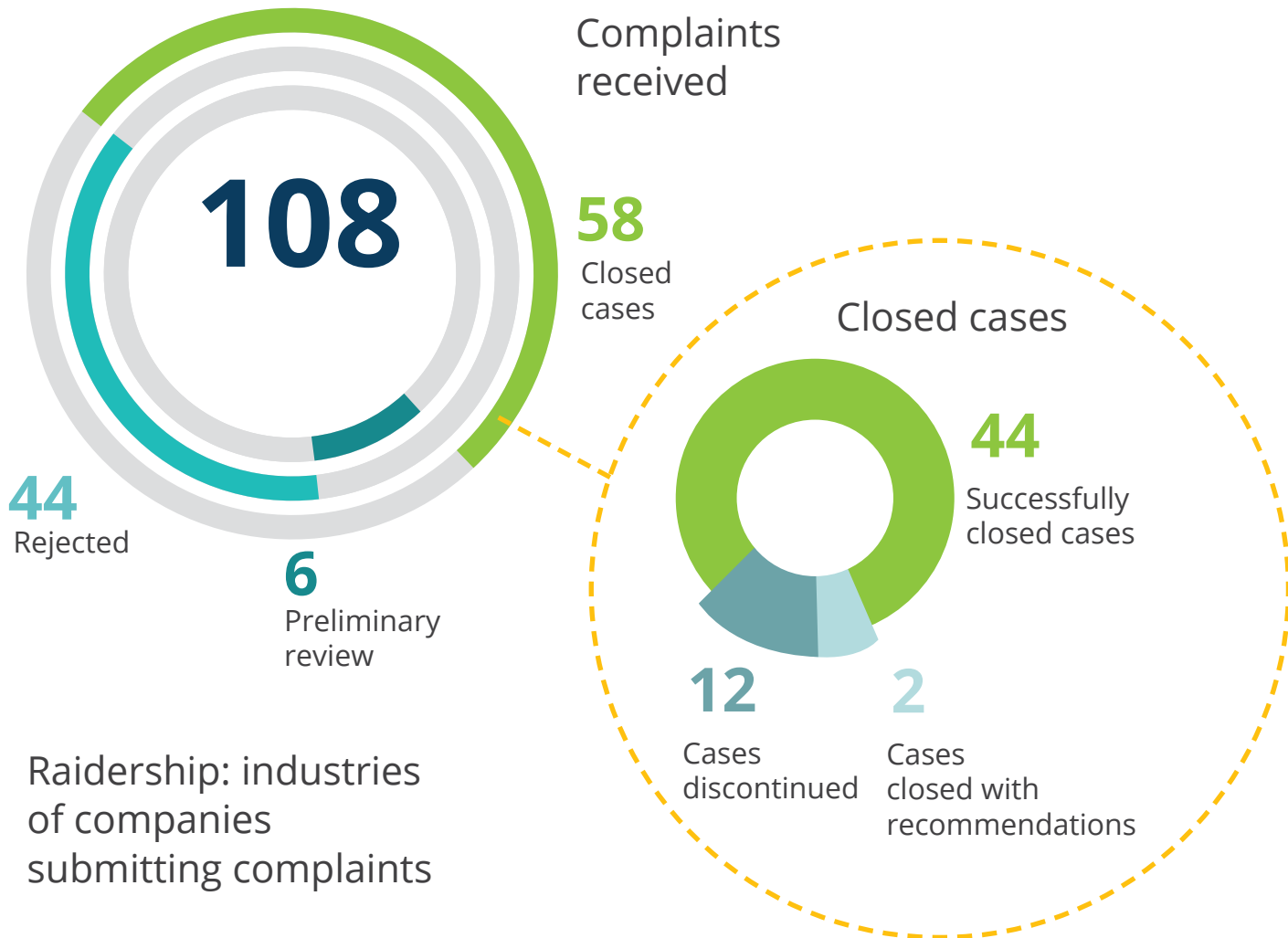
complaints from businesses
addressing malpractice
of state registrars.

After a decline in the number of appeals lodged with the Council in 2016, we have observed a growing number of complaints on this matter for the third consecutive year. During 9 months of 2019 we have already received more appeals concerning state registrars' malpractice than in 2018 in total.



Raidership: statuses of complains

Out of 108 complaints received we had to reject 44 appeals as not fitting our eligibility criteria, according to our Rules of Procedure. Among closed cases we can point out a high level of successfully closed cases on this matter — 76%, which is 9 pp higher than our average success rate of 67%.

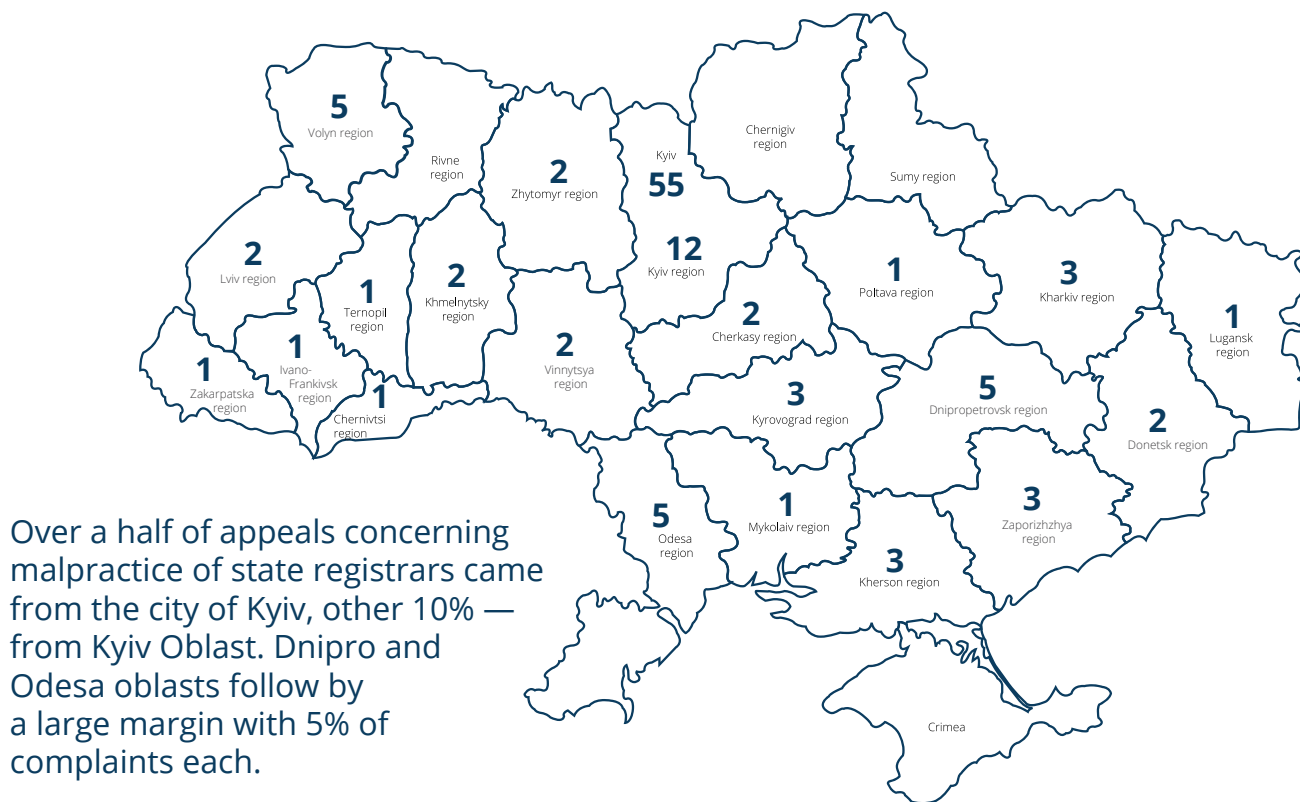


The industry breakdown of complaints concerning raidership is less concentrated than the one on total appeals. Apparently, industries most vulnerable to raider attacks were: real estate and construction (18%), agriculture and mining (13) and manufacturing (12%).

Number of complaints received



Raidership: geography of complaints received



Raidership: size of companies submitting complaints

Small/Medium

Large

69

64%

36%

39

The share of large companies in focus of state registrars' malpractice is 8pp higher than the total share of large enterprises, which submitted complaints to the Business Ombudsman Council.

Raidership: size of companies, submitting complaints

Ukrainian companies

Foreign companies

88


81%

19%

20

Four out of five appeals on malpractice of state registrars came from Ukrainian companies.

Raidership: types of cases




A number of investigations completed by the Council show that raider attacks may contain a force element — the **physical seizure of property**. It can be exemplified by the case of Econia company, baby water and food producer, when about 15 people broke into its office and informed of their ownership right to the plant.

However, raiders do not always resort to strong arm tactics. At the same time raidership goes side by side with the technical element related to making changes to public registers based on forged documents. A bright example is the case of the Lithuanian investor, a credit group, where owners accidentally learned that information about them in the Register of Legal Entities had been changed.

In the absence of a takeover, owners for a long time may not know they do not officially possess their property anymore — as is the case with the Lithuanian investor. In such circumstances, the law allows to calculate the administrative appeal term of registration action from the day when the person learned or could have learned about violation of his or her rights.

The prerequisite for a **"technical" raider attack** is usually forged documents, which, depending on the reason chosen by the raiders for the purpose of registration action, are documents requiring signature of the top management or founders of the company (enterprise), or non-existing court decisions. At the same time, there are cases where dishonest state registrars (including notaries) made registration changes, by loading not documents, but blank A4 pages into the system. For example, in the case of the company from Ternopil Oblast both components are in place: forgery of a non-existing district court decision relocated from temporarily occupied territories (as confirmed by the court itself) for a registration action with immovable property, as well as clean pages instead of the legal entity general meeting minutes.



Such registration changes become possible through raiders **interaction with dishonest state registrars**, called "black registrars" or "black notaries" in everyday life. Sometimes stolen state registrar's electronic keys letting you log in to civil registers are used. For example, the Ukrainian developer with European investments turned to us with such an issue. Its flagship trade center was attempted to be taken over with the help of stolen electronic keys.

It is noteworthy, raiders may also benefit from the so-called **"throwing out of the game" scheme of the MinJust Commission**, considering complaints against state registrars. It is carried out through filing a lawsuit on cancelling a registration action by raiders themselves. If a dispute becomes the subject of court proceedings, the Commission must refuse satisfying a complaint. It is followed by withdrawal of a "technical" lawsuit by raiders, while the deadline for filing a complaint with the Commission is not envisaged. It is illustrated by the case of agicompany from Chernihiv Oblast, where a similar scheme had been applied twice. Following cancellation of the Commission's first decision by the court, another similar claim was filed based on which the Commission again refused to satisfy the complainant's complaint.



Raidership: implementation of systemic recommendations



In July 2017, the Council presented to the Government a package of recommendations aimed at combatting raidership. State bodies have already implemented 36% of them.

Major implemented recommendations

- As suggested by the Council, the Ministry of Justice ensured full synchronization of data between the State Register of Property Rights to Immovable Property and the State Land Cadastre. Data of the State Register of Property Rights to Immovable Property is from now on available for cadastral registrars. Thus, discrepancies between the State Register of Property Rights to Immovable Property and the State Land Cadastre will no more hamper business activity of legitimate owners following cancellation of “raiding” registration actions.
- Following our recommendations, the Ministry of Justice now publicizes results of off-site documentary audits of state registrars. Publication of names of the registrars and notaries, having been constantly or temporarily denied access to the state registries, on the official web-site of the Ministry of Justice provides business with the insight on reputation of a particular state registrar.
- Jurisdictional conflicts in court disputes pertaining to the sphere of state registration were also resolved. Possibility to integrate several interconnected claims subject to consideration upon different types of court proceedings into one joint lawsuit will simplify judicial protection of the owner’s breached rights.

Recommendations subject to monitoring

- In order to prevent raider attacks we promote the idea of introducing the system of notification of owners of corporate rights about pending registration actions. In such a way an owner, receiving an email or SMS about new inquiries regarding registration actions will be timely warned about a possible “raider” attack.
- The Prosecutor General's Office and the Ministry of Interior should also develop methodological recommendations for law enforcers focused on investigation of the most common instances of raidership. More detailed procedure of raidership investigation will enhance efficiency of law enforcement in combatting this kind of malpractice.
- We also recommend to ensure a full technical interaction between the State Register of Property Rights to Immovable Property and the Unified State Registry of Court Decisions. The party having a winning court decision related to registration actions will have an opportunity to expect enforcement of this court decision by the state registrar automatically, without obligations to file a respective application and pay off an administrative fee.

Raidership: lifehacks

Here are several life hacks regarding correct raider attack response steps:

1

Do not delay the administrative appeal.

You have 60 calendar days for submitting complaints to the Commission for Complaints Consideration in the field of state registration under the Ministry of Justice. You may not go to court right away — an administrative appeal will save you a considerable amount of time and resources. Along with your request to the Commission, you can file a complaint with the Business Ombudsman Council. We are authorized to participate in the meetings of the Commission and submit written proposals on the complaint.



2

Make the petitionary part of the complaint correctly.

Ask for the complaint to be considered in your presence (and with participation of the Council's investigator if you turned to us). It is advisable to petition for monitoring and performing a desk audit of the notary/registrar activities.





4

Try contacting a notary/registrar.

Sometimes perpetrators can override the system even without the knowledge of state registrar (for example, if they somehow get a personal e-sign key). Written explanations and participation of a notary/registrar in the meeting may can be very helpful. If you fail to get in touch, find the person's information on the Internet and attach it to the complaint — the so-called "black" notaries/registrars usually have a certain "trace" in the form of resonant investigations or publications shining a light on their reputation.

3

Approach by proving unreasonableness of a registration action comprehensively.

For example, if the ground is a court decision, which, in your opinion, is forged, ask the court for a written statement that would certify this decision had never been made. Never mind physical relocation of the court from occupied territories — the court's electronic databases store information on court decisions issued since 2006.



5

Don't miss a meeting.

Stay tuned for the Commission meeting announcements on your complaint at https://minjust.gov.ua/other/zasidannya_komisii. We recommend doing this at least twice a week after filing a complaint — THE LATEST ANTI-RAIDER LAW 1056-1 SEEMS TO HAVE ESTABLISHED IT.



6

Go to the National Police Department with an application on a criminal offense.

There are signs of an offense in the specified actions of the subject of state registration under Part 1 of Art. 358 of the Criminal Code of Ukraine.

1.9. Feedback

In the reporting period
we sent 257 requests for
feedback and received

146

**completed
feedback
forms from
our applicants**

95%

of them said they
were satisfied with
working with us.



They also
indicated
what they are
satisfied the
most in dealing
with us and
specified areas
that require
improvement.

Companies assessed our work
based on several criteria:



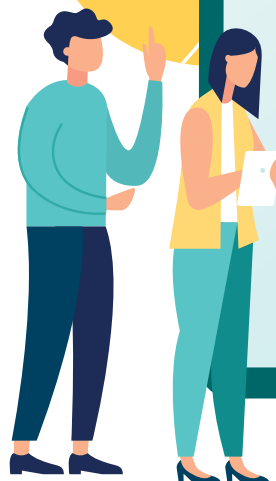
client care and
attention to the
matter



quality
of work
product



understanding
the nature of the
complaint



“We express our gratitude to the Business Ombudsman Council's team for help with our issues”

Olena Storchak

Director of UKRAFLORA LLC

“Appealing to the Business Ombudsman Council is an effective tool for building a constructive dialogue with authorities, protection of legal rights and interests of legal sector representatives of the country's economy.”

Artem Filipyev

General Counsel PJSC
ArcelorMittal Kryviy Rih

“We express our respect and gratitude for invaluable assistance provided by employees of your institution in the fight for justice.”

Stepan Grod

General Director
Matimex-Ukraine LLC

“Thank you for your help in protecting our company's rights. Your objectivity, impartiality, and professionalism were key factors in ensuring a positive outcome of our case.”

Vitaliy Nakonechnyi

Chairman of the Supervisory
Board of Noris PJSC

“We highly appreciate your facilitation in continuing and developing Groupe Atlantic's operations in Ukraine. Recognizing our rights and refunding VAT will directly influence keeping our workplaces safe in the country”.

David Loffredo

Financial Director International Division,
Groupe Atlantic



2. Summary of key matters and follow-up of recommendations

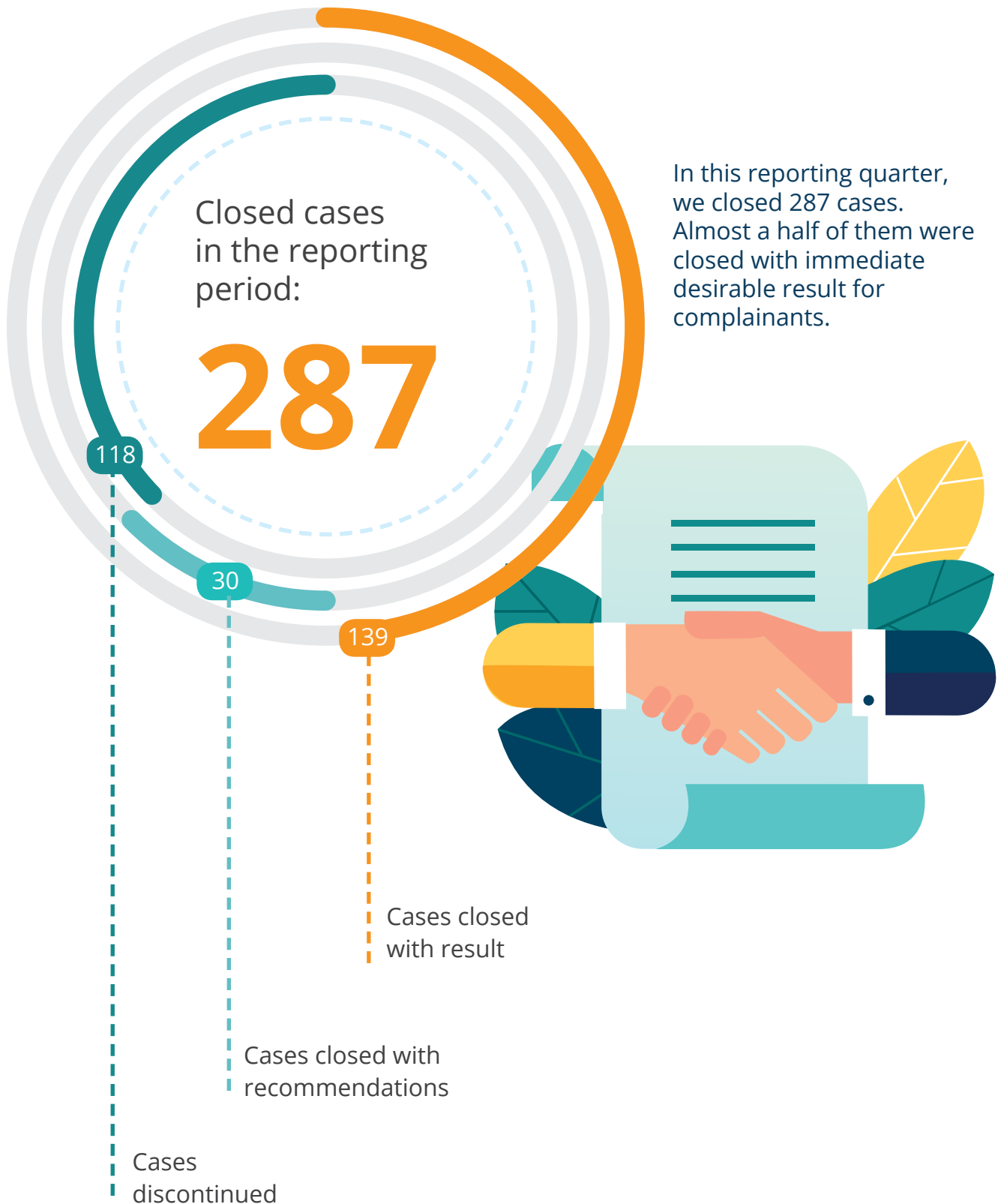
2.1. Information on closed cases and recommendations provided

Total number of closed cases since launch of operations:

4090



Closed cases



TOP-10

Subjects of Closed Cases in Quarter III 2019:

Subject	Q3 2019	Change as compared to Q2 2019	Change as compared to Q3 2018
Tax issues	197	2%	8%
Actions of law enforcement bodies	31	15%	-35%
Prosecutor's Office Actions	14	75%	-36%
Actions of the National Police	15	0%	-25%
State Security Service Actions	2	-50%	-67%
Actions of State Regulators	21	50%	-16%
Customs issues	13	-28%	63%
Ministry of Justice actions	7	40%	-30%
Actions of local government authorities	7	-56%	-30%
Actions of state companies	5	67%	25%
Permits and licenses	1	-50%	0%

Over two thirds of all closed cases were tax related. Cases concerning actions of law enforcers amounted to 11% of closed investigations. Malpractice of state regulators ranked third with 7% share. Customs problems, faced by entrepreneurs, hit the fourth position in the TOP of closed cases with 5%.

Financial Impact in Quarter III 2019:

UAH 564^{mln}

Tax inspections

381.214.084

Tax VAT refund

65.250.000

Tax other

62.077.646

Tax VAT invoice suspension

24.942.994

Tax criminal cases

15.020.963

Tax VAT electronic administration

6.508.468

Local government authorities/
municipalities other —
compensation

5.919.511

Overpaid customs duties refund

1.674.164

State Treasury Service —
budget compensations

772.049

Prosecutors' Office — funds refund

626.795

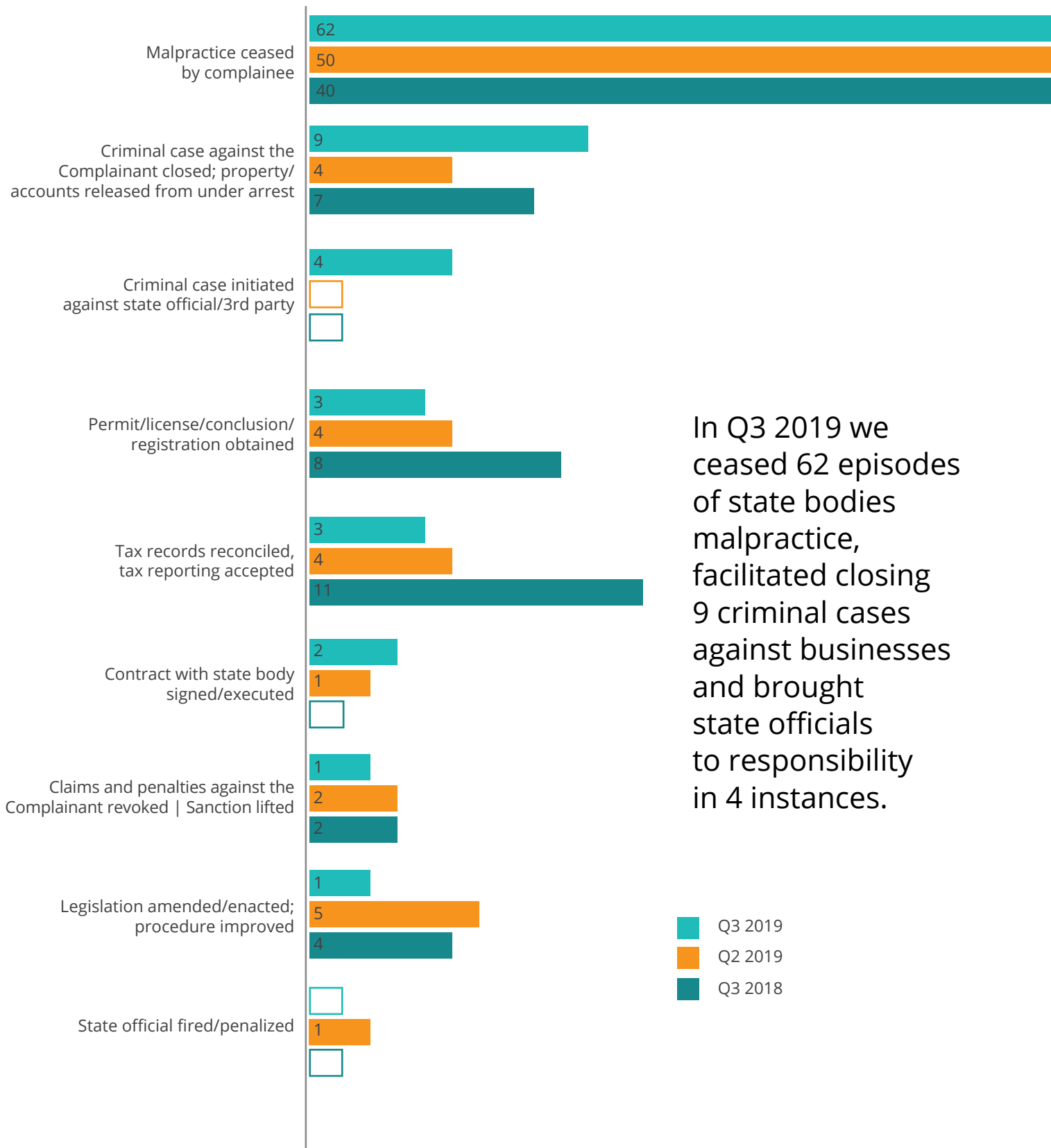
Other state regulators

409.599

Two thirds of the financial impact in Q3 2019, which is UAH 381 mn, came from the cancellation of ungrounded tax audit results. Other UAH 65 mn were refunded to companies as pending VAT and UAH 62 mn — from other tax related cases solved.



Non-Financial Impact of BOC's Operations in Quarter III 2019:





Recommendations provided

Total number of
recommendations
issued since launch
of operations:

2797

Recommendations
issued in Quarter 3,
2019:

169

Recommendations
implemented

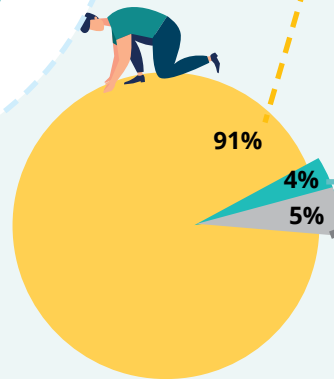
2535

Recommendations
subject to
monitoring

117

Recommendations
not implemented:

145



Government Agencies Whom the BOC Issued Recommendations in 2015-2019 (case-by-case basis) and Ratio of Implementation

Complainee	Issued recommendations	Implemented recommendations	Cumulative implementation rate since May 2015 to a respective period		
			Q3 2019	Q3 2018	Q3 2019
State Fiscal Service	1892	1766	93%	93%	93%
National Police of Ukraine	140	114	81%	77%	80%
Prosecutor's Office of Ukraine	131	104	79%	73%	78%
Local government authorities	115	85	74%	75%	71%
Ministry of Justice	97	90	93%	90%	92%
Ministry of Regional Development	55	54	98%	95%	98%
State Security Service	53	52	98%	93%	98%
Ministry of Economic Development and Trade of Ukraine	43	38	88%	81%	88%
Ministry of Ecology and Natural Resources of Ukraine	38	36	95%	90%	94%
Parliament, the Cabinet of Ministers, the President of Ukraine	30	27	90%	76%	90%
State Enterprises	29	25	86%	75%	85%
Ministry of Social Policy and Labour of Ukraine	25	23	92%	89%	91%
Ministry of Finance of Ukraine	20	18	90%	93%	89%
Ministry of Infrastructure of Ukraine	17	12	71%	78%	73%

Complainee	Issued recommendations	Implemented recommendations	Cumulative implementation rate since May 2015 to a respective period		
			Q3 2019	Q3 2018	Q3 2019
Ministry of Internal Affairs	16	13	81%	83%	81%
Ministry of Health of Ukraine	12	11	92%	100%	100%
Ministry of Agrarian Policy and Food of Ukraine	11	7	64%	78%	78%
National Commission for State Regulation of Energy and Public Utilities	11	10	91%	88%	91%
Other	11	10	91%	90%	90%
Antimonopoly Committee of Ukraine	10	7	70%	75%	70%
Ministry of Energy and Coal Industry of Ukraine	9	9	100%	88%	100%
Commercial and other courts	7	7	100%	100%	100%
State Service of Ukraine on Food Safety and Consumer Protection	7	5	71%	75%	71%
National Bank of Ukraine	5	2	40%	40%	40%
State Funds	5	2	40%	25%	50%
NABU	4	4	100%	100%	100%
Communal Services of Ukraine	1	1	100%	0%	50%
Ministry of Education and Science of Ukraine	1	1	100%	100%	100%
National Council of Ukraine on Television and Radio Broadcasting	1	1	100%	100%	100%
State Emergency Service of Ukraine	1	1	100%	100%	100%
Grand Total	2797	2535	91%	89%	90%

In the reporting quarter state bodies implemented 169 more individual recommendations, issued by the Council. In such a way, since launch of operations, 91% of our individual recommendations to state bodies have already been implemented.

In comparison with Q2 2019 the prevailing majority of state bodies to whom we addressed 30+ recommendations, improved their performance. The State Fiscal Service remained stable at a high level of 93%.

With respect to law enforcement bodies, we recorded a 4pp improvement for the National Police (up to 81%) and a 6 pp improvement for the Prosecutor's Office (up to 79%), which is unfortunately far below average. By contrast, the Security Service was among the best performers with 98% (+5pp as compared to Q2 2019).

The Ministry of Regional Development (98%), the Ministry of Ecology and Natural Resources of Ukraine (95%), and the Ministry of Justice (93%) performed very well in terms of implementing individual recommendations.

The Ministry of Economic Development and Trade (88%) and the Parliament, the Cabinet of Ministers, the President (90%) laudably improved their position by 7% and 14% respectively, although their performance is still a bit below the average of 91%.

Local government authorities performed 1pp decrease from the previous quarter and closed the quartet with only 74% of implementation rate, which is the poorest performance among state bodies, whom we addressed 30+ recommendations.

2.2. Systemic issues identified and solved

Tax issues

Tax issues not only remained the major concern among complaints submitted by businesses to the Council, but also have gained 2pp since the previous quarter. In Q3 2019, we received more appeals concerning all key tax subjects: tax inspections, VAT invoice suspension, VAT electronic administration and tax criminal cases.

Most often (38% of tax appeals) companies have sought assistance in challenging results of tax audits. Entrepreneurs also complained more about suspension of VAT invoices. Electronic administration of VAT was the third most common tax problem for businesses. Complaints concerning initiated tax criminal cases, albeit at a slower pace, also increased in comparison with the previous period.

Actions of law enforcement agencies

A positive trend is noted for the second quarter in a row — companies have been lodging less appeals concerning actions of law enforcement bodies. In particular, we recorded fewer cases of procedural abuse and omission of law enforcers, as well as unreasonable criminal cases against businesses.

We received fewer complaints regarding the National Police (-22% as compared to Q2 2019 and — 9% as compared to Q3 2018) and the Prosecutor's Office (-14% as compared to Q2 2019 and -32% as compared to Q3 2018). The number of appeals related to the State Security Service remained at a low level of only 3 complaints during July-September 2019.

Actions of state regulators

Companies also complained less about actions of state regulators compared to the previous period. We have received fewer appeals concerning DABI, but more with regard to the AMCU. The number of appeals related to the State GeoCadastré and the NEURC remained stable.

Customs issues

We noticed an increase in the number of complaints on customs issues (+ 42% as compared to Q2 2019 and + 170% as compared to Q3 2018). This was mainly driven by an increased number of appeals regarding delays in customs clearance of goods. At the same time, the number of complaints about adjusting the customs value and refunding overpaid duties decreased.

Actions of the Ministry of Justice

Entrepreneurs were more likely to seek assistance with regard to the Ministry of Justice. Complaints concerning actions of state registrars, which implied raidership, as a rule, were on a rise. That is why we dedicated a separate section of the report to an in-depth analysis of complaints on this issue.

Focus on raidership

Since launch of operations in May 2015 we have received 108 complaints from businesses addressing malpractice of state registrars. Over three fourths of all closed cases were closed with immediate desirable result for the complainant, which is 9 pp higher than our average success rate of 67%.

The share of large companies in focus of state registrars' malpractice is 8pp higher than the total share of large enterprises, who submitted complaints to the Business Ombudsman Council. Four out of five appeals on malpractice of state registrars came from Ukrainian companies. Industries most sensitive to raider attacks were real estate and construction, agriculture and mining and manufacturing.

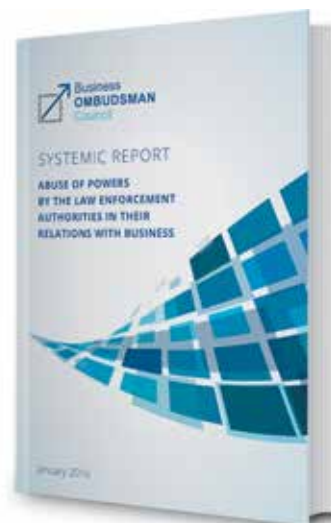
Recognition of taxpayers as high-risk

In the third quarter of 2019, we received 43 complaints from businesses about the inclusion of taxpayers in high-risk lists. In addition, we have received another 45 complaints about the unblocking of specific tax invoices (either through an administrative appeal or by a court order). Much of these tax invoices were also blocked because the payer was on the high-risk list. Therefore, these complaints are, to a certain extent, also derived from the high-risk problem.

At first glance, this is a new trend. But taking a look at a retrospective of complaints, it becomes clear that we are dealing with an old problem. Previously, it appeared in the form of termination of agreements on recognition of electronic documents, VAT payers registration cancellation, applying the so-called "status 9".

Systemic recommendations implemented

ABUSE OF POWERS BY THE LAW ENFORCEMENT AUTHORITIES IN THEIR RELATIONS WITH BUSINESS



Issue

A fair share of complaints received by the Council purport challenging groundless launching of criminal proceedings under Article 212 of the Criminal Code of Ukraine (tax evasion).

According to the statistics disclosed by the Prosecutor General's Office of Ukraine, in 2018, pre-trial investigation authorities have commenced (registered) 1099 criminal proceedings under Article 212 of the Criminal Code of Ukraine. Nonetheless, only 39 ended up with the actual “act of conviction” and were filed with the court (almost a similar figure of 34 indictments was for 2017).

Another factor explaining why the practice of commencing criminal proceeding for tax evasion became more widespread is that since 2011 (when

the Tax Code entered into force) the threshold has, de facto, decreased in comparison with its original equivalent in USD (i.e., from approximately USD 59,000 in 2011 to some USD 39,000 at the beginning of September 2019). Hence, almost every tax audit with a significant amount of taxes (in 2018 it was the amount of UAH 881 000 and in 2019 already UAH 960 500) resulted in opening a criminal case for tax evasion against the officials of businesses.

Thus, the analysis results of the complaints received by the Council gave the reason to assert the importance of amending legislation to decrease the number of groundless opening of criminal proceedings under Article 212 of the Criminal Code of Ukraine.

BOC's recommendation

To increase the threshold amount of actual amounts due to be paid to the budget (arising from the unpaid taxes, levies and unified social tax), triggering treatment of such action on the part of taxpayer as a criminal offence.

¹ https://www.gp.gov.ua/ua/stst2011.html?dir_id=113897&libid=100820&c=edit&_c=fo#

Actions taken by government agencies

On September 25, 2019 the Law № 101-IX "On Introducing Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine Aimed at Reducing Pressure on Business" entered into legal force.

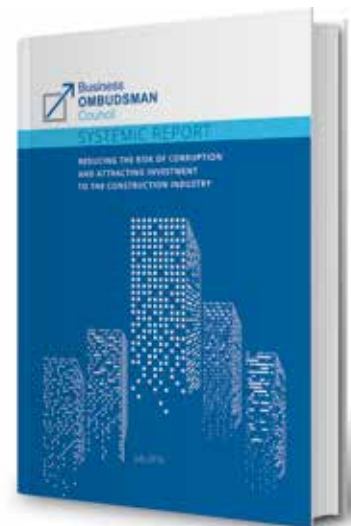
The said Law increased thresholds for bringing persons to liability under Article 212 of the Criminal Code of Ukraine, — namely increased the size of a significant, large and especially large amount of actual non-receipt of funds in the budget from 3000 (UAH 2 881 500), 5000 (from 4 802 500 UAH) and 7000 (from UAH 6 345 500) non-taxable minimum incomes. Therefore, from now on for the opening of criminal

proceedings under part 1 of Art. 212 of the Criminal Code of Ukraine the threshold amount has increased from UAH 960 500 to UAH 2 881 500.

Thus, by adopting the Law № 101-IX, the Council's systemic recommendation — i.e., to increase the threshold amount of actual sums due to be paid to the budget (arising from the unpaid taxes, levies), triggering treatment of such action on the part of taxpayer as a criminal offence — was finally implemented. Such changes should reduce the pressure on business and thus can be considered quite positive.

Systemic recommendations implemented

REDUCING THE RISK OF CORRUPTION AND ATTRACTING INVESTMENT TO THE CONSTRUCTION INDUSTRY



Issue

An equity contribution is a quasi-tax on construction, which is formally paid by the developer, but actually assigned to the buyer of real estate. Such a contribution not only increases the cost of investment in Ukraine, but also, due to the large discretion of local authorities, is often extremely corrupt.

BOC's recommendation

To cancel the obligatory equity contribution for developers.

Actions taken by government agencies

Implementation of this recommendation is envisaged in the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Encouraging Investment Activity in Ukraine", which was signed by the President on October 11, 2019.

The bill proposes to abolish the obligatory payment of 4% contribution to the development of the locality's infrastructure from the cost of housing construction and 10% — from the cost of non-residential construction.

2.3. Summary of important investigations

In this chapter you may read illustrations of recommendations the BOC issued to various government agencies and the results of their implementation.

TAX ISSUES

Subject: Tax inspections

**Over UAH 140 mn
of additional payment
dropped for boilers
manufacturer**

Subject of complaint:

The Main Department of the State Fiscal Service in Odesa Oblast (SFS)

Complaint in brief:

A French subsidiary company, a leading boilers and heaters manufacturer in Ukraine, turned to the Council. The company disagreed with the SFS tax audit conclusions, according to which it had to pay extra UAH 140 mn.

The tax authority questioned the Complainant's transactions with a number of counterparties. Therefore, the SFS concluded the company had no right to a VAT refund.

Apart from it, the tax authority noted the company offered much lower prices for products in their authorized stores than average ones on the Internet, so it decided to penalize the company for that.

Another "million-dollar" alleged violation related to costs for foreign employees in Ukraine. The SFS insisted on the need to pay a single social contribution (SSC) from the amount spent on expats house rent, as well as the refund of transport costs to employees who used their own cars.

Disagreeing with the tax authority findings, the company turned to the Council for help.

Actions taken:

The investigator examined case materials and supported the company's position. The Council addressed the SFS in writing and asked to comprehensively and impartially consider the Complainant's objections. The Council, in particular, insisted it was necessary to apply the principle of personal responsibility of each party for economic transactions when assessing reality of such relationships between the Complainant and its counterparties.

The Council also stressed that when calculating the company's market value of goods, it was necessary to use the Complainant's official databases, rather than information from the Internet.

With regard to expenditures for expats, the Council proved the company acted correctly and in accordance with the Labor Code. According to current legislation, such expenses are required and they are exempted from SSC.

The Council's investigator also participated in the company's case review at the SFS. The next day the Complainant submitted additional explanations and documented evidence to the tax authority.

Result achieved:

Taking into account supporting documents, the SFS arranged an unscheduled inspection of the company. Following audit conclusions, the tax authority dropped previously charged additional payments worth over UAH 140 mn. The case was closed successfully.

Subject: Tax inspections

SFS drops additional payment worth UAH 630k for pharmacy network

Subject of complaint:

The Main Department of the State Fiscal Service of Ukraine in Kharkiv Oblast (SFS)

Complaint in brief:

The Council received a complaint from a regional Kharkiv-based pharmacy network about charging of taxes based on a scheduled inspection results.

Having analyzed the company's activities for 2015-2018, the SFS questioned the reality of the Complainant's transactions with a number of private entrepreneurs. The tax authority particularly pointed out insufficient detailing of transactions in primary documents on delivery of advertising, marketing and printing services, as well as cash registers maintenance services. The above conclusions became the ground for additional charging of income tax and VAT. The claims set forth by fiscals are quite common for this category of disputes.

Disagreeing with the tax authority conclusions, the company appealed the decision of the SFS and turned to the Council for support.

Actions taken:

The investigator examined case materials and supported the company's position. The Council addressed the SFS in writing and asked to comprehensively and impartially consider the Complainant's objections. The Council, in particular, insisted it was necessary to apply the principle of personal responsibility of each party for economic transactions when assessing reality of such relationships between the Complainant and its counterparties.

The Council also stressed that when calculating the company's market value of goods, it was necessary to use the Complainant's official databases, rather than information from the Internet.

Result achieved:

Having accepted the Council's arguments, the SFS canceled 70% of additional payments worth UAH 630k. When canceling disputed tax notifications-decisions, the supervisory authority, inter alia, substantiated its position with the relevant Supreme Court practice. The case was closed successfully.

Subject: Tax inspections**Unexpected know-how of Ukrainian tax authorities: transfer wages-pricing****Subject of complaint:**

The Main Department of the State Fiscal Service in Kyiv (MD SFS)

Complaint in brief:

The Council received a complaint from a financial company that disagreed with fines of the MD SFS amounting to UAH 800k.

The co-owner and executive director of this company, dealing with car purchase financing, is a foreigner. He is officially employed in Ukraine, receives high official salary and pays heavy taxes to the budget from it. For two years of working in Ukraine, his salary reached 6 mn including taxes.

Clearly, the tax authority got interested in such big payments. It initiated an audit and concluded that, under the Tax Code's (TC) rules, payment of salary to a non-resident employee could be considered a "controlled operation" for transfer pricing purposes (TP) because the law did not directly state the opposite.

Transfer pricing is the sale of goods or services to interdependent enterprises at intracompany prices, which differ from market ones. This is a fairly common international tax planning scheme, often aimed at minimizing taxes to be paid. It allows a total profit redistribution in favor of businesses located in countries having lower taxes.

The signs of transfer pricing noticed by the SFS in payment of wages to the foreign director were:

- transaction with a non-resident counterparty
- the transaction volume exceeded UAH 5 mn

The SFS insisted that the director's relations with the company were not labor, but civil-law, since he spent little time in the workplace during working hours. The tax authority found a confirmation thereof in the foreigner's passport — he rarely came to Ukraine. Therefore, as the SFS further stated, it was not a salary payment, but a transfer pricing scheme (TP) and, when applying it, a special report had to be submitted to the tax authority. It was clear that the company that in no way used this scheme neither prepared nor submitted such a report.

Hence, the company was additionally charged UAH 800k for not submitting a report. A shocked complainant appealed to the Council.

Actions taken:

The Council's investigator impartially examined materials of the case and respective legislation norms. He pointed out that tax authority changing director's labor relations to civil-law ones was limited only to the fact of his being mostly absent in Ukraine. However, the legislation does not prohibit to work remotely and, indeed, thanks to modern technologies and means of communication one can perform all labor functions and responsibilities remotely at many positions.

Referring to the relevant legislation, the investigator also tried to convince the tax authority officers that wages payment cannot be treated as transfer pricing and the company's employee — as its counterparty. According to the OECD Guidelines, on which regulation norms are actually based, this scheme applies to relations between businesses, but not individuals.

The Council also emphasized that it was no use for the company to overestimate the payroll to minimize income tax, since wage taxes are very high: personal income tax (18%), military levy (1.5%), a unified social tax (22% of the maximum base), while corporate income tax in Ukraine makes up only 18%.

Moreover, the form and procedure for completing a report on controlled transactions are not adapted to be included in the payroll transactions report, since actually no column can be applied to such transactions (in particular, country of origin of the subject of transaction, delivery terms under Incoterms, trademark, manufacturer, transfer of ownership date, etc. — all this does not apply to salaries).

However, tax authority officers continued pressing their point by referring to the fact there was no rule in the Tax Code of Ukraine that would directly exclude salaries from transfer pricing.

The Council participated in the company's complaint consideration at the SFS. Taking into account a potentially systemic nature of the problem, the Council's investigator also met with SFS auditors for TP and the Ministry of Finance representatives.

Result achieved:

The Council upheld the Complainant's position and pointed out the reasons for the tax authority to cancel the decision. However, the decision was left unchanged by the SFS of Ukraine and the Complainant had to further challenge it in court. Having exhausted all available means of influence on government agencies, the Council had to discontinue the investigation.

A positive outcome of this case is just thanks to this case a previously unknown "payroll" TP issue gained publicity, become known to TP expert community. This case was highlighted in many publications and even in a letter to the Ministry of Finance dated February 01, 2019, No. 11420-08-63/2874. As a result, a business employing highly-paid non-resident employees will be able to predict risks associated with the "payroll" TP in the future, and avoid large fines by timely submitting required reports.

Subject: Tax inspections

SFS drops additional payment worth almost UAH 7 mn for sweets manufacturer

Subject of complaint:
Large Taxpayers' Office (LTO)

Complaint in brief:

The world's leading producer of sweets approached the Council. The company disagreed with the tax audit results, according to which it had to additionally pay almost UAH 7 mn.

LTO doubted the fact sweets manufacturer was actually ordering marketing services for promoting its products. In particular, in the tax authority's view, promos were held by unidentified persons free of charge. Accordingly the Complainant's transactions with the marketing agency were treated as fictitious.

According to the company, the ground for the audit was open criminal proceedings against the marketing agency counterparty. Disagreeing with the tax authority position, the company appealed the decision in the State Fiscal Service and turned to the Council for help.

Actions taken:

After reviewing the circumstances of the case, the investigator addressed the SFS in writing. The investigator found out the Complainant's legal position was in line with the Supreme Court and the SFS positions based on similar cases consideration results. The Council gave a legal assessment of the Complainant's facts and evidence and added its own arguments in support of the Complainant's position. In particular, the Council payed attention to necessity of compliance with the taxpayer personal responsibility principle and absence of court judgments that came into force with respect to partners of the Complainant's counterparty.

Result achieved:

The SFS accepted the Council's arguments and satisfied the company's complaint. The fines and additional charges were dropped and the case was closed successfully.

Subject: Tax inspections**SFS drops additional payment worth UAH 24 mn for coal trader****Subject of complaint:**

The Main Department of the State Fiscal Service in Donetsk Oblast (SFS)

Complaint in brief:

A coal trader turned to the Council with a complaint against the SFS. The company disagreed with the tax audit conclusions according to which it had to additionally pay almost UAH 24 mn.

The tax authority audited the company's activities and additionally charged it VAT and income tax. In particular, the SFS suspected the Complainant of overstating the value of sold products, as well as of absence of proof of delivery of goods. Disagreeing with the tax findings, the trader applied to the SFS and asked the Council for help.

Actions taken:

Having examined the documents of the case, the Council upheld the Complainant's position. The BOC investigator participated in the administrative appeal of the tax decision and provided the Council's opinion. The Complainant prepared additional documents in support of its statements. In addition, the Council asked the SFS in writing to comprehensively and impartially consider the company's appeal.

Result achieved:

The SFS accepted the Council's arguments and cancelled four tax decisions totally amounting to nearly UAH 24 mn. The case was successfully closed.

Subject: Tax inspections**SFS drops additional payments worth over UAH 3 mn for company from Cherkasy Oblast****Subject of complaint:**

The Main Department of the State Fiscal Service in Cherkasy Oblast (SFS)

Complaint in brief:

An oil trader from Cherkasy Oblast approached the Council. The Complainant disagreed with the tax audit conclusions, according to which he had to additionally pay UAH 3 mn of taxes.

The SFS insisted the Complainant declared fictitious economic transactions with the counterparty and understated his VAT liabilities. The tax authority based its conclusions on the fact the counterparty did not have enough workers and transport to carry out the respective business transactions. The SFS added that the Complainant's counterparty was involved in a criminal case, and probably, broke the law.

Disagreeing with the tax authority decision, the company appealed it in the SFS and turned to the Business Ombudsman Council for help.

Actions taken:

After examining case files, the Council upheld the company's position. The investigator addressed the SFS in writing and noted the tax authority, when examining the disputed business transactions, did not pay attention to the actual movement of assets between parties to the agreement.

The investigator noted that a criminal case against counterparty's officials was not an adequate proof of transactions fictitiousness and did not entail legal consequences for the taxpayer.

The case-law also testified in favor of the company. The Supreme Court has ruled earlier in a similar case that absence of the counterparty's material and labor resources does not exclude the possibility of real provision of its services and does not indicate getting an unreasonable tax benefit by the buyer. For example, engaging employees is possible under civil, outsourcing and outstaffing agreements. Main vehicles may be owned by the supplier under a lease or rent.

Finally, the investigator stressed that the law-abiding taxpayer in its legal relationship with the state should not depend on another taxpayer violating the law.

Result achieved:

Following the case consideration outcomes by the fiscal service, the SFS satisfied the company's complaint and dropped additional VAT accruals worth over UAH 3 mn. The case was closed successfully.

Subject: Tax inspections**SFS unreasonably refuses to acknowledge company's damages****Subject of complaint:**

The Main Department of the State Fiscal Service in Odesa Oblast (Odesa SFS)

Complaint in brief:

A Transservice 2008 port elevator company serving the port terminal approached the Council. The Complainant disagreed with the SFS tax audit conclusions.

According to the findings of the report, the company lowered the tax liability on income tax. The Complainant stated instead it incurred losses amounting to UAH 2.6 mn, as a result of interest accrual under a credit contract with a non-resident company. The credit contract was registered with the NBU, in accordance with the established procedure. Odesa SFS did not challenge the grounds for and correctness of interest calculation. The Complainant violated interest accrual terms. Subsequently, it accrued the corresponding amounts and submitted updated income tax returns. However, the SFS did not accept tax returns. As it turned out later, the reason for their rejection were errors in filling out bank details.

The Tax Code stipulates taxpayers shall report if their tax return is not accepted. Moreover, a supervisory authority shall specify the reasons for rejection. However, Odesa SFS did not indicate any specific errors in completing the declaration.

Actions taken:

The Council's investigator examined the circumstances of the case and found that in this case the supervisory authority did not follow good administration principle that resulted in an ungrounded decision. The Council upheld the Complainant's position, added its own arguments and asked the SFS to objectively and impartially consider the company's complaint.

The investigator also supported the company during the consideration of the case at the SFS and articulated the Council's arguments in favor of the Complainant. The investigator emphasized the tax authority violated the reporting acceptance procedure and made an unmotivated decision.

Result achieved:

However, the SFS neither accepted the Council's arguments nor dropped the additional payment for the company. Taking into account the above said, in the Council's view, the SFS position is unsubstantiated. However, the decision of the SFS of Ukraine is final and can be appealed only in court. As the case follow-up is outside the competence of the Council, the case was closed. This case is a vivid example of how negative consequences of errors made by government agencies are left to private entities.

Subject: VAT electronic administration**SFS innovation: VAT limit arrest for cooperation with suspicious counterparty****Subject of complaint:**

The State Fiscal Service of Ukraine (SFS)

Complaint in brief:

The company from Kharkiv turned to the Council with a complaint about non-enforcement of the court decision by the Tax Service. As a result of the SFS omission, the Complainant was unable to fulfill its commitments to counterparties and register tax invoices.

After one of the Complainant's counterparties became involved in the criminal proceedings, and the SFS initiated an arrest of UAH 1.6 mn. from its SEA VAT (VAT electronic administration system) limit. The company challenged this decision in the appellate court. The Court of Appeal overturned the petition for arrest because SEA VAT amount limit couldn't be considered material evidence.

However, even after the decision came into force, the SFS was slow on unblocking the limit. The tax authority insisted the court order should appear in the Unified State Register of Court Judgments (USRCJ) first, as such decisions were often forged. The tax authority ignored the fact that the decision had already entered into force and the legislation did not provide for appearance of a court decision in the register for its enforcement.

By coincidence or not, the court decision would not appear in the register for a long time. The company tried to speed up publication of the ruling, however, faced the unusual situation where the investigator in criminal proceedings (which, by the way, had to do not with the enterprise itself but its counterparty ruled to prohibit publication of the court decision online in order "not to disclose the pre-trial investigation secret". After having been trapped in a vicious circle, the Complainant appealed to the Business Ombudsman Council.

Actions taken:

The investigator examined the circumstances of the case and asked the SFS in writing to comply with the appeal decision. He stressed the legislation does not provide for publication of a judgment in the Unified State Register of Court Judgments as a condition for its enforcement. The Council helped arrange a conference call during which the Complainant and the SFS discussed the unusual situation with the SFS of Ukraine.

Result achieved:

The parties agreed the Complainant would send the SFS a reply from the USRCJ on the court ruling publication prohibition. Two days later the SFS unblocked the Complainant's VAT limit. The case was closed successfully.

Subject: VAT invoice suspension

**The case gets resolved
in 9 days after eighteen
months of delays**

Subject of complaint:
The State Fiscal Service of
Ukraine (SFS)

Complaint in brief:

A fuel products wholesale trader turned to the Council with a complaint about the State Fiscal Service. The tax authority did not enforce the court decision on tax invoices registration.

A disputed invoice transaction occurred in the spring of 2018, when the Complainant received a prepayment for petroleum products supply from its counterparty. Accordingly, the trader submitted tax invoices worth UAH 1.32 mn for registration. However, the SFS blocked them and the company had to go to court.

In September 2018, the District Administrative Court of Kyiv ordered the tax authority to register disputed tax invoices. The court decision came into force despite the fiscal authority attempts to challenge it in appeal and cassation courts. However, the tax authority was in no hurry again. This time the Complainant asked the Council for assistance.

Actions taken:

Having examined the circumstances of the case, the Council's investigator addressed SFS in writing. He insisted on a prompt enforcement of the court decision that had already become effective.

Result achieved:

The SFS accepted the Council's arguments and promptly registered disputed eighteen months old tax invoices. The Complainant's counterparty received a tax credit worth UAH 1.32 mn. The case was successfully closed in just 9 days upon the Complainant's appeal to the Council.

Subject: Tax other**The complainant gets paid almost UAH 800k of penalties for late VAT refund****Subject of complaint:**

The State Treasury Service of Ukraine in Kyiv (Kyiv State Treasury)

Complaint in brief:

A Kyiv-based meat products producer approached the Council. Despite the court decision, the Complainant was not paid a penalty interest for late VAT refund.

In April 2019, the District Administrative Court of Kyiv ordered to pay the Complainant almost UAH 800k from the state budget. The decision of the court came into force. However, as of mid-July, it remained unenforced. The funds were not returned to the Complainant.

Actions taken:

The procedure for collecting funds from debtor's accounts is regulated by the Resolution of the Cabinet of Ministers and is as follows. According to the procedure, the SFS approves a payment amount with the collector within five working days and notifies the local State Treasury thereof. After that Kyiv State Treasury should have passed the necessary documents to the State Treasury Service of Ukraine but the Complainant reported missing the specified deadline.

Therefore, after examining the documents of the case, the Council's investigator sent a letter with relevant arguments to Kyiv State Treasury and the Main Department of the SFS in Kyiv. The Council asked in writing to cease malpractice and enforce the court decision.

Result achieved:

Shortly after the Council's involvement, the Complainant received almost UAH 800k on its expense account. The case was closed successfully.

CUSTOMS ISSUES

Subject: Overpaid customs duties refund

Odesa customs refunds UAH 1.3 mn. of overpayments to tire importer

Subject of complaint:
Odesa Customs of the SFS
(Odesa Customs)

Complaint in brief:

Odesa-based tire importer approached the Council. The company could not get a refund of overpaid customs duties.

In 2017-2018, Odesa Customs adjusted the customs value of the Complainant's imported goods for a total amount of over UAH 2 mn. The company disagreed with the price for the products determined by the customs authority but paid the duty to import the products into the territory of Ukraine as required by the government agency. Later the company appealed the decision of Odesa Customs in court. Odesa District Administrative Court declared the customs value adjustment made by the customs authority illegal and obliged customs officers to refund overpayments in full.

Almost two years have passed since the decision came into force, while the government agency returned only one third of the amount. The company turned to the Business Ombudsman Council with this issue.

Actions taken:

The Council's investigator twice addressed Odesa Customs in writing with a request to execute a court order and refund the rest of the amount to the company. For the first time the government agency allegedly lacked a written application for the overpayment refund from the company.

Result achieved:

Odesa Customs finally accepted the Council's arguments and agreed to refund UAH 1.3 million to tire importer. The case was closed successfully.

Subject: Customs clearance delay/refusal**The Council helps speed up customs clearance of imported flowers****Subject of complaint:**

Volyn Customs of the State Fiscal Service (Volyn Customs)

Complaint in brief:

The Council received a complaint from a large Ukrainian importer of flowers. The company complained about a delay in customs clearance of goods by Volyn Customs.

According to the Complainant, customs clearance of goods became longer recently — customs officers especially carefully and several times examined the boxes and pallets on which the flowers were transported. Considering that flowers are a very perishable commodity, long interruptions for the company created serious problems. One of the examples provided by the Complainant was a day's delay of a batch of tulips from the Netherlands at the request of Volyn Customs. According to the company, similar situations happened several times a week. Moreover, after long examinations, customs officers released cars without finding any violations.

In order to avoid further losses from delays, the company sought assistance from the Business Ombudsman Council.

Actions taken:

The Council's investigator examined the circumstances of the case. She promptly addressed the Head of Volyn Customs of the State Fiscal Service and asked in writing to prevent possible violations of the complainant's legitimate interests as a result of lengthy examinations. The investigator stressed duration of customs clearance of goods should not exceed 4 hours. She further emphasized the Complainant's losses caused by the delay in customs clearance were disproportionate to the potential danger of the imported goods.

Result achieved:

Volyn Customs heeded the Council's request — numerous long-lasting examinations stopped. According to the company, all further deliveries of goods were successfully cleared. The Complainant thanked the Council for assistance. The case was closed successfully.

NATIONAL POLICE

Subject: National Police inactivity

Law enforcer gets penalized for ineffective case investigation

Subject of complaint:

The Main Department of the National Police in Zaporizhzhia Oblast (Zaporizhzhia National Police)

Complaint in brief:

The Council received a complaint about an ineffective pre-trial criminal investigation from a garage co-operative owner in Zaporizhzhia.

According to the Complainant, the garage cooperative, the market value of which amounts to UAH 8 mn, has been a sweet spot for many people since early 90's. In general, the owner appealed to law enforcers three dozen times — one attempted to take over the cooperative.

And so, in early 2018, there was an episode mentioned in the criminal case. On a cold Sunday morning, the owner of the cooperative was called and informed that the complex had been taken over by raiders. Having arrived at the scene, he saw that the central entrance to the area had been welded, the side gates broken, and a box office booth was put up near them for those wishing to enter the cooperative. According to the Complainant, a few armed men in black uniform were on guard near the blocked administrative building. As the owner approached them, he was greeted with a stream of obscenities and threats of murder. The brawl began. One of the attackers took out a gun.

At this moment, a police patrol arrived. Weapons were hidden, but curses and threats did not stop. When one started looking for the watchman, it turned out the raiders threatening with a weapon had locked him in the pantry the night before. He was kept there until morning, while all the assembly and dismantling works were carried out on the territory of the cooperative.

The Complainant insisted the documents presented by new owners to police officers were forged. Based on the Complainant's application, the National Police initiated an investigation into an unauthorized seizure of property. Meanwhile, the garage cooperative operated for the benefit of new owners.

However, the investigation appeared to be ineffective. The company complained there was no progress in the case at all. Numerous requests were formally replied to. When almost a year passed, the company turned to the Business Ombudsman Council for help.

Actions taken:

Since the early days of the complaint receipt, the investigator established regular communication with the Investigative Department of Zaporozhzhia Oblast police.

To ensure the outcome, the Council addressed Zaporizhzhia National Police and the Prosecutor's Office in Zaporizhzhia Oblast in writing regarding law enforcers misconduct.

Result achieved:

The Regional Prosecutor's Office responded to the Council's request unprecedentedly quickly and within a few days reported that a decision had been made to punish the head of the local Prosecutor's Office by stripping him of his personal bonus.

The Council had been considering the complaint for nearly four months. During this time, the complaint was the subject of consideration of the Central Investigative Department of the National Police of Ukraine. The National Police top management of one of Zaporizhzhia city districts received an official warning of ineffective pre-trial investigation of criminal proceedings and the investigator received corresponding instructions. Although no final procedural decision has been made yet, the Council stays in touch with the Complainant and hopes that, after joint efforts made, this story will logically end in favor of the bona fide property owners.

STATE SECURITY SERVICE

Subject: State Security Service procedural abuse

Law enforcers pressure on company from Dnipropetrovsk Oblast stopped

Subject of complaint:
Nikopol Department of the State Security Service of Ukraine Office in Dnipropetrovsk Oblast (SBU)

Complaint in brief:

An electronic equipment distributor turned to the Council. The company complained about law enforcers pressure on its economic activities.

According to the Complainant, SBU officers, having travelled a 236 km distance, came to the company CEO's home on a day-off to allegedly check the company's location. Moreover, law enforcers urged the CEO to certify in writing that one of his counterparties was a fictitious company. According to the Complainant, after the CEO refused, the pressure intensified. The company's CEO was summoned for an interview. However, no official suspicion from law enforcers was put forward to him.

Having no idea what was going on and what actually caused such an interest on the part of law enforcers, the Complainant appealed to the Council, the Prosecutor General's Office of Ukraine and the State Bureau of Investigations (DBR).

Actions taken:

The Council considered the company's complaint and recommended the PGO and the DBR to check SBU officers' actions. However, DBR did not see sufficient grounds in their actions to launch criminal proceedings. The PGO forwarded the Council's appeal to the Military Prosecutor's Office of Southern Region of Ukraine, and the latter — to its garrison in Dnepropetrovsk. The complainant's appeal finally came to SBU.

Result achieved:

SBU accepted the Council's arguments and took the Complainant's information into account in its internal operative activities. Law enforcers pressure on the company's business stopped. The company thanked the Council for assistance in resolving the case.

STATE REGULATORS

Subject: State regulators DABI

DABI approves putting supermarket into operation with the Council's facilitation

Subject of complaint:

Department of the State Architectural and Construction Inspectorate in Kyiv Oblast (DABI)

Complaint in brief:

The Business Ombudsman Council received a complaint from a developer, a contractor and a customer of a supermarket construction in Kyiv Oblast. DABI did not allow developers to commission a ready-made object and declared all already approved documents invalid.

The Architectural Service got interested in the facility after an NGO complained about developers. In the activists' view, the developer violated the urban planning legislation during construction, in particular, might not have had due permits (as it turned out later, it was not true).

Therefore, during the year DABI tried several times to conduct an unscheduled inspection of the facility, issued a series of orders to companies, fined them and eventually canceled registration of the notice of construction commencement. The Complainant insisted DABI's orders and decisions were illegal and civil servants' actions were unlawful.

The Council's investigators started working on such a controversial case.

Actions taken:

Having examined the circumstances of the case and parties' positions, the Council upheld the company. In particular, investigators found out activists' appeal had no nitty-gritty, except for suspicion the developer might not have permits (which could be easily denied without any inspections by using the online register). The law provides for such situations and prohibits initiation of unscheduled inspections based on anonymous or other clearly unreasonable inquiries. However, supervisory authorities are usually afraid of being accused of lack of attention to activists' complaints and proceed from the logic: "it's better to double check" without taking into account how much inconveniences an inspection will cause to a business.

The Council's investigators also found out DABI's officers committed a number of procedural violations trying to conduct an unscheduled inspection. For example, the subject of inspection should have been compliance with construction law in general, not only permits availability issue activists drew attention to. The company thus had reasonable grounds to really fear activists' appeal could be a formal pretext to apply sanctions and block construction.

A Deputy Business Ombudsman and the Council's investigator met with the DABI top management and comprehensively discussed complaints from the developer, the contractor and the construction customer.

Result achieved:

SBU accepted the Council's arguments and took the Complainant's information into account in its internal operative activities. Law enforcers pressure on the company's business stopped. The company thanked the Council for assistance in resolving the case.

Subject: State GeoCadastr**The StateGeoCadastr
approves documents for
children's camp****Subject of complaint:**

The State Service of
Ukraine for Geodesy,
Cartography and Cadastre
(StateGeoCadastr)

Complaint in brief:

A children's camp addressed the Council. The top management of the institution complained that StateGeoCadastr delayed carrying out state examination of the land management project for allotment of the land plot located near the camp.

There is a pond next to the camp used by the company in its economic activity for sports activities and children entertainment. The water body is bounded by an earthen dam, on which lies the road regularly used by the company. Due to being washed with water and no operational care, the dam is in a critical condition, is destroying daily and dangerous to use. The company tried to solve the issue with government agencies concerning dam repair without leasing the land plot, but it didn't work out because of the reluctance of officials to take responsibility. This negligence towards dam maintenance may at any time lead to its breach and harm the company, as the camp is located on the pond bank and flooding can stop its normal operation for a long time.

Trying to take the dam repair under control, in 2017 the company initiated the procedure for land allocation in local community ownership, to be able to lease it on a competitive basis then. A part of this process was land management project state examination. Several land allocation stages were behind, however, the State GeoCadastr several times rejected land use examination of the land management project for formal reasons. The documents were several times returned for revision.

Actions taken:

After examining the complainant's complaint, the Council's investigator addressed the StateGeoCadastr in writing asking to impartially consider the Complainant's appeal. The government agency replied again it was necessary to revise the documents and take into account all the remarks made in the conclusion.

Realizing that such correspondence can last very long, the investigator asked the government agency for a meeting to promptly discuss all the remarks and further develop a follow-up action plan for the company. After that, she called and discussed the complainant's issues with the StateGeoCadastr representative.

Result achieved:

The StateGeoCadastr accepted the Council's arguments and approved the Complainant's land management project. The subject of the complaint was successfully resolved.

Subject: State GeoCadastre**Great victory for an ordinary man****Subject of complaint:**

The Main Department of the StateGeoCadastre in Kyiv (StateGeoCadastre)

Complaint in brief:

A private entrepreneur approached the Council with a complaint against the State GeoCadastre. The public regulator did not register the Complainant's land plot.

While planning to open a family store, the entrepreneur prepared a package of necessary documents and submitted them to the StateGeoCadastre. Despite the fact that different permitting authorities approved this building design, the StateGeoCadastre refused to register it because of allegedly unjustified change in its functional use and a broken chronology of the land management project.

The entrepreneur challenged the public regulator actions in court, and also turned to the Business Ombudsman Council for support.

Actions taken:

The investigator examined the circumstances of the case and upheld the Complainant's position in writing by turning to the StateGeoCadastre. Meanwhile, the court acknowledged the private entrepreneur's documentation complied with legislation requirements and the government agency unreasonably refused the Complainant. However, the state body continued rejecting registration of the land plot based on other different reasons. In order to finally settle a long-lasting conflict between the parties, the Council helped arrange a personal meeting of the Complainant with the State GeoCadastre top management with the participation of the investigator.

Result achieved:

With the Council's facilitation the StateGeoCadastre finally registered the land plot. There was no need for further court disputes, thus lifting a tax burden from the Complainant. The case was closed successfully.

MINISTRY OF JUSTICE

Subject: MinJust Registration Service

Unsuccessful raidership attempt by minority shareholders

Subject of complaint:

The Ministry of Justice of Ukraine (MinJust)

Complaint in brief:

A developer company addressed the Council. According to the Complainant, minority shareholders of the company attempted to illegally take over it.

The ownership structure of the Limited Liability Company (LLC), which the raiders had encroached on before the attack looked like this. Majority owners spouse had a share of 92% and two more minorities — 8%. The company CEO was a husband of the owners couple.

The state registrar of the utility company from Kyiv Oblast changed the CEO to another person and certified a new charter of the company. The company's share capital was increased in such a way that the share of minority shareholders increased from 8% to 84%. The state registrar, however, wasn't much concerned about the fact several new criminal cases had been launched against newly appeared owners.

Moreover, the Complainant reported that simultaneously with the registrar's actions about a hundred of athletic people surrounded the residential complex perimeter where the developer's office was located. They took control of complex checkpoints and locked entrances to construction objects.

Actions taken:

The Council's investigator was already examining the case file the following day. In the Council's view, changing the company's CEO, its share capital and constitutive documents could be illegal. The Council stated it in a letter to the Deputy Minister of Justice of Ukraine for State Registration. A Memorandum of Partnership and Cooperation was signed between the Council and the Ministry of Justice.

Result achieved:

The Complainant's issue was bought up at the Expert Group meeting with participation of both parties. The MinJust considered the complaint considering all the circumstances and ordered to cancel illegal registration actions — changing the CEO, share capital and constitutive documents. The "black" registrar was denied access to the State Register of Property Rights to Immovable Property.

We would like to remind that raidership is one of the systemic problems of business the Council is working on. Our recommendations to the Government on this issue can be found [in the report](#) and their implementation status — [on our website](#).

Subject: Registration Service**Raider attack against company from Ternopil successfully fought back**

Subject of complaint:
Registration Service of the
Ministry of Justice of Ukraine

Complaint in brief:

A company from Ternopil filed a complaint with the Council against a raider attack. The Complainant is a small company providing car repair and maintenance services and owns, in particular, two facilities with an area of 3000 m² in Ternopil. At the end of 2018, the Complainant's real estate objects were re-registered to another owner.

On December 11, a private notary of Dnipropetrovsk Oblast re-registered the Complainant's property to another owner. The reason for it was allegedly the decision of one of the district courts of Donetsk, dated back to 2011. Four hours later, a Kyiv notary re-registered the property in favour of a new company. The next day she executed a sale and purchase agreement under which another owner bought two thirds of the property. The head of the company was also illegally changed. The attackers did not stop at that. They issued a series of mortgage obligations for the said real estate objects.

The Complainant promptly reported the National Police on the crime and filed a complaint with the Complaints Commission in the Sphere of State Registration of the Ministry of Justice (Anti-Raider Commission). The Complainant also appealed to the Business Ombudsman Council to protect its legitimate rights and recover the property.

Actions taken:

The Council's investigator examined case materials. She found out Donetsk court decision, as a reason for the first re-registration, was not selected by accident. Since the court is located in an uncontrolled territory of Ukraine, it is actually impossible to check the reality of its decisions.

The Council's investigator participated twice in the Anti-Raider Commission meeting and upheld the company's position. Certain efforts were made to obtain a confirmation from the corresponding court in Donetsk (working in a controlled territory of Ukraine) regarding the fact of absence of the decision based on which property owners had been changed.

Result achieved:

With the Council's facilitation, the Anti-Raider Commission cancelled unlawful registration actions against the company and completely renewed its rights. The Complainant thanked the Council for assistance in resolving the issue. To chase raiders, the company submitted a separate complaint to the National Police.

Subject: Enforcement Service

Working meetings with government agencies is effective tool for solving cases

Subject of complaint:

The State Enforcement Service Department of the Ministry of Justice of Ukraine (MinJust Enforcement Service)

Complaint in brief:

A construction company from Zaporizhzhia turned to the Council. The company complained about MinJust Enforcement Service that refused to initiate proceedings for formal reasons.

In late 2018, Zaporizhzhia Administrative Court ordered the State Tax Service to register the Complainant's tax invoices worth UAH 4.5 mn. The Complainant sent the corresponding writ of execution to the MinJust, however in a month upon the document receipt, the Enforcement Service refused the company because of failure to provide documents confirming powers of the signatory. Therefore, the Complainant prepared an additional set of documents and sent them to the MinJust. After a repeated application, another month passed, but no response was ever received by the company.

Feeling that the MinJust deliberately delayed the enforcement of a court decision and sent only formal replies, the company turned to the Business Ombudsman Council for support.

Actions taken:

Considering a possible violation of the Complainant's rights and legitimate interests, the Council's investigator asked the MinJust in writing to check the circumstances of the case and cease the Enforcement Service malpractice. Instead, the company received a new refusal by the MinJust — a full name and patronymic of the official who issued it was not indicated in the writ. The Council had to apply to the MinJust again. The investigator stressed that it was unlawful to refuse to initiate proceedings on the court decision enforcement with such argumentation.

In an effort to establish a constructive dialogue with the government agency, the Council used another tool envisaged by the Memorandum of Cooperation with the Ministry of Justice. Thus, an Expert Group meeting with the participation of the Deputy Ombudsman, Council's investigators and the MinJust experts with the Head of the Enforcement Service Department in particular, was held.

Result achieved:

During the meeting, the government agency accepted the Council's arguments. The Enforcement Service canceled the most recent refusal on the same day and initiated enforcement proceedings at the company's request. It would enable the Complainant to refund UAH 4.5 mn of VAT. The case was closed successfully.

3. Cooperation with stakeholders

Members of the Business Ombudsman Council's Supervisory Board welcomed Mr Świąćicki in his new position and reiterated their willingness to develop cooperation with the institution:



Mathilde Mesnard

the OECD Deputy Director for Financial and Enterprise Affairs:

“The OECD is proud to be one of the founders of the Business Ombudsman Council of Ukraine. This institution became an important player in promoting responsible conduct and integrity among Ukrainian companies. Its professionalism and independence are key for ensuring trust in the business community and influence with the government. We welcome Mr Marcin Świąćicki as the new Business Ombudsman of Ukraine and wish him success. The OECD will stand by the Business Ombudsman Council in its future activities”.



Matteo Patrone

the EBRD Managing Director Eastern Europe and the Caucasus:

Five years ago, the government of Ukraine, the EBRD, the OECD and several Ukrainian business associations agreed to set up a post of Business Ombudsman. This was a major step forward towards the improvement of Ukraine's investment climate. Over this period, the Business Ombudsman has become firmly established as a powerful advocate for domestic and foreign investors in this country. I would like to express my gratitude for the outstanding contribution made by the first Business Ombudsman, Algirdas Šemeta, and his team.

I also wish every success to Marcin Świąćicki, who is taking over the position of Business Ombudsman. I would also like to thank all the contributors to the Multi-Donor Account for Ukraine which was established at the EBRD and through which we support this important undertaking”.



Dmytro Romanovich

Deputy Minister for Development of Economy, Trade and Agriculture of Ukraine:

“The Business Ombudsman Council has proven itself to be an effective mediator in the relationship between business and government. We congratulate the new head of this institution, a Polish politician and economist Marcin Svencicki, on his appointment. Together we will continue working to improve business environment in the country”.





Andy Hunder

the President of the American Chamber of Commerce in Ukraine:

On behalf of the American Chamber of Commerce in Ukraine, I would like to congratulate Marcin Świąćicki on his appointment as Business Ombudsman. For 5 years, the Business Ombudsman Council has been a reliable counterpart of AmCham Ukraine on issues related to protecting business interests and making business climate better.

We are grateful to Algirdas Semeta for mutually beneficial cooperation that resulted in many successful cases like 'MaskShowStop' law and anti-raiding issues. We wish Marcin Świąćicki a successful term in his new role and look forward to working together for the benefit of Ukraine's business community at large.



Gennadiy Chyzhykov

the President of the Ukrainian Chamber of Commerce and Industry:

The work of the Business Ombudsman's office has been increasingly effective. Its success is determined by all the accomplished KPIs, which are backed by concrete results of protected business rights. The CCI of Ukraine, as a member of the Supervisory Board, congratulates on the appointment of a new business ombudsman, a well-known statesman and expert Marcin Swiecicki. We believe that his knowledge and experience will continue these difficult but necessary activities for the country!"



Anna Derevyanko

the Executive Director of the European Business Association:

On behalf of the European Business Association, we congratulate the new Business Ombudsman on his appointment. We hope that together with such institutions we will be able to improve the business climate in the country and, accordingly, to develop the economy. So we wish you luck, excitement and inspiration in this not easy but interesting post".



Anatoliy Kinakh

the President of the Ukrainian League of Industrialists and Entrepreneurs:

The Ukrainian League of Industrialists and Entrepreneurs sees in the beginning of activity of newly elected Business Ombudsman in Ukraine Marcin Swiecicki the possibility of further strengthening the influence of the Business Ombudsman Council as an institution improving the business climate in the country, establishing international standards of healthy economic competition and business integrity".



3.1. Cooperation with state bodies

One of the Business Ombudsman Council's key goals is providing effective systemic communication of business with the authorities, government and local self-government agencies, as well as state-owned enterprises or subordinate to government agencies.

The BOC
has signed

9 Memoranda of
Cooperation with



the State Fiscal Service



the Security Service of Ukraine



the Ministry of Ecology
and Natural Resources



the State Regulatory Service



the Ministry of Justice



the National Anti-corruption Bureau



Kyiv City State Administration



the National Police and the National
Agency on Corruption Prevention

Expert group meetings

Expert groups are a platform for open and transparent consideration of specific complaints, as well as improvement of the legislation that regulates entrepreneurial activity, and removal of obstacles to conducting business in Ukraine.

	Number of expert group meetings	Number of cases addressed
State Fiscal Service	9	104
Ministry of Ecology and Natural Resources	3	3
Prosecutor's Office*	1	7
National Police	2	29

* This expert group works on an informal basis

3.2. Cooperation with business associations

Jointly with the **American Chamber of Commerce in Ukraine** we held a series of interactive seminars covering important issues, faced by companies doing business in Ukraine:



July 3, 2019

"How to Act During Tax Inspections and Challenge Their Results with the Business Ombudsman's Help?"

During the seminar we discussed:

- Cases when business can be inspected
- Important things to know about inspections, incl. schedule plans and changes to them
- Issues that often pop up, corruption cases in the course of inspection
- How to challenge inspection results?
- How can the Business Ombudsman Council assist in appealing the inspection results?



July 10, 2019

"Compliance Insights for Business: How to Manage Reputation Risks"

During the seminar we discussed:

- Implanting compliance through BOC ad-hoc investigations and systemic recommendations
- Why does your reputation matter? Does your counterparty's reputation mitigate risks?
- Lessons learned from BOC cases
- Red flags that could indicate non-compliance
- How to effectively manage compliance risks?
- How to keep your compliance level or united we stand, divided we fall



Over
100 participants

joined both events, which proves that such knowledge seminars were helpful for our guests and our experience based some advice gave them real value added.



September 12, 2019

Press Breakfast with a Delegation of Journalists

Upon the invitation of the **American Chamber of Commerce in Ukraine** we participated in the Press breakfast with a delegation of journalists from major international media. During this meeting we conveyed our message regarding challenges and opportunities of doing business in Ukraine to influencers from various foreign publishing houses. We talked over key Ukrainian macroeconomic indicators and shared investment success stories, voicing key tasks in order to foster Ukraine's economic growth from the Business Ombudsman Council perspective.



3.3. Public outreach and communications

The Business Ombudsman Council uses public communication to report trends of appeals, submitted by companies, voice systemic business issues and suggest ways to solve them.

It is worth mentioning that we cooperate with media only on the free of charge basis, providing from our side expert opinions, legal analysis and recent statistics concerning malpractice of state bodies.

The media

Given the mission to protect legal rights of entrepreneurs and improve the business climate in Ukraine, we enjoy the willingness of journalists to communicate our work results. The level of legal expertise and the skill to convey the message through is also highly appraised by media channels — our experts are frequent authors at major online platforms, speakers at forums and seminars, guests in TV and radio studios.

This quarter our interviews were published in the leading Ukrainian and international media:



ЛІГА.net



TAXLINK
ALL ABOUT TAXES



vox
ukraine

УНН

Specialized legal media

ЮРИДИЧЕСКАЯ ПРАКТИКА
ФАКТА РЕПУБЛИКИ УКРАИНА

ЮРИСТ
ЖУРНАЛ СУЧАСНОГО ПРАВИКА

ЗаконоБізнес

The FCPA Blog

Since launch of operations in May 2015, the Business Ombudsman and his Office were cited in the media

2400+
times

with
99%
mentions being positive and constructive

We also made a number of TV

8 КАНАЛ

hromadske.tv
громадське телебачення

UBR

UA TV

and **radio** appearances



ГОЛОС
СТОЛИЦІ
слухай, щоб жити

The Business Ombudsman Council communicates with the media to exchange information and does not, in any shape or form, provide financial compensation to editors or journalists for mentioning its activity or its speakers.

Events

05/07

Conference on corruption and anti-corruption policies organized by Kyiv School of Economics and European Bank for Reconstruction and Development



10/07

Seminar on Anti-Corruption and Business Integrity organized by OECD and Lebanese Economic and Social Council, Beirut (Lebanon)



18/07

Meeting of the National Anticorruption Policy Council organized by National Anticorruption Policy Council

30/08

Tax Fest organized by Ukrainian Bar Association



05/09

Round table "Protection of Foreign Investments in Ukraine. Challenges and Solutions" organized by the Ministry of Justice of Ukraine and Association of Corporate Security Professionals in Ukraine

12-13/09

Practical tools to strengthen the principles of integrity in private and public enterprises organized by NNEGC Energoatom and the Ukrainian Network of Integrity and Compliance



13/09

Open lecture "Corporate Conflicts and Counteracting Raiding" organized by Legal High School



18/09

IV International Compliance Forum organized by Yuridicheskaya Praktika



20/09

VIII Tax Forum. TaxCruise organized by the Ukrainian Bar Association



Social media



What do we do in social media:

- Showcase successful stories. Take lessons from unsuccessful ones.
- Communicate systemic business issues. Suggest possible solutions.
- Post important news. Share thoughts and views.
- Produce our own content. Capture videos.
- Visualize things, prefer infographics.
- Share our articles, columns and other useful content.
- Announce our events. Livestream them.
- Communicate with followers. Swiftly respond to their questions.

Podil Plaza Business Centre,
30A Spaska St.,
04070 Kyiv, Ukraine
(entrance from 19 Skovorody Str.)

Phone: +380 (44) 237-74-01
Fax: +380 (44) 237-74-25
E-mail: info@boi.org.ua

www.boi.org.ua
www.facebook.com/BusinessOmbudsmanUkraine