



01 October — 31 December 2020

QUARTERLY REPORT

REPORT FOCUS:
TAX INSPECTIONS



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The BOC and the Council are used interchangeably throughout the text to refer to the Business Ombudsman Council.

FOREWORD

OF THE BUSINESS OMBUDSMAN



Business Ombudsman
Marcin Świąćicki

Marcin Świąćicki

DEAR FRIENDS, COLLEAGUES AND PARTNERS,

In Q4 2020, we received 451 business appeals concerning malpractice of state bodies. This is 9% more than in Q4 2019, and 3% more than in Q3 2020. We also closed more cases — 293: +18% as compared to Q4 2019 and +7% as compared to Q3 2020. Thus, we managed to help entrepreneurs recover and save UAH 267 mn. The vast majority of complainants (98%), who provided their feedback, were satisfied with the BOC facilitation.

The most significant issue of entrepreneurs remained the same — these were tax issues. In the reporting quarter, they comprised almost two thirds (64%) of all appeals. Among them, the most common subject of business complaints was tax invoice suspension (177 appeals) consisting of three types of problems: classical tax invoice suspension (100), inclusion of entrepreneurs in list of “risky” taxpayers (29 complaints) and non-enforcement of court decisions on tax invoice registration (48). While the number of complaints on first two issues went down compared to the previous quarter, the number of complaints on non-enforcement of court decisions that have already entered into

force, increased by over one third. We devoted a special systemic report, the publication of which is scheduled for February 2021, to the study of various aspects of this problem and ways of solving it.

After a significant drop in Q2 and Q3 2020 due to the introduction of the moratorium on most tax inspections, the number of complaints on this subject went up again. Since early August 2020, the Cabinet of Ministers has slightly expanded the list of permitted types of inspections: apart from documentary audits regarding budget VAT refund, inspections on excisable goods were added. This influenced the number of business complaints — already in Q4 2020 we received one quarter more appeals than in Q3 2020. For more information on dynamics of complaints about tax inspections, specifics of lockdown-related appeals and our forecasts for the future, read in the special section of this report.

Actions of law enforcement bodies were one of the reasons for appeals increase in the reporting period. In particular, entrepreneurs complained more about procedural abuse of the National Police and the

State Security Service. Bearing small absolute figures in mind, we must state that the number of business complaints against the SSS in Q4 2020 was the largest in last 10 quarters. At the same time, the number of complaints against actions of the Prosecutor's Office went down.

Another source of growth were actions of state regulators — the number of business complaints has risen by half as compared to Q3 2020.

In the reporting period, we did not receive any complaints from businesses specifically related to quarantine issues. Obviously, entrepreneurs didn't like all the restrictions, nevertheless, we have not received any complaints that actions of state bodies in connection with these restrictions were illegal.

In addition to reviewing individual complaints of entrepreneurs, we are actively working on implementation of the BOC systemic recommendations aimed at solving the most critical business issues and improving quality of domestic business environment in key areas. For this purpose, we regularly interact with state bodies' representatives, to which we addressed systemic recommendations, to discuss and implement the BOC systemic recommendations. In Q4 2020, we met in working groups and conducted working meetings with representatives of the Committees of the Verkhovna Rada of Ukraine, the State Tax Service, the Prosecutor General's Office, the Ministry of Finance, the Ministry for Development of Economy, Trade and Agriculture, the Ministry of Justice, the Ministry

of Communities and Territories Development, the State Regulatory Service.

We would like to highlight the following systemic wins of the quarter:

- The Cabinet of Ministers, the Ministry of Digital Transformation and the Export Promotion Office finally launched a Single Export Web Portal to support national exporters;
- The Ministry of Finance resumed regular work of the Expert Council on preparation of generalized tax consultations;
- The Ministry of Finance and the State Tax Service have organizationally and technically ensured renewal of VAT electronic administration system indicators for those taxpayers whose registration has been cancelled and further renewed;
- The State Tax Service and the Ministry of Finance provided an opportunity to write off accrued arrears from a single contribution to for "dormant" individual entrepreneurs, who ceased their activities.

The draft law "On the Business Ombudsman Institution" was registered in the VRU in June 2020. In October 2020 the VRU Committee on Ukraine's Integration into the European Union supported the draft law on the Business Ombudsman Institution. Earlier, the bill was approved by two more committees of the Verkhovna Rada: the Committee on Economic Development and the Committee

on Anti-Corruption Policy. In the reporting quarter, we held a series of meetings with key stakeholders on the draft law in the Parliament. During the discussion of the document provisions, it was suggested to re-register the enhanced version of the bill for consideration in the first reading at the plenary session of the Verkhovna Rada. Jointly with the MPs and other stakeholders, we are working on an updated version that should take into account the comments and suggestions of the parties concerned. Several diplomatic missions in Ukraine have also emphasized that the adoption of the BOI law will facilitate the improvement of business climate in Ukraine and attract foreign investment.

Jointly with the Ukrainian National Bar Association (UNBA), which unites 58 000 advocates, we held a number of practical webinars accredited by the Expert Council on Accreditation and Certification of the UNBA. Due to motivating lawyers with credit points we managed to raise interest in the events where our investigators were key speakers and involve a large number of participants. At one of the recent webinars 800 attendees from different regions of Ukraine joined us.

Since March 2020, the BOC has voluntarily switched to a remote work regime. Since the majority of investigators prefer to work remotely, we decided to keep this regime even when the quarantine ends. This allowed us to reduce the office rental area by 45% and, accordingly, significantly cut down operating costs.

Q4 2020 AT A GLANCE

451

COMPLAINTS
RECEIVED

+3%

as compared
to Q3 2020

+9%

as compared
to Q4 2019

293

CASES CLOSED

+7%

as compared
to Q3 2020

+18%

as compared
to Q4 2019

DIRECT FINANCIAL IMPACT:

UAH 267 MN

98%

OF COMPLAINANTS WHO
PROVIDED FEEDBACK WERE
SATISFIED WITH WORKING
WITH THE BOC

TOP-5 BLOCKS
OF COMPLAINTS

64% Tax issues

12% Actions of law
enforcement bodies

7% Actions of state
regulators

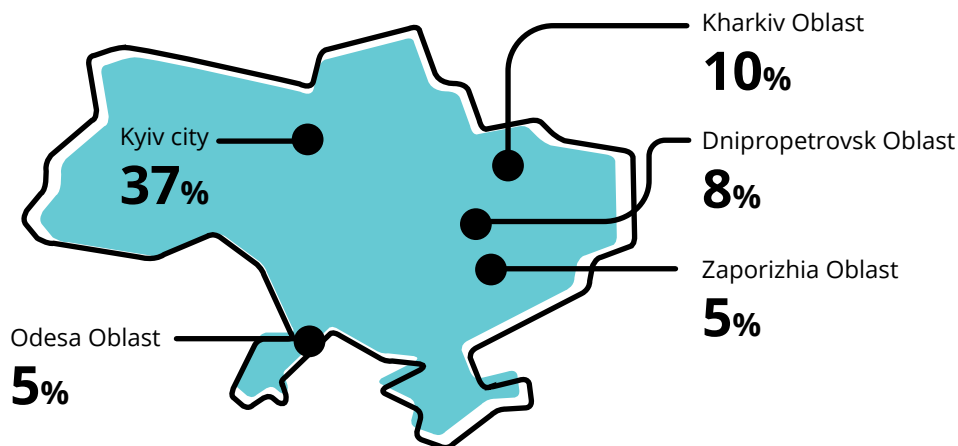
4% Customs
issues

3% Actions of local government
authorities

89%

OF CASE-BY-CASE
RECOMMENDATIONS WERE
IMPLEMENTED BY STATE
BODIES

TOP-5 MOST ACTIVE REGIONS



TOP-5 INDUSTRIES



25%

Wholesale and
Distribution



16%

Agriculture
and Mining



12%

Individual
Entrepreneurs



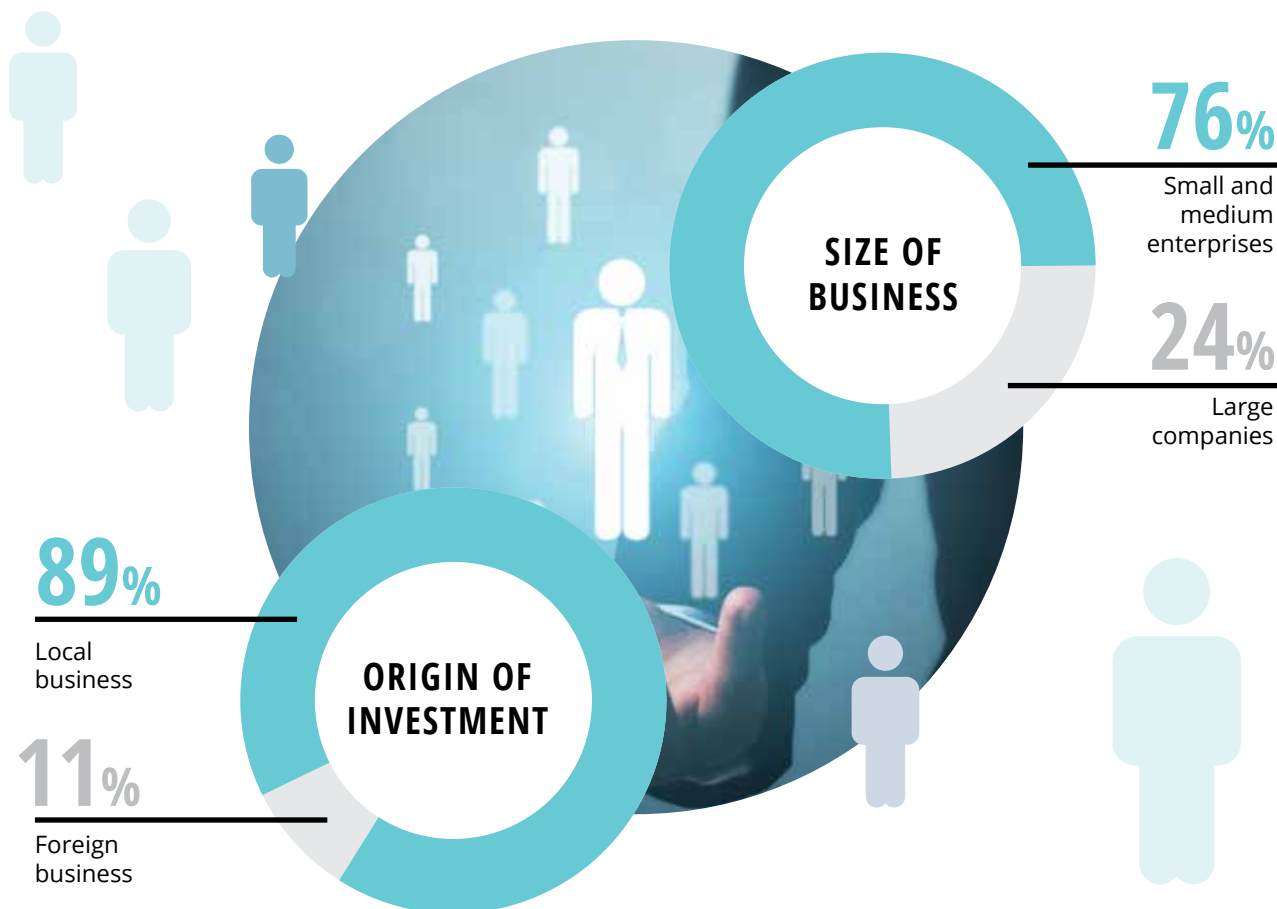
10%

Manufacturing



8%

Real Estate and
Construction



2020 AT A GLANCE

1737
COMPLAINTS
RECEIVED

+91
appeals YOY

1159
CASES
CLOSED

+20
appeals YOY

DIRECT FINANCIAL IMPACT:

UAH 843 MN

98%

OF APPLICANTS WHO
GAVE THEIR FEEDBACKS
WERE SATISFIED WITH
COOPERATION WITH THE BOC

89%

OF INDIVIDUAL
RECOMMENDATIONS THE BOC
ISSUED TO STATE BODIES ARE
ALREADY IMPLEMENTED

TOP-5 BLOCKS OF COMPLAINTS

61% Tax issues

15% Actions of law
enforcement bodies

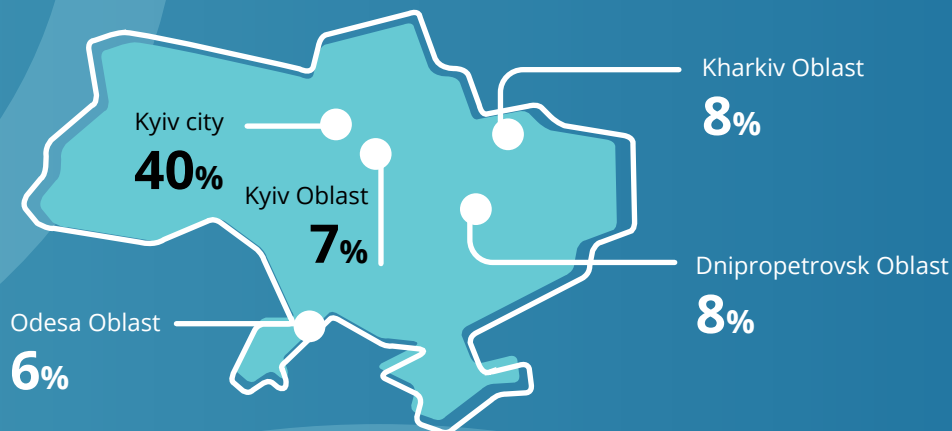
5% Actions of state
regulators

4% Customs
issues

4% Actions of local government
authorities

TOP-5

MOST ACTIVE
REGIONS



TOP-5 INDUSTRIES



26%

Wholesale and
Distribution



12%

Agriculture
and Mining



10%

Individual
Entrepreneurs



12%

Manufacturing



11%

Real Estate and
Construction



SIZE OF BUSINESS

74%

Small and
medium
enterprises

26%

Large
companies

ORIGIN OF INVESTMENT

87%

Local
business

13%

Foreign
business



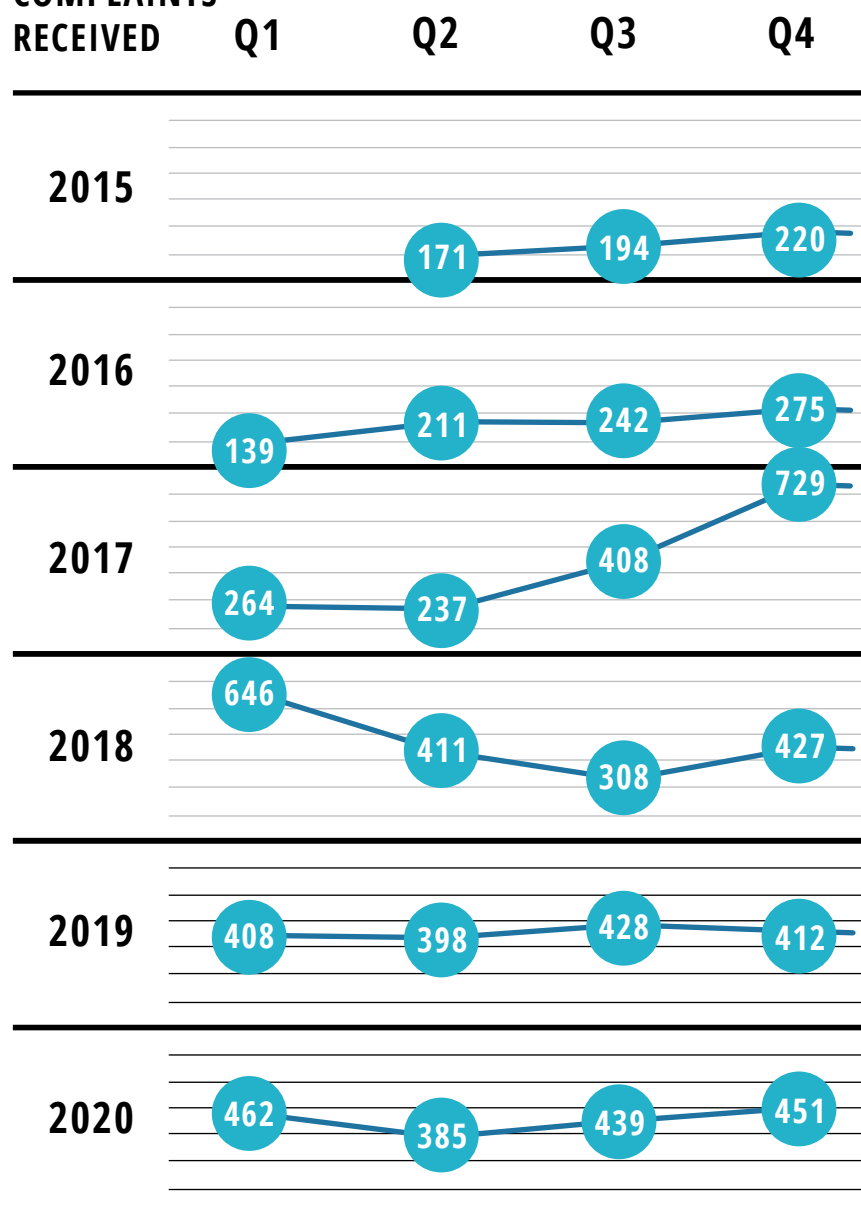
1.COMPLAINT TRENDS

1.1. VOLUME AND NATURE OF COMPLAINTS RECEIVED

(Clause 5.3.1 (a) of Rules of Procedure)

In October-December 2020, we continued to observe an increase in the number of complaints concerning malpractice of state bodies from companies conducting business in Ukraine.

VOLUME OF COMPLAINTS RECEIVED



We received

451

appeals,

which is

3%

more than in
Q3 2020 (QOQ)

9%

more than in
Q4 2019 (YOY)

**THE TOTAL
NUMBER OF
COMPLAINTS
ADDRESSED TO US
BY BUSINESSES
SINCE MAY 2015:**

8265

TOP-10

SUBJECTS OF COMPLAINTS IN Q4 2020

SUBJECT	Q4 2020	Q3 2020	Q4 2019
TAX ISSUES	289	297	254
Complaints related to SMKOR* operation:	177	201	102
Classic VAT invoice suspension	100	102	20
Non-enforcement of court decisions on VAT invoice registration	48	35	32
Inclusion of taxpayers in "risky" lists	29	64	50
Tax inspections	44	35	88
VAT risky taxpayer	29	64	50
Tax criminal cases	15	16	9
VAT electronic administration	10	12	17
Tax termination/renewal/refusal of VAT payers registration	5	1	1
VAT refund	4	4	3
Termination of agreement on recognition of electronic reporting and Tax status 09	0	0	2
Tax other	34	28	32
NATIONAL POLICE ACTIONS	35	24	29
National Police procedural abuse	20	12	14
National Police inactivity	12	10	14
National Police criminal case initiated	1	1	0
National Police corruption allegations	0	1	0
National Police other	2	0	1
ACTIONS OF STATE REGULATORS	31	21	36
StateGeoCadastre	3	0	2
State Architecture and Construction Inspection (DABI)	2	1	3
Antimonopoly Committee of Ukraine (AMCU)	2	4	3
National Energy and Utilities Regulatory Commission (NEURC)	0	1	1
National regulatory agencies NBU other	0	1	0
Other state regulators	24	14	27

* SMKOR — system for monitoring risk assessment criteria

SUBJECT	Q4 2020	Q3 2020	Q4 2019
CUSTOMS ISSUES	18	23	10
Customs valuation	11	7	4
Customs clearance delay/refusal	2	14	1
Customs criminal proceedings	1	0	0
Customs administrative proceedings	1	0	0
Overpaid customs duties refund	0	0	1
Customs other	3	2	4
ACTIONS OF LOCAL GOVERNMENT AUTHORITIES	13	14	9
Local government authorities land plots	3	6	3
Local government authorities rules and permits	3	2	
Local government authorities other	7	6	6
PROSECUTOR'S OFFICE ACTIONS	12	19	18
Prosecutor's Office inactivity	6	2	3
Prosecutor's Office procedural abuse	5	16	11
Prosecutor's Office corruption allegations	1	0	0
Prosecutor's Office criminal case initiated	0	0	1
Prosecutor's Office other	0	1	3
MINISTRY OF JUSTICE ACTIONS	12	16	12
Department of State Registration	6	11	5
Enforcement Service	6	5	7
STATE SECURITY SERVICE ACTIONS	9	4	5
State Security Service procedural abuse	6	0	0
State Security Service criminal case initiated	1	2	2
State Security Service inactivity	0	1	0
State Security Service other	0	1	3
ACTIONS OF STATE COMPANIES	8	3	4
State companies abuse of authority	2	2	1
State companies other	6	1	3

SUBJECT	Q4 2020	Q3 2020	Q4 2019
LEGISLATION DRAFTS/AMENDMENTS	6	3	4
Deficiencies in regulatory framework state regulators	1	1	1
Deficiencies in regulatory framework tax	0	0	2
Legislation drafts/amendments	1	0	0
Deficiencies in regulatory framework other	4	2	1

TAX ISSUES

Business disputes with state bodies over tax issues remain the most common subject in the BOC portfolio. In Q4 2020, we received 289 such complaints, which amounts to almost two thirds of total appeals.

It is noteworthy that despite all the measures to facilitate conditions for doing business during the COVID-19 crisis, introduced by the Government, we received 14% more complaints about the actions of tax authorities YOY. When compared to Q3 2020, the number of appeals in the tax block went down by 3% (from 297 to 289). We are going to explain the key drivers of this trend below.

The number of tax related complaints decreased as compared to Q3 2020, mainly due to a 55% decline in the number of appeals regarding inclusion of taxpayers in high-risk lists (from 64 to 29 complaints). The number of business appeals regarding suspension of tax invoices remained almost unchanged (-2 complaints against the previous quarter) at the level of 100 complaints. Still, the scale of the issue is thought-provoking: it is 5 times higher than in the same period of 2019 (100 vs 20).

Similar dynamics was observed in complaints featuring allegedly ungrounded criminal cases: in the reporting quarter we received 15 appeals on this subject, which is 6% less (16 complaints) QOQ, but two thirds more (9 complaints) YOY. The number of complaints related to VAT e-administration, which entrepreneurs approached us with, has decreased: -17% as compared to Q3 2020 and -41% as compared to Q4 2019.

At the same time, in comparison with Q3 2020 and Q4 2019, the number of business appeals concerning non-enforcement of court decisions that have already entered into force increased by 37% (from 35 to 48) and by 50% (from 32 to 48) respectively. We have studied various aspects of this problem and came up with recommendations to solve them in a dedicated systemic report, the publication of which is scheduled for February 2020.

After a significant reduction in the second and the third quarters of 2020, the number of complaints about tax inspections went up again. The point is that in March 2020, the Cabinet of Ministers imposed a moratorium on the majority of tax inspections. Among exceptions were in-house inspections, conducted in the office of the tax authority only on the basis of tax reporting data, without requesting any documents from the taxpayer, and unscheduled documentary inspections with respect to the budget VAT refund.

Since the beginning of August 2020, several additional types of inspections have been added to the list of permitted: actual inspections in the field of excisable goods: fuel, alcohol and tobacco, as well as inspections conducted on the basis of taxpayers' appeals (in particular, the so-called "liquidation inspections"). This was reflected in the number of complaints to the BOC — already in Q4 2020 we received 26% more complaints QOQ.

We analyse this problem in depth in a separate section of the report. Read more about the dynamics of complaints on tax inspections, the specifics of quarantine-related appeals and our forecasts for the future [on pages 22-27](#).

ACTIONS OF LAW ENFORCEMENT BODIES

The actions of law enforcement bodies were one of the reasons for the increase in the number of business appeals in the reporting quarter. Concerning the National Police, we received 46% more complaints: +46% as compared to Q3 2020 (from 24 to 35) and +21% as compared to Q3 2019 (from 29 to 35). Inter alia, entrepreneurs complained more about procedural abuse (+67%) and inactivity of the National Police (+20%) as compared to Q3 2020. For the first time in many quarters, the number of complaints about actions of the State Security Service increased significantly: +125% vs. Q3 2020 (from 4 to 9) and + 80% against Q4 2019 (from 5 to 9). Keeping in mind the small absolute numbers, we acknowledge that this is the largest quarterly number of complaints against this state body since Q2 2018.

At the same time, the number of business appeals regarding actions of the Prosecutor's Office has decreased. We received 37% fewer complaints in comparison with Q3 2020 (from 19 to 12) and -33% in comparison with Q4 2019 (from 18 to 12).

ACTIONS OF STATE REGULATORS

The actions of state regulators also had a significant impact on the upward trend of appeals in Q4 2020. The number of complaints in this block went up by 48% as compared to Q3 2020, from 21 to 31 complaints. In particular, companies reported more problems in cooperation with the State Geocadaastre and the State Architecture and Construction Inspection.

CUSTOMS ISSUES

Compared to the previous quarter, the total number of complaints on customs issues went down (from 23 to 18), mainly due to a significant decrease in the number of appeals (from 14 to 2) regarding delays in customs clearance of goods. In the meantime, entrepreneurs complained more about customs value adjustments and other customs issues.

ACTIONS OF LOCAL GOVERNMENT AUTHORITIES

We received 13 complaints concerning local government authorities, which is 1 complaint less than in Q3 2020, but 4 complaints more (+44%) than in Q4 2019. Among other things, the number of appeals about obtaining permits from local authorities went up.

ACTIONS OF MINISTRY OF JUSTICE

The total number of complaints against the Ministry of Justice decreased by 25% in comparison with Q3 2020 and remained same as in Q4 2019. However, trends of appeals concerning actions of the Enforcement Service and the State Registration Department were different. The number of complaints against the State Registration Department decreased by 45% as compared to Q3 2020, but increased by 20% as compared to Q4 2019. The Enforcement Service was in the focus of 20% more appeals as compared to Q3 2020, but 14% less — as compared to Q4 2019.

OTHER ISSUES

In Q4 2020, entrepreneurs were more active in suggesting changes to legislation (+100%) and complained more about actions of state-owned enterprises (+167%), as compared to both the previous quarter and the same reporting quarter of 2019.

1.2. TIMELINES OF THE PRELIMINARY REVIEW OF COMPLAINTS

(Clause 5.3.1 (b) of Rules of Procedure)

In the reporting quarter, the average
time for preliminary review
of a complaint was

**8.7 WORKING
DAYS,**

which means that we perfectly
fit our Rules of Procedure's target
of 10 working days.

1.3. NUMBER OF INVESTIGATIONS CONDUCTED AND GROUNDS FOR DISMISSING COMPLAINTS

(Clause 5.3.1 (c) of Rules of Procedure)

277

Investigations

54

Complaints
in preliminary
assessment



120

Dismissed complaints

In Q4 2020, the BOC undertook 277 investigations, which amounts to 61% of complaints received. The rest of appeals remained at the stage of preliminary assessment (12%) or was dismissed as not fitting the Council's eligibility criteria (26%) as of December 31, 2020.

NUMBER OF INITIATED INVESTIGATIONS:

Q4 2020	277
Q3 2020	276
Q4 2019	249

RATIO OF DISMISSED COMPLAINTS:

Q4 2020	— 26%
Q3 2020	— 22%
Q4 2019	— 26%

MAIN REASONS FOR COMPLAINTS DISMISSAL IN Q4 2020

	Q4 2020	Q3 2020	Q4 2019
Complaints outside Business Ombudsman's competence	57	63	69
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	24	12	21
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	14	23	17
The complaint had no substance, or other agencies or institutions were already investigating such matter	4	7	8
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	3	0	5
A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration	3	4	3
The party affected by the alleged Business Malpractice has not exhausted at least one instance of an administrative appeal process	3	2	3
Complaints arising in the context of private-to-private business relations	2	0	2
All other	100	11	9

The predominant reason (48%) for complaints dismissal — they were outside the Business Ombudsman's competence. Active court proceedings (20%) and lack of cooperation from the complainant's side (12%) were also common in Q4 2020.

WE EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL OF UKRAINE FOR THE ASSISTANCE PROVIDED IN SOLVING OUR ISSUE.

IT IS THANKS TO THE ASSISTANCE AND PERSEVERANCE OF THE BOC THAT WE ARE FINALLY ABLE TO RECEIVE BUDGET FUNDS FOR ELECTRICITY DISTRIBUTION SERVICES, ADDITIONAL WORKS AND LICENSED ACTIVITIES RELATED SERVICES, AS WELL AS OTHER PAYMENTS (PENALTIES, FINES, ETC.) PROVIDED BY OTHER REGULATIONS. IT IS DIFFICULT TO OVERESTIMATE THE IMPORTANCE OF YOUR FACILITATION IN SOLVING A GOOD DEED, WHICH ACTUALLY WARMS OUR TEAM WORKING IN HOSTILITIES ENVIRONMENT.

VOLODYMYR HRYTSAI
ACTING CEO OF LUHANSK ENERGY UNION COMPANY LLC

1.4. TIMELINES OF CONDUCTING INVESTIGATIONS

(Clause 5.3.1 (d) of Rules of Procedure)

In the reporting quarter, the BOC closed

293
cases

Average duration of these investigations was

77
days



which is

13

days less
than envisaged
in our Rules
of Procedure

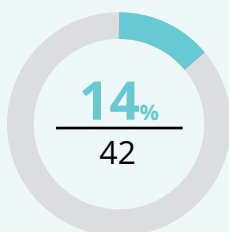
the time for preliminary review should not exceed 90 working days.

AVERAGE TIME FOR CONDUCTING INVESTIGATIONS:

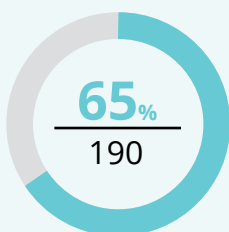
Q4 2020	77 days
Q3 2020	76 days
Q4 2019	75 days

RATIO OF CLOSED CASES BY DAYS:

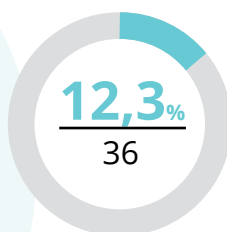
< 30 days



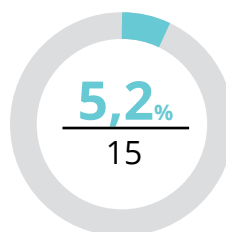
31-90 days



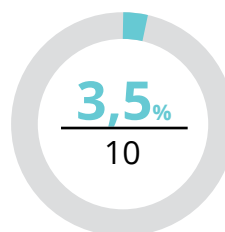
91-120 days



121-180 days



181+days



The majority of cases — 232, which is **79%** of all closed investigations in Q4 2020, were investigated within 90 days, as standardly envisaged in our Rules of Procedure.

1.5. GOVERNMENT AGENCIES SUBJECT TO THE MOST COMPLAINTS

TOP-11

COMPLAINÉES

	Q4 2020	Q3 2020	Q4 2019
State Tax Service	275	281	248
National Police	35	25	29
State Customs Service	18	23	10
Tax Police	15	16	9
Local government authorities	13	14	9
Prosecutor's Office	12	18	18
Ministry of Justice	12	18	13
State Security Service	9	5	5
Ministry of Social Policy	9	3	6
Ministry for Development of Economy, Trade and Agriculture	8	3	12
State-owned enterprises	8	3	5

In Q4 2020, companies lodged 275 complaints with the BOC regarding actions of the State Tax Service, which is 2% less than in Q3 2020, but 11% more than in Q4 2019. The number of appeals concerning the State Customs Service almost doubled YOY, but decreased by 22% QOQ. We also observe a significant increase YOY (+67%) in the number of complaints about actions of the Tax Police, although QOQ it declined by 6%.

Business also complained more against the following law enforcement bodies: the National Police and the State Security Service. The number of appeals regarding the National Police went up by 40% and 21% QOQ and YOY respectively. We received 80% more complaints against the State Security Service both QOQ and YOY. At the same time, the number of appeals featuring the Prosecutor's Office went down by one third both QOQ and YOY.

The number of complaints concerning alleged malpractice of local government authorities was on the rise YOY (+44%), but down QOQ (-7%).

Companies reported fewer episodes of potential malpractice on the part of the Ministry of Justice: -33% QOQ and -8% YOY.

In Q4 2020, we received 8 complaints against both the Ministry for Development of Economy, Trade and Agriculture and 8 complaints against state-owned enterprises. That is why we were made to compile the TOP with 11, not 10 complainees.

OTHER COMPLAINEEES INCLUDE:

	Q4 2020	Q3 2020	Q4 2019
Commercial and other courts	5	0	1
Ministry of Energy of Ukraine	4	1	1
National Bureau of Investigation of Ukraine	2	4	4
Ministry of Finance of Ukraine	2	1	3
Ministry of Internal Affairs	2	2	0
Ministry of Defence of Ukraine	2	0	0
Antimonopoly Committee of Ukraine	2	4	3
Ministry for Communities and Territories Development	2	2	3
State Funds	1	4	1
Communal Services of Ukraine	1	0	3
State Regulatory Service of Ukraine	1	0	0
Ministry of Infrastructure of Ukraine	1	2	4
Ministry of Ecology and Natural Resources of Ukraine	1	1	9
Ministry of Digital Transformation	1	0	0
Other	5	3	2

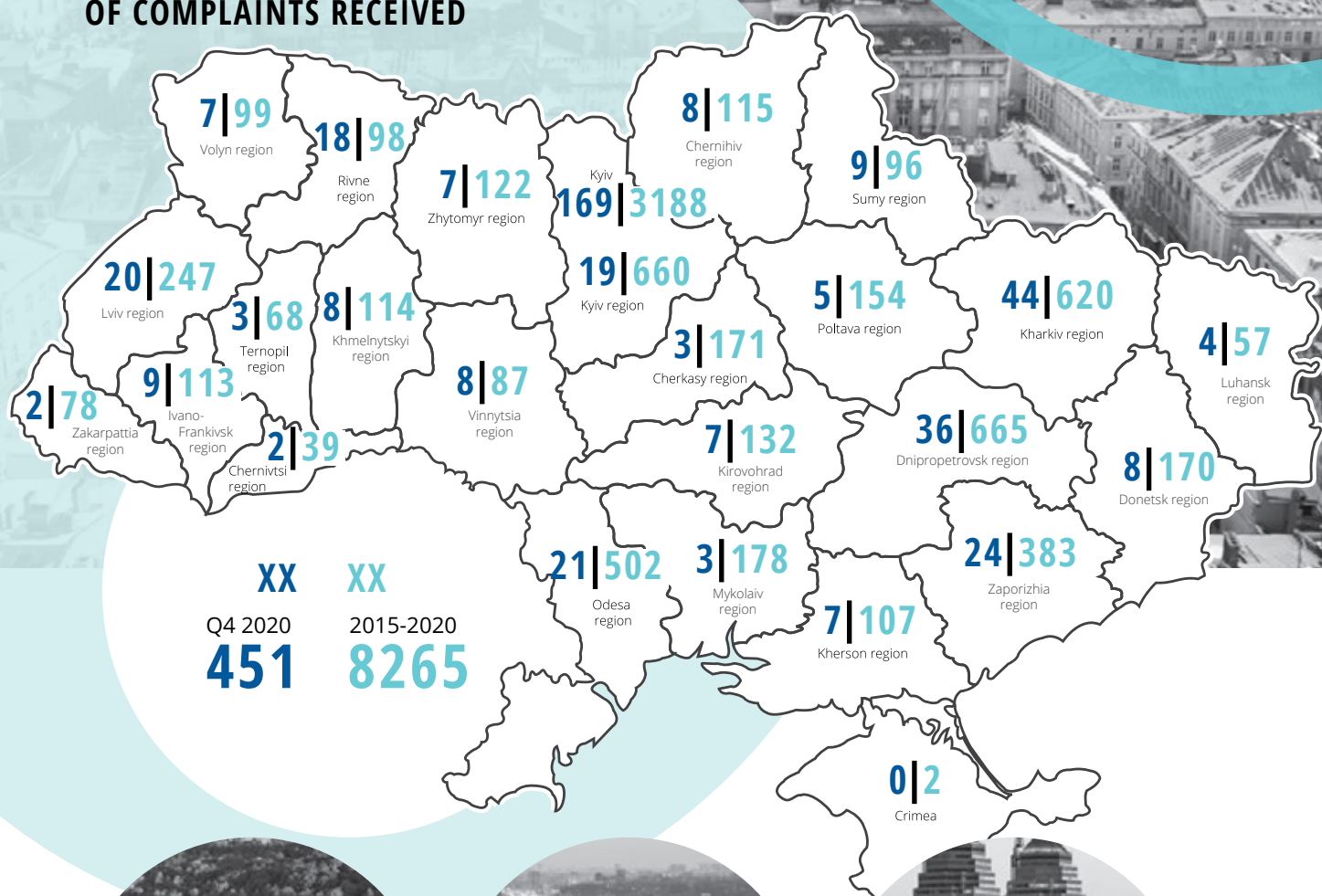


WE EXPRESS OUR DEEP GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL. A SUCCESSFUL SETTLEMENT OF THE ISSUE CONCERNING PAYMENT FOR WORKS WE PERFORMED FOR KYIVPASTRANS WOULD BE COMPLETELY IMPOSSIBLE WITHOUT YOUR PARTICIPATION, SINCE ALL OUR ATTEMPTS TO SOLVE THIS ISSUE ON OUR OWN DID NOT BRING ANY RESULTS. THE BUSINESS OMBUDSMAN COUNCIL ENJOYS WELL-DESERVED RESPECT AND REPUTATION AMONG UKRAINIAN BUSINESS REPRESENTATIVES AND LEGAL ADVOCATES AS AN ORGANIZATION THAT IS ABLE TO PROMPTLY RESPOND TO BUSINESS NEEDS AND PROVIDE QUALITY SERVICES.

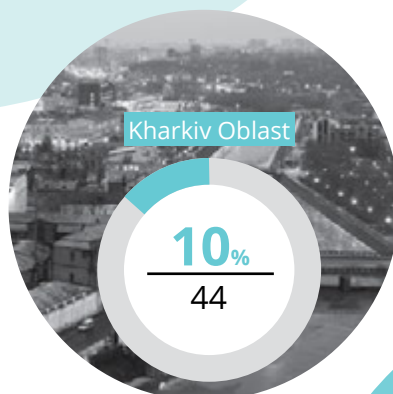
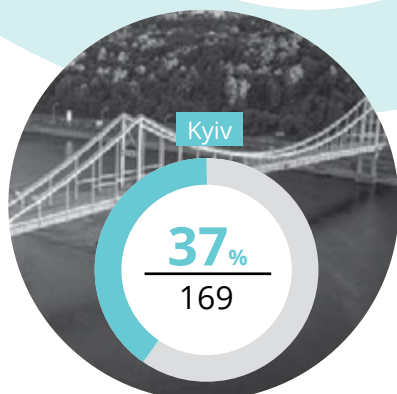
ANATOLII GLUSHKOV
INDASTRICAL AND COMMERCIAL
COMPANY ALLIANCEREMTRAKTOR LLC



1.6. GEOGRAPHICAL DISTRIBUTION OF COMPLAINTS RECEIVED



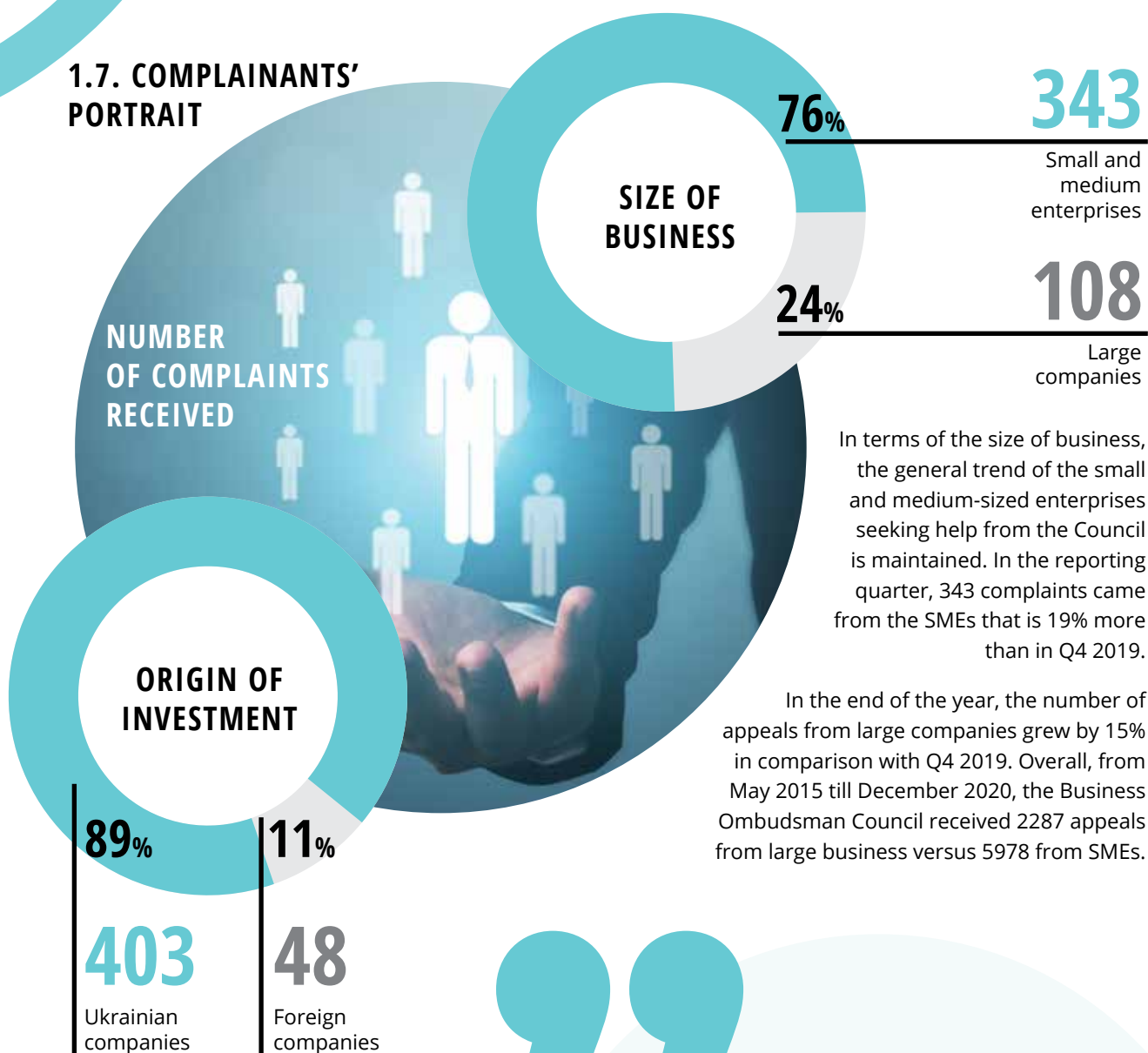
XX XX
Q4 2020 2015-2020
451 8265



As compared to Q3 2020, companies from the following Oblasts lodged more complaints with the BOC: Kharkiv +33%, Zaporizhia +14%, Odesa +11%. At the same time, the number of appeals from the city of Kyiv and Dnipropetrovsk Oblast went down by 8% each.

In Q4 2020, we received only 19 appeals from Kyiv Oblast, which is 41% less, than in Q3 2020. That is why this region didn't appear in the TOP-5 by the number of appeals.

1.7. COMPLAINANTS' PORTRAIT



In terms of the size of business, the general trend of the small and medium-sized enterprises seeking help from the Council is maintained. In the reporting quarter, 343 complaints came from the SMEs that is 19% more than in Q4 2019.

In the end of the year, the number of appeals from large companies grew by 15% in comparison with Q4 2019. Overall, from May 2015 till December 2020, the Business Ombudsman Council received 2287 appeals from large business versus 5978 from SMEs.

As compared to Q4 2019, we received more appeals from both local companies and companies with foreign investment: +2% and 9% respectively.

In Q4 2020, the number of complaints from Ukrainian business remained prevailing: 403 out of 451, with a share growth by 16% YOY. At the same time, the investigators' team considered 48 complaints from foreign companies that stays relatively stable at the level of 11% as compared to the previous quarter.

WE THANK THE BUSINESS OMBUDSMAN COUNCIL FOR ITS ASSISTANCE IN OBTAINING A CERTIFICATE FOR THE RIGHT TO DEVELOP DOCUMENTS JUSTIFYING THE AMOUNT OF EMISSIONS INTO THE ATMOSPHERE.

YEVHEN YEROMENKO
DIRECTOR OF SCIENTIFIC TECHNICAL
ENTERPRISE RESOURCE LLC

TOP-5

COMPLAINANTS' INDUSTRIES

	Number of complaints received in Q4 2020	Number of complaints received in Q3 2020	Number of complaints received in Q4 2019
WHOLESALE AND DISTRIBUTION	113	124	111
AGRICULTURE AND MINING	74	59	32
INDIVIDUAL ENTREPRENEUR	53	42	42
MANUFACTURING	43	44	67
REAL ESTATE AND CONSTRUCTION	39	43	38
ALL OTHER	129	127	122

The last quarter of 2020 demonstrated how different the Council's complainants were. The number of appeals from agriculture and mining business and individual entrepreneurs continued to grow as per the results of the previous quarter: from 59 to 74 and from 42 to 53. Their shares increased by 25% and 26% respectively. Wholesalers and distributors maintained at top in the ranking of industries. Slight changes in the number of appeals are observed in manufacturing and real estate and construction.



THANK YOU FOR YOUR PROFESSIONALISM. WE WOULD LIKE TO NOTE THAT YOUR HELP WAS EXTREMELY NECESSARY AND USEFUL. IT IS YOUR INSTITUTION THAT GIVES HOPE THAT UKRAINE IS MOVING TOWARDS POSITIVE CHANGES. IT IS THANKS TO YOUR EFFORTS THAT THE EXISTING SYSTEM OF BUREAUCRATIC REPLIES CAN BE LEFT IN THE PAST.

OLENA ANTONEVSKA
REPRESENTATIVE OF ZHYTOMYR-
AGROBUDINDUSTRIA LLC

OTHER INDUSTRIES INCLUDE:

Retail	28
Physical Person	12
Auto transport	8
Energy and Utilities	8
Public Organizations	6
Farming	6
Activity in the field of law	5
Repair and Maintenance Services	4
Supply of electricity, gas, hot water, steam and air conditioning	4
Printing and reproduction activity	3
Education	3
Warehousing	3
Electric installation works	3
Hire, rental and leasing	3
Activity in the field of architecture	3
Consulting	3
Technical testing and research	3
Financial Services	3

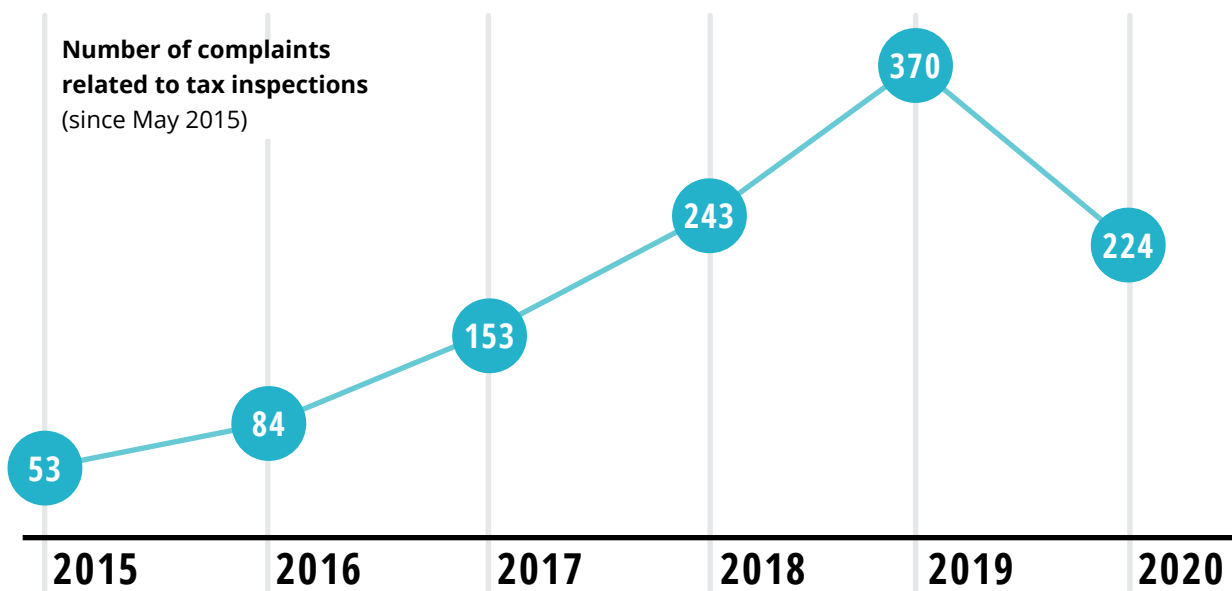
Waste collection and disposal	2
Funds management	2
Information and Telecommunications	2
Household activities	1
Cleaning services	1
Engineering, geology and geodesy areas activity	1
Economic and commercial activity	1
Fishing services	1
Post office activities	1
Ground and pipeline transport	1
Restaurant business	1
Social assistance	1
Scientific research and development	1
Activities in the field of employment	1
Activities in the field of culture and sports, recreation and entertainment	1
Maintenance of buildings and territories	1
Oil and Gas	1
Other	1

1.8. REPORT FOCUS:

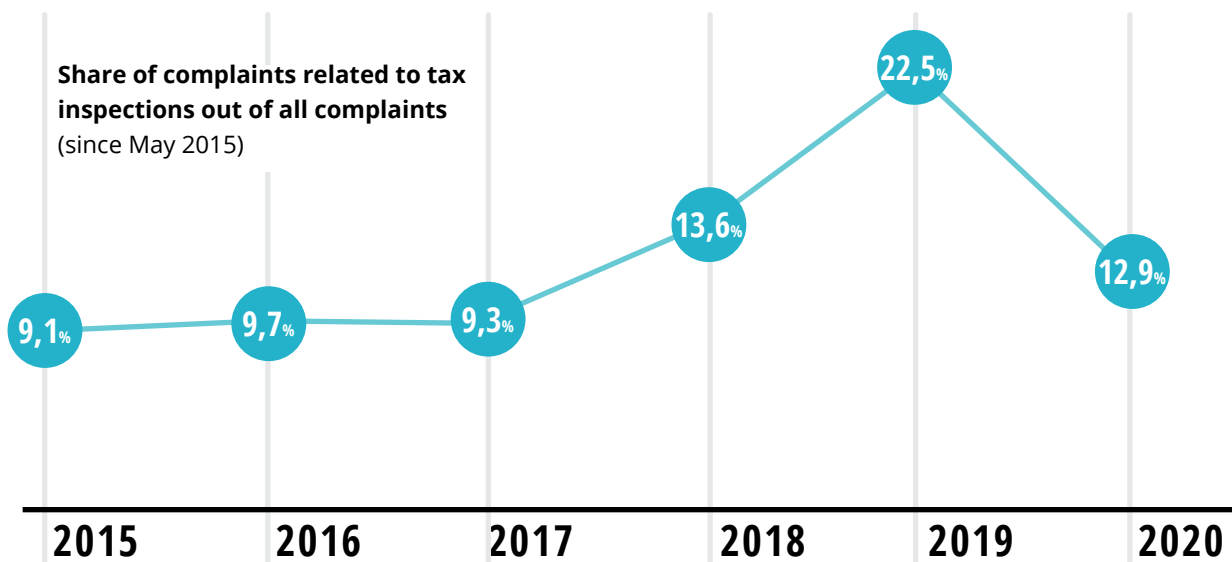
Tax inspections are among the issues of the biggest concern for the Ukrainian business. Complaints related to their results appeal constantly occupy a significant place in the structure of complaints received by the Council.

There has been a steady upward trend in the number and share of such complaints for a long time. The year 2020 was the first year in which the Council began receiving significantly fewer complaints on this topic.

Number of complaints related to tax inspections
(since May 2015)

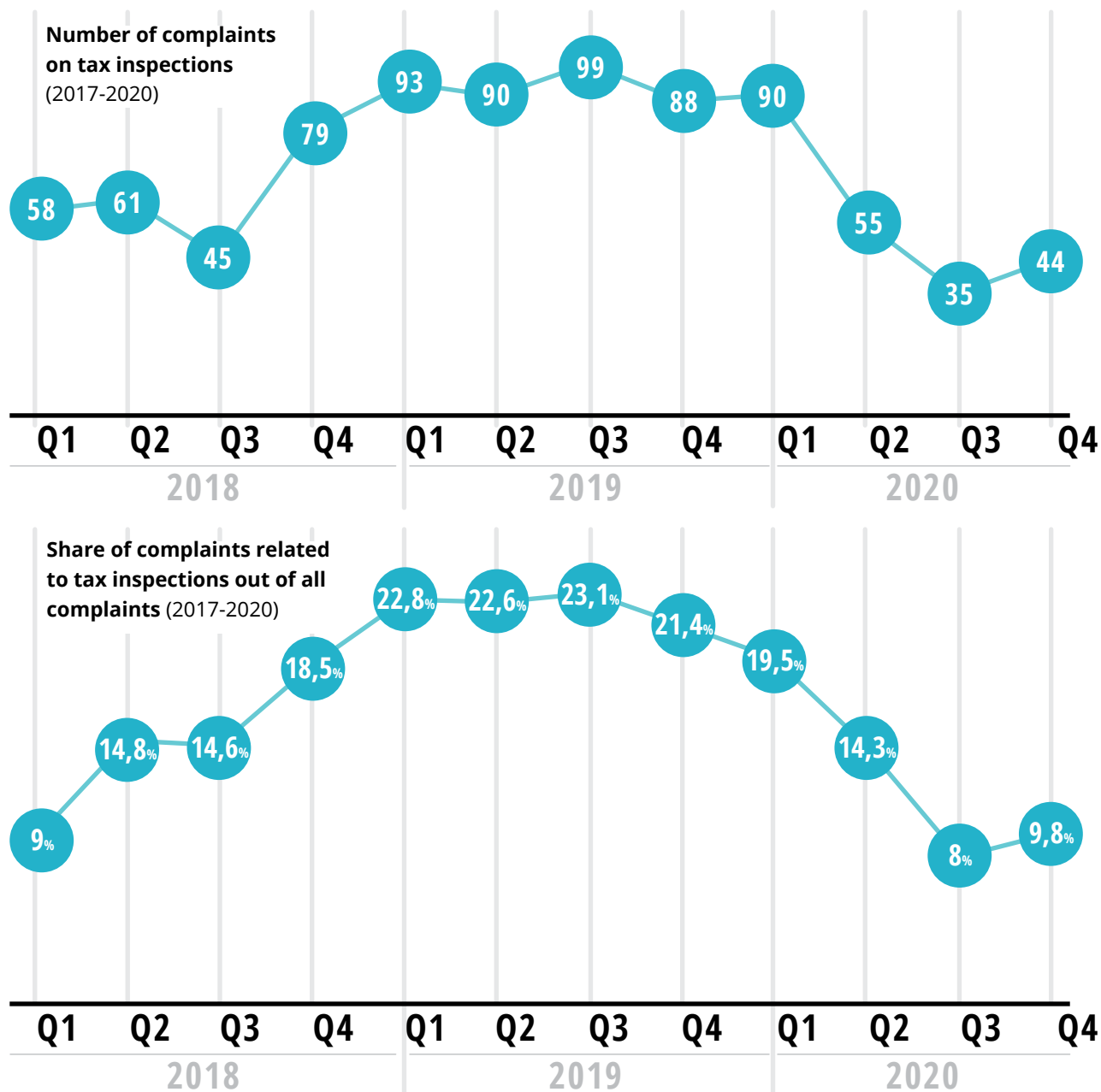


Share of complaints related to tax inspections out of all complaints
(since May 2015)



INSPECTIONS

If we have a look at the statistics in the quarterly dimension, it becomes clear that a sharp decrease in the number of such complaints began in Q2 2020 and continued in Q3 2020, before gradually becoming on a rise in Q4 2020.



Given such unusual dynamics, it will be analysed in this quarterly report what trends and processes it may indicate and what respective forecasts should be made for the future.

Source: BOC statistics

SPECIFIC FEATURES OF COMPLAINTS ON TAX AUDITS

Business activities in Ukraine may be subject to several types of tax audits: in-house, documentary (scheduled and unscheduled, on-site and off-site) and actual ones.

Most Ukrainian companies and entrepreneurs face this experience at least once every three years. Three years is a limitation period with expiration of which the old periods, with some exceptions, are no longer subject to audit. Some business representatives, due to their activities nature or scale, go through such experience much more often.

In the Ukrainian reality, inspections often involve strong antagonism between a business entity and a regulatory body. A significant part of inspections ends with discovery of significant violations, in connection with which businesses are threatened with significant additional tax payments and sanctions. At the same time, businesses often disagree with inspections findings and challenge them.

There is an administrative appeal procedure in Ukraine, within which inspection results can be appealed to the central level tax authority — the State Tax Service of Ukraine. This procedure is becoming increasingly popular among taxpayers. For example, if in 2017, according to the STS of Ukraine statistics, the authority received 10 072 complaints, in 2018 there were 14 592 already, while in 2019 — 24 679 (an impressive growth by 2.5 times in 2 years).

Back in November 25, 2016, the possibility of participation of

the Council in consideration of complaints processed by the STS was expressly provided by the Order of the Ministry of Finance "On approval of the Procedure for registration and submission of complaints by taxpayers and their consideration by regulatory authorities", as well as mandatory consideration (acceptance or reasoned rejection) of proposals on complaints.

Complaints in this category are quite difficult to resolve. After all, significant amounts of taxes and fines accrued to be paid to the state budget are often at stake. Audit results cancellation usually means that these amounts will never be paid. This holds a higher-level tax authority acting as an arbitrator in the pre-trial settlement of tax disputes significantly liable. The Council, as an impartial third party, promotes the objectivity of the process by providing its own opinion on the merits. However, the decisive word remains with the tax authority, and it does not always coincide with the vision of the Council.

If one fails to convince the STS of Ukraine that the complainant is right, there will be no second out-of-court attempt. Any other means of settlement commonly used by the Council in its work (consideration of complex cases at specialized expert groups meetings, working meetings, various forms of mediation, etc.)

will not be available as well. The inspection conclusions, upheld by the decision of the STS of Ukraine, are subject to further appeal in court only.

Given the above peculiarities, a share of cases closed by the Council in this category, which were successful for complainants (i.e. cancellation of the inspection conclusions in full or largely), makes up 36.2% for the whole period of the Council's operations — it is significantly less than on average for all types of complaints (60.2%).

However, a successful resolution of complaints in this category often has a significant direct financial impact on complainants in the form of additional tax payments and fines dropped with the Council's facilitation, which would otherwise have to be paid. A record holder is a case in which fines totalling to over UAH 2.3 bn were dropped. The second and third places are occupied by cases in which the financial effect reached UAH 444 and 349 mn accordingly. In total, in eight cases the financial effect exceeded UAH 100 mn, in 31 cases — UAH 10 mn, in 111 cases — UAH 1 mn. The total financial impact in this category of cases reached almost UAH 7.5 bn in 2015-2020.

2020

TRENDS

1

In the Q1 2020, the number of complaints of this kind received by the Council remained at “cruising altitude” throughout 2019.

But already in Q2 there was a drop of 39% compared to the Q1 and Q3 — another 36% compared to Q2. This staggering decline, which was only slightly offset by a 26% increase in Q4 caused a final result: in 2020, the Council received a total of 39% fewer complaints on tax audits than in 2019.

This trend is easy to explain if we have a look at it through the prism of processes taking place in the country and the world at that time. Indeed, from March 18, the Cabinet of Ministers of Ukraine introduced quarantine and anti-epidemic measures to prevent COVID-19 acute respiratory disease spread in Ukraine.

2

On the same date, a moratorium on most tax audits came into force.

In addition, the deadlines for submitting and reviewing complaints under administrative appeal procedure were suspended. These temporary measures were initially introduced until May 31, 2020 and were subsequently extended to an indefinite period — until the last calendar day of the month when quarantine expires.

According to the STS Ukraine official information, the number of tax audits in Ukraine for 11 months of 2020 went down by almost 49 % (6,480 tax inspections, compared to 12 676 for the same period of 2019). Control and audit activities intensity reduction is reflected not only quantitatively but also qualitatively. Thus, for eleven months of 2020, a total amount of additional payments under scheduled and unscheduled inspection reports amounted to UAH 4.588 bn., while for the same period of 2019 this amount reached UAH 12.530 bn. As a result, reduction of control and audit burden on taxpayers reached almost 64% in qualitative terms.

3

The average amount of accruals based on tax audit results

dropped from UAH 988k for 11 months of 2019 to UAH 708k for the same period in 2020, i.e. more than 28%.

4

The number of complaints of taxpayers challenging tax audits results

decreased by over 32% for the same period (15 515 complaints received in 11 months of 2020, as compared to 22 927 complaints received during the same period in 2019).

Thus, a decrease in the number of complaints related to tax audits received by the Council is correlated with the overall decrease in tax audits intensity and appealing their results in Ukraine in tough times of the COVID-19 spread.





SPECIFIC FEATURES OF QUARANTINE PERIOD COMPLAINTS

Quarantine period peculiarities caused some changes both in the nature of complaints on tax audits received by the Council and in the methodology for their resolving.

In the period from March 18, 2020 to August 8, 2020, only some types of tax audits not covered by the moratorium were conducted in Ukraine. These are, firstly, in-house inspections (conducted in the office of the tax authority based only on tax reporting data without requesting any documents from the taxpayer). Secondly, these are unscheduled documentary audits carried out before budget VAT refund payment.

Since August 8, 2020 some more types of inspections were added to the list of “permitted” ones: actual inspections in the field of circulation of excisable goods, such as fuel, alcohol and tobacco, as well as inspections carried out based on applications of payers (particularly the so-called “liquidation inspections”).

Naturally, in 2020 (and, in particular, in its last quarter), the Council had to deal with the consequences of exactly these types of inspections. At the same time, such previously relevant categories of issues, as corporate income tax additional payments accrual or controversial issues related to transfer pricing, have virtually disappeared from view.

The procedure for reviewing complaints in the STS of Ukraine during the quarantine period has also undergone some changes.

Firstly, due to deadlines for submission and reviewing complaints in the STS of Ukraine suspension, time-frames of resolving this category of cases have become somewhat lengthier and more uncertain. If earlier the deadline for making a decision on the complaint was 60 days from the date of its receipt by the STS of Ukraine, now there are frequent cases when complaints are considered for 3-4 months.

Secondly, the STS of Ukraine ceased to practice open consideration of complaints by means of meetings previously held in the tax authority's office with the participation of the complainant's and the Council's representatives. In order to compensate these inconveniences for payers, the practice of remote complaints review by teleconference was introduced.

Given that the STS of Ukraine official statistics, these changes in the way of handling complaints did not affect such review performance and its effectiveness for payers. Thus, for 11 months of 2020, the share of appealed tax notifications-decisions, other decisions and claims cancelled as a result of the administrative appeal in whole or in part, amounted to 22.8%, which is even higher than during the same period last year (18.9%).

According to the Council's statistics, the effectiveness of consideration of appeals, in part of those appeals, in consideration of which taxpayers involve the Council, has nevertheless decreased. Thus, of cases investigation initiated by the Council in 2019, 38.3% were closed successfully for complainants. The same figure in 2020 was only 29.5%.

FORECASTS FOR THE FUTURE

The Council tends to consider reducing relevance of this category of complaints a temporary phenomenon that will cease to exist soon after the moratorium on inspections is cancelled.

Easing of the moratorium, which took place on August 8, 2020, has already resulted in a growth in the number of complaints in this category in Q4 2020 by 26% compared to the previous quarter.

Given the fact that the respective government agencies representatives (the Ministry of Finance and the STS of Ukraine) have repeatedly spoken for lifting the

moratorium, and taking into account the objective necessity of filling the budget in a challenging 2021, it is highly likely the moratorium may be cancelled or significantly eased next year. In this scenario, the number of this type of complaints received by the Council will quickly reach the level of 2019 (90-100 complaints per quarter).

Hence, it is of relevance to address systemic reasons for tax audits to be of such a great concern for business.

SYSTEMIC RECOMMENDATIONS



There are many controversial issues regularly arising in the relationship between tax authorities and taxpayers and which require some significant changes at the legislative level or in law enforcement practice for the situation to be improved in the future.

Many of them were described in the Systemic Report "Administering Taxes Paid by Business" published in August 2020 (chapters 2.5, 6,7, 9.1-9.3).

The possibility and ways of implementing of the Council's systemic recommendations were the subject of thorough discussions held by the Council with the top management of the Ministry of Finance and the STS of Ukraine at the end of 2020.

The Council hopes that at least a part of systemic recommendations is implemented in the short run and some systemic issues are resolved even before a new wave of tax audits starts in Ukraine.

1.9. FEEDBACK

In the reporting quarter
we sent out circa

290

feedback forms to our
complainants
and received back

127

completed
ones

which is

35%

more than
in Q3 2020.



In **125**
FEEDBACK FORMS

applicants said they were
satisfied with working with us –

WE ASKED COMPANIES TO ASSESS OUR WORK BASED ON SEVERAL CRITERIA:

- ☒ client care and attention to the matter
- ☒ understanding the nature of the complaint
- ☒ quality of work product

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



**IN SUCH A WAY
THE CLIENT
SATISFACTION
LEVEL OF**

98%

IS REACHED



WE EXPRESS OUR APPRECIATION AND SINCERELY THANK YOU FOR COOPERATION AND ASSISTANCE IN MAKING THE FINAL PROCEDURAL DECISION IN THE CRIMINAL PROCEEDING. THANK YOU FOR YOUR PERSONAL PARTICIPATION AND QUICK RESPONSE TO OUR APPEALS. THANKS TO YOUR SUPPORT AND EFFECTIVE COOPERATION, THE WORLD'S LARGEST STEEL PRODUCER CONTINUES MAKING A SIGNIFICANT CONTRIBUTION TO INVESTING, STRENGTHENING AND ECONOMIC GROWTH OF UKRAINE.

ARTEM FILIPIEV

DEPUTY DIRECTOR GENERAL ON TAX, INTERACTION WITH STATE BODIES AND COMMUNICATION ISSUES

OLEH KRYKAVSKYI

GOVERNMENT RELATIONS DIRECTOR

PJSC ARCELORMITTAL



WE TRULY THANK THE BUSINESS OMBUDSMAN COUNCIL FOR THE TWO-YEAR STRUGGLE. THE COURT DECISION IS ENFORCED!

ALINA MYRONOVSKA

LAWYER, CONSULTING COMPANY SIDCON LLC



AN ACTIVE PARTICIPATION OF THE BOC INVESTIGATOR HELPED TO RETURN THE TEMPORARILY SEIZED PROPERTY TO ITS LEGITIMATE OWNER AND, THUS, TO RESTORE VIOLATED RIGHTS OF THE COMPANY.

WE ARE GRATEFUL FOR YOUR ACTIVITIES, WHICH HELP TO RESTORE VIOLATED RIGHTS OF BUSINESS ENTITIES AND CONTRIBUTE TO IMPROVING CONDITIONS FOR DOING BUSINESS IN UKRAINE IN GENERAL.

TETIANA KONDRATENKO

LAWYER, ACTIO LAW FIRM



2. SUMMARY OF KEY MATTERS AND FOLLOW-UP OF RECOMMENDATIONS

The primary duties of the Business Ombudsman are to work with entrepreneurs to explore problematic situations in their interaction with state officials on the case-by-case basis, come up with respective recommendations to state bodies in case business rights were violated, and to bring to the attention of state bodies systemic issues in certain spheres and suggest their possible solutions. Hence, in this section we will report on closed investigations and results for complainants, recommendations issued to state bodies and status of their implementation, identified and solved systemic business issues.

2.1. INFORMATION ON CLOSED CASES AND RECOMMENDATIONS PROVIDED

293

CLOSED CASES
IN THE REPORTING
PERIOD

CLOSED CASES

Q4 2020	293
Q3 2020	274
Q4 2019	249

132

Cases closed
successfully

120

Cases closed
without
success

41

Cases closed with
recommendations

TOTAL NUMBER OF CLOSED
CASES SINCE LAUNCH
OF OPERATIONS:

5496

TOP-10

SUBJECTS OF CLOSED CASES:

	Q4 2020	Q3 2020	Q4 2019
Tax issues	211	209	177
Customs issues	19	8	19
National Police actions	15	17	9
Actions of State Regulators	12	14	19
Actions of local government authorities	11	6	4
Ministry of Justice actions	10	4	10
Prosecutor's Office actions	3	8	2
Actions of State Security Service	2	1	1
Actions of state companies	2	1	1
Other	7	2	5
Total closed cases	293	274	249

In the reporting quarter, we managed to close 293 cases, which is 18% more than in Q3 2020 and 7% more than in Q4 2019. Three out of four closed cases (74%) were tax-related.

Actions of law enforcement bodies were in the focus of 20 closed cases. The majority of these featured the National Police (15 cases) — it is 67% more QOQ, but 12% less YOY.

Customs issues and problems in interaction with state regulators composed 6% and 4% of all closed cases respectively.

THANK YOU FOR HELPING US! SPECIAL THANKS TO THE INVESTIGATOR WHO DIRECTLY DEALT WITH OUR ISSUE. WE ARE SURE THAT THE SITUATION WOULD NOT HAVE BEEN RESOLVED WITHOUT THE BUSINESS OMBUDSMAN'S OFFICE INVOLVEMENT. WE WISH YOU STRENGTH, CREATIVE INSPIRATION AND SUCCESS IN YOUR ACTIVITIES BEING VITAL FOR THE UKRAINIAN BUSINESS.

OLENA GOLUBEVA
LAWYER, VARIANT AGRO BUD LLC

FINANCIAL IMPACT IN Q4 2020:

UAH **267**_{MN}

Under financial effect, we mean the amount of money that entrepreneurs have managed to return or save due to successful resolution of disputes with state bodies. We take into account only those amounts that appeared in cases, after appropriate agreement with a complainant. We do not include the monetary value of saved investment or financial equivalent of the returned property to the financial result, for instance. Nevertheless, since May 2015, financial effect of the BOC activities for businesses operating in Ukraine exceeds UAH 18.8 billion.

	Q4 2020, UAH
Tax inspections	188,737,640
Tax VAT electronic administration	51,324,247
Tax VAT invoice suspension	17,053,696
Ministry of Justice Enforcement Service	4,174,468
Tax VAT refund	2,610,790
State-owned companies other	2,026,402
Tax other	588,250
Local councils/municipalities other — compensation	6,970
TOTAL	266,522,463

The major share of financial impact came from cancellation of ungrounded tax inspections results — 71% or UAH 189 mn. Apart from that, UAH 51 mn was related to VAT electronic and UAH 2.6 mn — to VAT refund. Solving other tax issues also helped business to recover UAH 19 mn. Successful settlement of the case concerning actions of the MinJustice Enforcement Service resulted in UAH 4 mn worth gain for the complainant. Another big win was when a state-owned enterprise finally paid the company UAH 2 mn for provided services.



NON-FINANCIAL IMPACT OF BOC'S OPERATIONS IN Q4 2020:

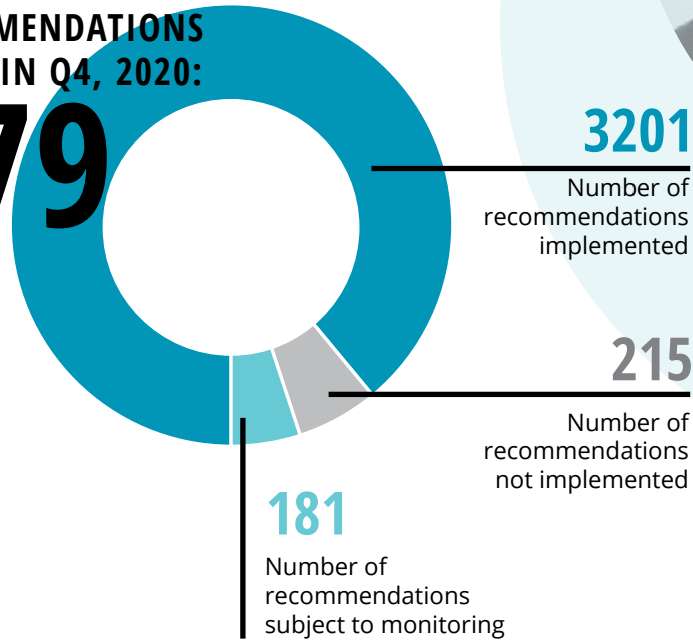
	Q4 2020	Q3 2020	Q4 2019	TOTAL
Malpractice ceased by complainee	66	41	40	733
Tax records reconciled, tax reporting accepted	16	9	7	203
Criminal case against the complainant closed; property/accounts released from under arrest	9	2	3	132
Legislation amended/enacted; procedure improved	3	4	2	80
Permit/license/conclusion/registration obtained	3	3	3	110
Criminal case initiated against state official/3rd party	1	1	1	26
Claims and penalties against the complainant revoked Sanction lifted	0	0	1	25
State official fired/penalized	0	1	2	36
Contract with state body signed/executed	0	0	1	52
Other issues	46	39	23	546

IN Q4 2020, WE CEASED DOZENS EPISODES OF STATE BODIES MALPRACTICE, HELPED COMPANIES TO SUBMIT TAX REPORTS, CLOSE UNGROUNDED CRIMINAL CASES, IMPROVE LEGISLATIVE ACTS, OBTAIN LICENSES AND PERMITS.

RECOMMENDATIONS PROVIDED

RECOMMENDATIONS
ISSUED IN Q4, 2020:

179



TOTAL NUMBER OF
RECOMMENDATIONS
ISSUED SINCE LAUNCH
OF OPERATIONS:

3597

GOVERNMENT AGENCIES WHOM THE BOC ISSUED RECOMMENDATIONS IN 2015-2020 (CASE-BY-CASE BASIS) AND RATIO OF IMPLEMENTATION

	Issued recommendations	Implemented recommendation	Q4 2020	Q3 2020	Q4 2019
State Fiscal Service, State Tax Service, State Customs Service	2482	2291	92%	92%	93%
National Police of Ukraine	206	154	75%	74%	81%
Prosecutor's Office of Ukraine	149	118	79%	79%	82%
Local government authorities	144	98	68%	70%	74%
Ministry of Justice	118	110	93%	94%	92%
Ministry for Development of Economy, Trade and Agriculture of Ukraine	103	90	87%	86%	85%
State Security Service	57	55	96%	98%	98%
Ministry of Energy of Ukraine	61	54	89%	87%	92%
State Enterprises	39	33	85%	91%	86%
Ministry of Social Policy of Ukraine	32	29	91%	88%	93%
Ministry for Communities and Territories Development of Ukraine	31	30	97%	97%	98%
Parliament, the Cabinet of Ministers, the President of Ukraine	33	28	85%	82%	90%

	Issued recommendations	Implemented recommendation	Q4 2020	Q3 2020	Q4 2019
Ministry of Infrastructure of Ukraine	22	15	68%	88%	76%
Ministry of Finance of Ukraine	22	17	77%	77%	86%
Ministry of Health of Ukraine	15	14	93%	70%	92%
Ministry of Internal Affairs	14	11	79%	73%	79%
National Commission for State Regulation of Energy and Public Utilities	11	10	91%	85%	91%
Antimonopoly Committee of Ukraine	11	8	73%	75%	70%
NABU	7	5	71%	88%	100%
State Funds	6	3	50%	63%	40%
National Bureau of Investigation of Ukraine	4	3	75%	100%	n/a
National Bank of Ukraine	5	2	40%	33%	40%
State Emergency Service of Ukraine	1	1	100%	100%	100%
Ministry of Education and Science of Ukraine	1	1	100%	100%	100%
Communal Services of Ukraine	1	1	100%	100%	100%
Ministry of Digital Transformation	1	1	100%	0%	0%
State Border Guard Service of Ukraine	1	1	100%	100%	0%
National Council of Ukraine on Television and Radio Broadcasting	1	1	100%	100%	100%
Ministry of Defence of Ukraine	1		0%	50%	0%
Other	11	10	91%	91%	91%
Grand Total	3597	3201	89%	89%	91%

In the reporting quarter, state bodies implemented 89% of individual recommendations issued by the BOC. This reflects state bodies' willingness to improve their performance and cooperate in solving disputed issues of business.

Out of 2482 of the Council's individual recommendations that traditionally addressed the block of the State Tax Service, the State Customs Service and the State Fiscal Service, 92% were fulfilled and thus maintained flat as compared to Q3 2020.

As compared to Q3 2020. In the reporting quarter, state bodies to whom we issued 30+ recommendations demonstrated a better ratio: the Parliament, the Cabinet of Ministers, the President of Ukraine (+3 pp), the Ministry of Social Policy (+3 pp), the Ministry of Energy, the National Police (+1 pp) and the Ministry for Development of Economy, Trade and Agriculture (+1 pp).

The following state bodies were less successful in implementation of recommendations provided by the BOC in comparison with the previous quarter: the State Security Service (-2 pp), local government authorities (-2 pp), the Ministry of Justice (-1 pp) and state enterprises (-6 pp).

As for the Prosecutor's Office in Ukraine and the Ministry for Communities and Territories Development, the number of executed recommendations remained stable at 79% and 97% respectively.

2.2. SYSTEMIC ISSUES IDENTIFIED AND SOLVED

Over 5 years of operations, we have prepared 16 systemic reports on selected business problems and issued 394 recommendations to state bodies.



In addition to reviewing individual complaints of entrepreneurs, we are actively working on implementation of recommendations given in our systemic reports aimed at solving the most significant business problems and improving quality of domestic business environment in key areas. For this purpose, we regularly interact with state bodies' representatives, to which we addressed systemic recommendations. In particular, in order to discuss and implement the BOC systemic recommendations in the reporting quarter we met in the format of working groups (under the supervision of the respective Deputy Business Ombudsman) and held a series of regular meetings with representatives of the VRU Committees, the State Tax Service, the Prosecutor General's Office, the Ministry of Finance, the Ministry for Development of Economy, Trade and Agriculture, the Ministry of Justice, the Ministry of Communities and Territories Development, the State Regulatory Service.

CURRENT WORK PERFORMED ON THE BOC SYSTEMIC RECOMMENDATIONS IMPLEMENTATION

Systemic recommendations from the report:

"Administering Taxes Paid by Business"

"Administrative Appeal: Current State and Recommendations"

Activities carried out in Q4 2020

Eight working group meetings with participation of Deputy Minister of Finance and first Deputy Minister of the State Tax Service were held.

Six meetings of the working group were held to prepare a draft law "On the Administrative Procedure" #3457 for the second reading created under the subcommittee on administrative services and administrative procedures of the Verkhovna Rada of Ukraine on organization of the government, local government, regional development and urban planning.

Systemic recommendations from the report:

Activities carried out in Q4 2020

“Abuse of Powers by the Law Enforcement Authorities in Their Relations with Business”

One meeting of the working group on development of prosecutors’ activity standards in investment protection with the Prosecutor General’s Office was held.

“Combatting Raidership: Current State and Recommendations”

Comments and proposals of the BOC expert group on state registration were sent to the Ministry of Justice of Ukraine regarding the draft law “On Amendments to Certain Laws of Ukraine Concerning of Raiding Counteraction Mechanism Improvement” #3774.

Upon registration of the said draft law in the Verkhovna Rada, the Business Ombudsman informed the Chairman of the Verkhovna Rada and the Verkhovna Rada Committee on Legal Policy in writing of the need to preserve provisions to ensure implementation of the BOC systemic recommendations and expressed hope for support in its adoption.

“Challenges and Problems in the Sphere of Competition Protection and Oversight”

The Deputy Business Ombudsman in charge participated in the American Chamber of Commerce Antimonopoly Committee meeting with the participation of representatives from the Verkhovna Rada Committee on Economic Development and the AMCU administration team. Later he addressed the VRU and the AMCU and reminded once again what systemic recommendations should be reflected in the draft law # 2730 “On Amendments to Certain Laws of Ukraine on Competition and Antimonopoly Reform”.

Systemic recommendations from the report:

Activities carried out in Q4 2020

"Problems with Cross-Border Trading in Ukraine"

Working communications are being held with the Verkhovna Rada Committee on Environmental Policy and Nature Management on the draft law No. 2207-1-д "On Waste Management".

The BOC has given proposals to the Ministry of Justice of Ukraine to the Code of Ukraine on Administrative Offenses developed by the Ministry of Justice pursuant to para 25 of the Verkhovna Rada of Ukraine Law-Drafting Activities Plan for 2020 approved by the VRU Resolution on June 16, 2020 No. 689-IX, which also considered the question of compensation of damages, as well as responsibility of officials, who made illegal decisions or committed omission was envisaged.

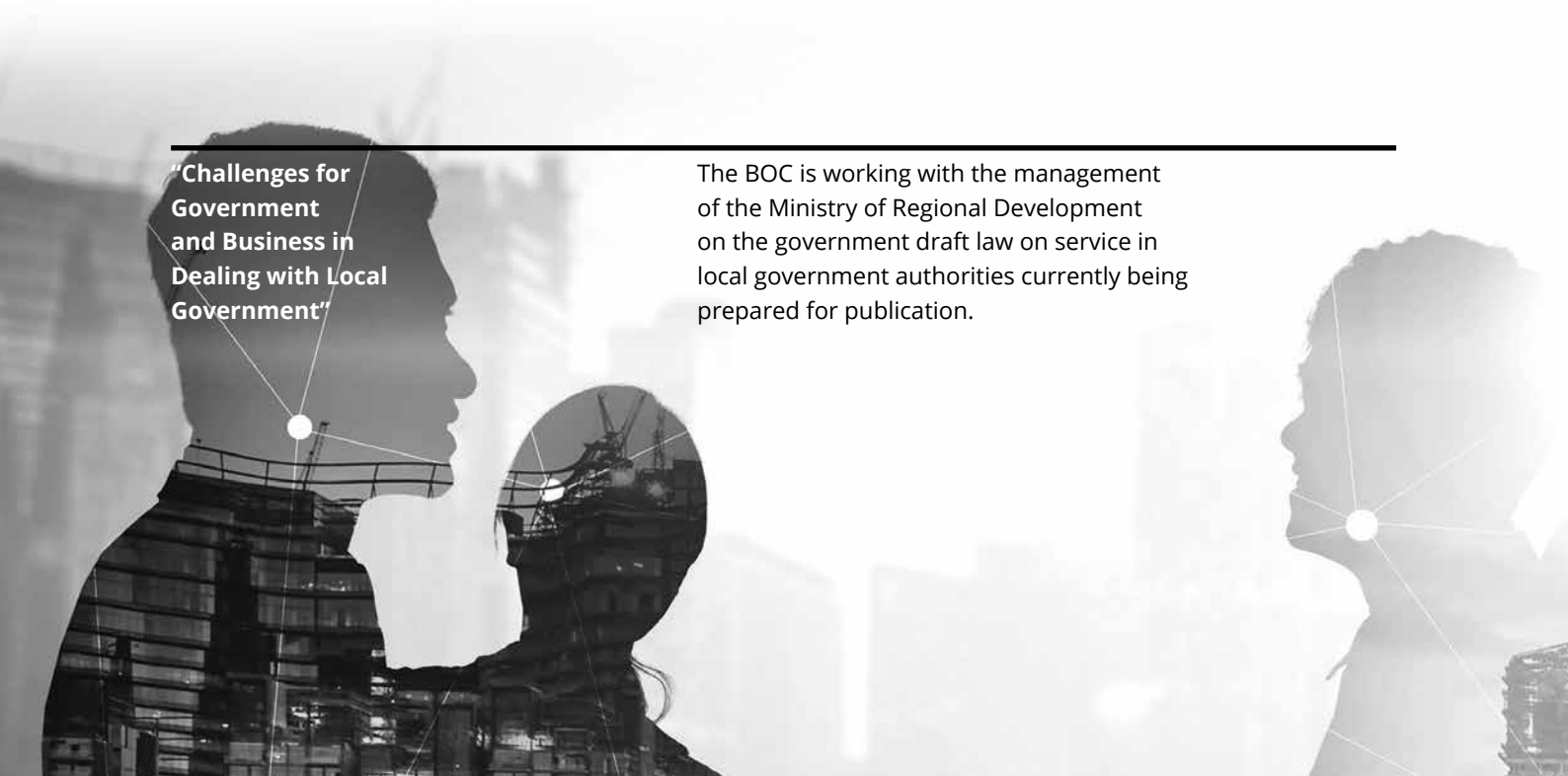
There are constant ongoing working communications with the Ministry of Finance on certain points related to customs reform and introduction of post-clearance audit control.

"Reducing the Risk of Corruption and Attracting Investment to the Construction Industry"

Working communications are held with the VRU Committee on Agrarian and Land Policy on development of amendments to the draft Law on Amendments to Certain Legislative Acts of Ukraine (on a single legal share of the land plot and the real estate object located on it) No. 0850 dated August 29, 2019.

"Challenges for Government and Business in Dealing with Local Government"

The BOC is working with the management of the Ministry of Regional Development on the government draft law on service in local government authorities currently being prepared for publication.



Systemic recommendations from the report:

Activities carried out in Q4 2020

"Control over controllers: the state of implementation of the reform of control bodies"

Within the framework of the Memorandum of Partnership and Cooperation with the State Regulatory Service is constantly monitoring the status of bringing legal acts in line with the Law of Ukraine "On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity".

"Business Focus on Labour Related Issues"

In December 2020, the BOC held working communications with the Ministry of Economy on the draft law proposing amendments to labor inspections. In the context of the systemic report it is proposed to directly amend the Law on the National Police to extend powers of the latter, particularly to provide support for labor inspectors during inspections including those facilities operating underground, without registration and actually using hired labor.

"Big Challenges for Small Business"

The BOC is represented in the Interdepartmental Working Group established under the Ministry of Economy for the development of small and medium-sized enterprises. In addition, the BOC is regularly communicating with the Regulatory Policy and Entrepreneurship Department to coordinate respective system recommendations implementation.



In particular, in Q4 2020 we acknowledged that the following of our recommendations were implemented:



Systemic Report

ADMINISTERING TAXES PAID BY BUSINESS

Issue

The issue is a necessity to ensure restoring indicators in the System of electronic administration (SEA) of VAT (such as the registration limit — the amount in which VAT payer has a right to register VAT invoices and adjustment calculations in the Unified Register of Tax Invoices) of those VAT payers whose registration had been annulled and subsequently renewed by the decision of higher tax body or court.

BOC's recommendation

The Council recommended to the Ministry of Finance of Ukraine and the State Tax Service of Ukraine to undertake all required measures (including organizational and technical), which will ensure restoring SEA VAT indicators of those VAT payers whose registration had been annulled and subsequently renewed.

If it were to be necessary for ensuring implementation foregoing recommendation — the Council recommended Ministry of Finance of Ukraine and the State Tax Service of Ukraine to develop and submit to the Cabinet of Ministers of Ukraine and the Cabinet of Ministers of Ukraine — to approve draft amendments to the Procedure for electronic administration of VAT (No.569) and/or other delegated legislative acts.

Actions taken by government agencies

The Resolution of the Cabinet of Ministers of Ukraine No. 1024 of 28.10.2020 supplemented the Procedure for electronic administration of VAT (№ 569) by introducing thereunder paragraph 7-1, thus substantially ensuring eventual implementation of the Council's recommendations.

Issue

The issue is that the Expert Council on Preparation of Generalized Tax Consultations of the Ministry of Finance of Ukraine (the "Expert Council") became effectively inactive; hence, issuance of generalized tax consultations ("GTCs") actually stopped in Ukraine.

Although an obligation to hold quarterly meetings of the Expert Council was expressly specified in the respective regulations, — in 2019 the Expert Council met only twice; and no meetings were held during seven months of 2020.

BOC's recommendation

The Council recommended to the Ministry of Finance of Ukraine to take a set of measures aimed at activating work of the Expert Council, namely: to approve its new composition; to systemize issues requiring issuance of the GTCs; to increase the frequency of meetings and a number of drafts the GTCs discussed in every meeting; to use extensively within the period between meetings a practice of processing drafts by the GTCs remotely.

Actions taken by government agencies

The new composition of the Expert Council, began operations in the IV quarter of 2020.

In the reporting period 4 meetings of the Expert Council were held and 4 working sub-groups were created. The Expert Council managed to discuss and approve the list of 20 issues to be addressed by GTCs.

On December 23, 2020, the Expert Council voted for the approval, and on January 5, 2021 the Ministry of Finance approved GTC — the first enacted in Ukraine since August, 2019.



Issue	BOC's recommendation	Actions taken by government agencies
<p>After the summer of 2020, when the Section VIII "Final and Transitional Provisions" of the Law of Ukraine "On Collection and Accounting a Single Contribution to the Compulsory State Social Insurance Fund" (the "Law") had been supplemented with a new paragraph 9-15, those persons who as of June 3, 2020, were still registered as the USC payers and had outstanding arrears (so-called "sleeping entrepreneurs"), were entitled to write it off subject to state registration of business activity termination, submission of USC reports as well as sending a corresponding application.</p> <p>However, the provisions of the Law did not provide an unambiguous answer to the question of whether the rules on writing off arrears from the USC apply to persons who by June 3, 2020, have already included the relevant information in the USR on the business activity termination.</p> <p>Moreover, after the Council issued its System Report, it discovered the negative practices of the tax authorities on this issue due to the lack of legal regulation, and started to receive the complaints in frames of the administrative appeal procedure regarding such refusals.</p>	<p>The Council recommended that the State Tax Service of Ukraine jointly with the Ministry of Finance of Ukraine to develop amendments to the Law aimed at ensuring practical possibility of writing off arrears amount under the unified social contribution, as well as penalties and fines accrued on it, to individual entrepreneurs who, as of June 3, 2020, included information about themselves in the USR and made an entry on activity termination (i.e. took separate actions established by paragraph 9-15 of Section VIII "Final and Transitional Provisions" of the Law, but as June 3, 2020, have pending arrears under the USC emerged in the period from January 1, 2017, to the date of registration of their activity termination).</p>	<p>Under the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on Social Support of Taxpayers for the Period of Restrictive Anti-Epidemic Measures Introduced to Prevent the Spread of Acute Respiratory Disease COVID-19 Caused by SARS-CoV-2 Coronavirus", which entered into force on December 10, 2020, the paragraph 9-15 of the Law had been reworded. Now it stipulates, in particular, that applications for writing off arrears amount, as well as fines and penalties, may be filed both by the persons who, as of the date of application submission, are the USC payers (except for the entrepreneurs who enjoy the simplified taxation system), and those who in the period from January 1, 2017, to the date of application were considered to be such payers.</p> <p>According to the State Tax Service's of Ukraine consultation contained in the Public Information and Reference Resource "ZIR" (category 201.04), persons who have already applied to the tax authorities for writing off arrears amount by August 31, 2020, do not need to apply again, — the controlling authorities will write it off on the basis of documents that were submitted earlier.</p>

Issue

The new paragraph 9-15 of Section VIII "Final and Transitional Provisions" of the Law was intended to retrospectively abolish the obligation established on January 1, 2017, for the private entrepreneurs, who nominally use the general taxation system, to pay a minimum unified social contribution in case of no income from their activities.

At the same time, even in the case of receiving a positive decision to write off arrears for the periods from January 2017 to June 2020, private entrepreneurs were denied in the arrears write-off accrued after June 3, 2020 (1039.06 UAH / month), because such a write-off is not provided by the Law. This, however, from the Council's point of view, contradicts the purpose of this regulation.

BOC's recommendation

The Council recommended that the State Tax Service of Ukraine jointly with the Ministry of Finance of Ukraine to develop amendments to the Law aimed at abolition of legal grounds for accrual by the tax authority of the single contribution for June-August 2020 to persons who used the mechanism established by the paragraph 9-15 of Section VIII "Final and Transitional Provisions" of the Law, and received a positive decision on full or partial write-off regarding the USC arrears, accrued since January 1, 2017, as well as the relevant fines and penalties.

Actions taken by government agencies

Under the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on Social Support of Taxpayers for the Period of Restrictive Anti-Epidemic Measures Introduced to Prevent the Spread of Acute Respiratory Disease COVID-19 Caused by SARS-CoV-2 Coronavirus", which entered into force on December 10, 2020, the paragraph 9-15 of the Law had been reworded. According to it, it is possible to write off the amounts of arrears, penalties and fines accrued for the period from January 1, 2017, to December 1, 2020. At the same time, applications for writing off arrears are submitted by March 1, 2021.

Meanwhile, on January 1, 2021, amendments to paragraph 2 of Part 1 of Article 7 of the Law, introduced by the Law of Ukraine "On Amendments to the Law of Ukraine "On Amendments to the Law of Ukraine "On Collection and Accounting a Single Contribution to the Compulsory State Social Insurance Fund" Regarding Elimination of Payers Discrimination", became effective. According to them, if a private entrepreneur who use the general system of taxation, have not received the income (profit) in the reporting period, he/she has the right, not an obligation, to pay the USC in such a period.

Moreover, if such a private entrepreneur is subject to the Law of Ukraine "On Social Support of Insured Persons and Business Entities for the Period of Restrictive Anti-Epidemic Measures Introduced to Prevent the Spread of Acute Respiratory Disease COVID-19 Caused by SARS-CoV-2 Coronavirus", the requirement to pay a "minimum" USC does not apply for December 1-31, 2020 (paragraph 9-16 of Section VIII "Final and Transitional Provisions" of the Law).

Therefore, only in exceptional cases — if persons wishing to write off the USC arrears amount, have terminated their state registration as entrepreneurs after December 1, 2020, and they are not subject to the provisions of paragraph 9-16 of Section VIII "Final and Transitional Provisions" of the Law, — the tax authority is entitled to additionally demand repayment of the USC arrears for December 2020 (UAH 1,100.00).

Issue

Given that the paragraph 9-15 of Section VIII "Final and Transitional Provisions" of the Law provided for the need to apply for the writing off arrears amount under the unified social contribution, within only three months since its entry into force, the Council was concerned about the practical informing of so-called "sleeping entrepreneurs" on the relevant amendments to the Law.

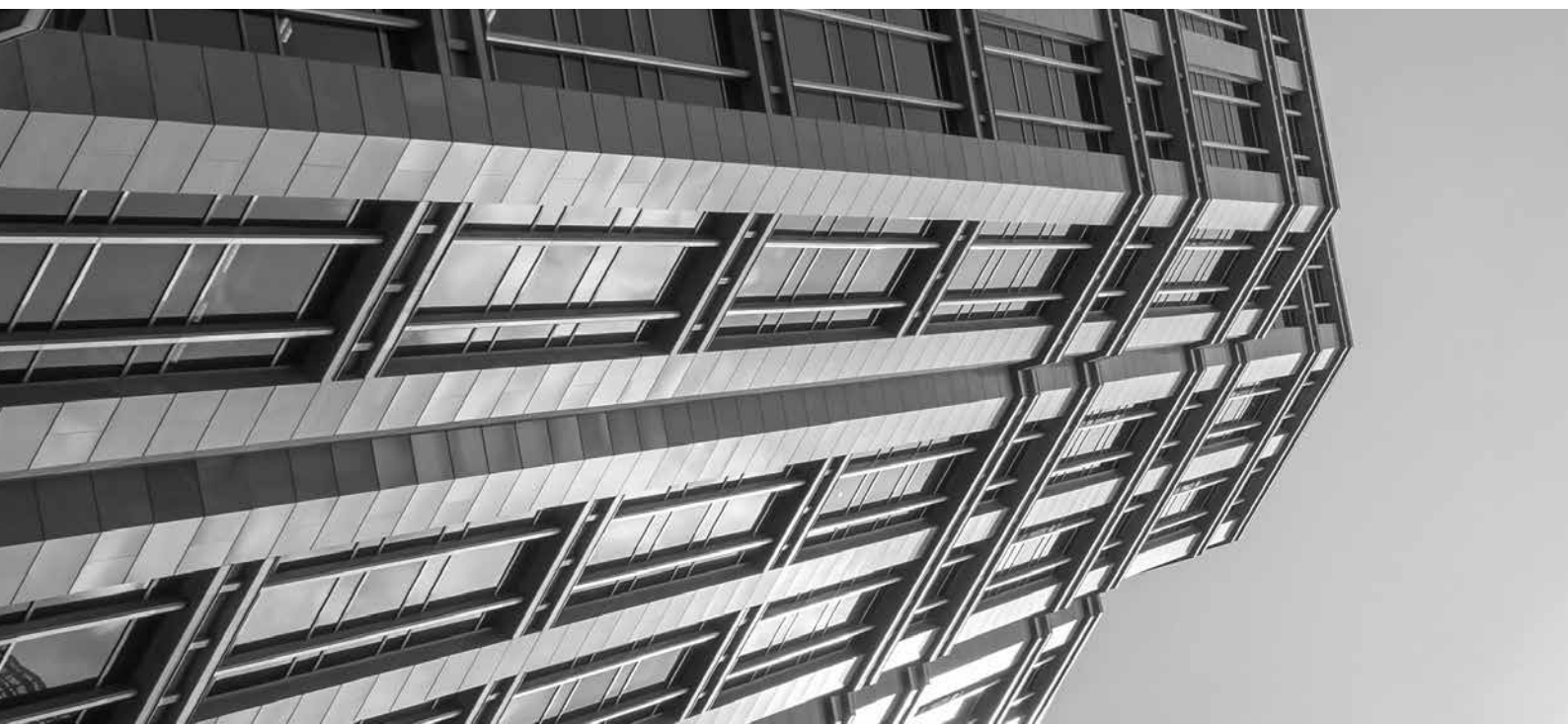
BOC's recommendation

The Council recommended to the State Tax Service of Ukraine to conduct a comprehensive awareness campaign about provisions of the paragraph 9-15 of Section VIII "Final and Transitional Provisions" of the Law for business entities that were established and registered before July 1, 2004, but information about which was not included in the USR.

Actions taken by government agencies

For the purposes of informing the payers, the State Tax Service of Ukraine instructed its territorial authorities by letter dated June 15, 2020, №9535/7/99-00-04-04-01-07. Relevant explanatory work for taxpayers on the provisions of the Law was carried out by the territorial bodies of the State Tax Service of Ukraine, which can be also traced on their websites.

Furthermore, on December 10, 2020, the State Tax Service of Ukraine published an Information Letter №17 "On Social Support of Taxpayers for the Period of Restrictive Anti-Epidemic Measures", which explains the relevant provisions of the Law.





Systemic Report

BIG CHALLENGES FOR SMALL BUSINESS

Issue

The absence of a comprehensive government source with detailed information for current and potential exporters about the effective rules and requirements in foreign markets, tools for finding potential foreign counterparties, and other opportunities and services in the context of the export activities.

BOC's recommendation

Taking steps to launch the National export web portal, its proper and regular filling with useful and accessible information for active and potential exporters, as well as introducing a separate section dedicated to promotion and using innovation opportunities by exporters, as set forth in the Action Plan to the Export Strategy.

Actions taken by government agencies

On December 23, 2020, the Government, the Ministry of Digital Transformation, and the Export Promotion Office presented the launch of the Single Export Web Portal — export.gov.ua, on the basis of Diia.Business online platform.

The website accumulates useful information for exporters and

provides for its regular active updating.

In terms of innovation, the site already publishes announcements and news about specialized exhibitions of technologies and offers from foreign companies for cooperation with innovative Ukrainian suppliers.



2.3. SUMMARY OF IMPORTANT INVESTIGATIONS

In this chapter you may get familiar with the cases successfully settled by the Business Ombudsman Council.

TAX ISSUES

Subject: Tax inspections

The decision in favor of the grain trader — the STS reviewed audit findings

Complainee:

The Main Department of the STS in Kyiv (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a big grain trader headquartered in Geneva, Switzerland. The company has been present on the Ukrainian market of grain and oilseeds since 2017.

The company disagreed with the tax audit findings. During the inspection, the tax authority found that the company had not timely paid income tax. The problem was that company indicated the budget classification code 11021000 (income tax of private enterprises) instead of 11020300 (income tax of enterprises established with the participation of foreign investors) in the income tax payment order. A month later, based on the company's letter, the MD STS corrected payment of these tax liabilities, but later imposed fines over UAH 50k on the company for their late payment. Considering the tax decision illegal, the company turned to the Business Ombudsman Council for support.

ACTIONS TAKEN:

The investigator found the company's complaint substantiated. The Council upheld the company's position and recommended that the State Tax Service of Ukraine (STS) ensure a full, comprehensive and impartial consideration of the grain trader's case. Referring to the current case-law of the Supreme Court in the respective category of cases, the investigator concluded the supervisory authority had no reason to impose a fine on the company because the complainant had not evaded taxes: an error in defining the budget classification code is not the same as non-fulfillment of his tax obligation.

RESULT ACHIEVED:

The STS accepted the Council's recommendations and overturned the disputed decision. Additional payments for the complainant were dropped. The case was successfully closed.

Subject: Tax inspections

"Tax thriller" from private entrepreneur's life from Donetsk region

Complainee:

State Tax Service
of Ukraine (STS)

COMPLAINT IN BRIEF:

An individual entrepreneur from Donetsk region appealed to the Council. She started her business in the construction sphere in 2016. After executing orders at several facilities for over two and a half years, the complainant terminated her business activity.

However, after business liquidation, the tax authority decided to inspect the entrepreneur's activities. It turned out that the execution of works on the territory of the facilities built at the expense of budget funds drew the tax officials' attention. The tax authority sent letters to the complainant three times (requesting documents with notifications regarding the inspection start and results of the already conducted one), but, according to her, she did not receive any of them. Having held the inspection without the complainant's presence, the tax authority detected violations, among which was the business activity beyond the chosen codes in state classifiers.

According to the law, a private entrepreneur of any group is obliged to switch to the general taxation system in case of conducting a type of activity absent from his file in the Unified Tax Payers Register.

That is why the tax specialist decided to retroactively move the complainant (from the beginning of 2017) from the simplified taxation system to the general one. As a result, the amount of taxes and fines accrued to the private entrepreneur was more than 73% instead of 5% of her declared turnover for the respective period and 14 times higher than the total amount of taxes and the SSC she declared and paid for that period. Having received the tax notification-decision, in which the amount of additional payments and fines reached seven digit numbers, the shocked businesswoman turned to the Business Ombudsman Council.

ACTIONS TAKEN:

Having examined the case file, the Council came to the conclusion that the tax authority had not fully investigated the situation and made premature decisions. Thus, inspection conclusions were based exclusively on bank statements of the entrepreneur, which the tax authority was able to obtain from the other body (the Prosecutor's Office). No other financial and economic documents were examined. Without such examination, in the Council's investigator's view, it is impossible to precisely identify the nature of economic transactions and make a final conclusion as to whether the complainant had in fact violated certain tax law provisions. Hence, the Council recommended the STS to cancel the tax decision by scheduling an additional inspection.

In addition to references to certain procedural shortcomings of the inspection, the Council noticed a significant severity of liability disproportionate to the gravity of the acts (tax offenses) incriminated against her.

Referring also to the relevant case-law of the European Court of Human Rights, the Council's investigator ascertained that such disproportionately severe sanctions the tax authority intended to impose against the complainant could be equated to a criminal punishment.

The latter can be applied only when the fact of offense committed by a person is proven beyond a reasonable doubt. In turn, the decision of the supervisory authority on the complainant was made without a proper investigation and without taking into account the complainant's arguments. In the Council's opinion, that is unacceptable in a democratic society.

The investigator tried to persuade the STS representatives to schedule a follow-up audit to investigate the situation more thoroughly. Unfortunately, this time the tax authority officials disagreed with the Council's arguments and supported the position of their colleagues who conducted the inspection. The appealed tax decisions were upheld, and the complaint was dismissed.

RESULT ACHIEVED:

The Council discontinued the complaint investigation as long as all out-of-court opportunities for settling the case were exhausted. The private entrepreneur decided to appeal against the tax decision in court. The trial in her case is currently ongoing.

Subject: Tax inspections

Law firm successfully appeals tax audit results

Complainee:

State Tax Service of Ukraine (STS), Main Department of the MD STS in Kyiv City

COMPLAINT IN BRIEF:

A law firm from Kyiv turned to the Business Ombudsman Council since it disagreed with the tax audit results. Tax officers detected that the complainant delayed payment of the single tax for legal entities and imposed financial penalty on the law firm. It turned out that two years ago the complainant erroneously paid a single tax to another account that transformed into a debt. Although the company further paid taxes on time and in full, the debt actually remained outstanding. The law firm filed an objection to the tax authority, but it could not help change the MD STS' decision. That is how the complaint appeared in the Council.

ACTIONS TAKEN:

Having examined the appeal materials, the investigator acknowledged the complaint as substantiated. The Council recommended the STS to ensure a full, comprehensive and impartial consideration of the company's complaint. Taking into account quarantine restrictions, the Council organized the complainant's consideration with the participation of the complainant and the tax authority by teleconference.

Subject: Tax inspections

UAH 185 mn of additional tax accruals for the Ukrainian bank cancelled
Complainee:

The State Tax Service of Ukraine (STS), Large Taxpayers Office (LTO)

RESULT ACHIEVED:

The STS paid respect to the arguments stated and upheld the Council's recommendations. Along with the disputed decision the financial penalty imposed on the law firm was cancelled. The investigator successfully closed the case.

COMPLAINT IN BRIEF:

A Ukrainian bank turned to the Business Ombudsman Council for help. The complainant disagreed with the tax audit findings, according to which he had to additionally pay UAH 185 mn. It turned out that during the audit LTO concluded, inter alia, that the complainant had not withheld income tax from non-residents originating in Ukraine when paying interests to a non-resident on a loan obtained by placing foreign securities on a foreign stock exchange.

At the same time, the complainant applied to the interest paid to the non-resident a tax rate of 0% on the basis of the tax exemption provided for in paragraph 46 of sub-section 4 of Section XX "Transitional Provisions" of the Tax Code of Ukraine.

The Bank tried to challenge audit findings on its own and submitted substantive objections to LTO with explanations on each point. However, the tax authority did not change its conclusions. After receiving tax notifications-decisions, the bank appealed them in the STS. The bank's complaint was taken up by the Council's team.

ACTIONS TAKEN:

After examining the case materials, the investigator found the complaint was substantiated and upheld the complainant's position. The Council drew attention to erroneous conclusions of LTO, lack of proof of tax legislation violation by the complainant and recommended the STS to ensure a full, comprehensive and impartial consideration of the bank's complaint. The Council's investigator asked the tax authority to consider the possibility of canceling the challenged TNDs. Consideration of the STS complaint was delayed due to temporary suspension of deadlines for consideration of complaints received during a strict quarantine restrictions period.

RESULT ACHIEVED:

The STS accepted the complainant's and the Council's arguments and cancelled additional payments for the bank amounting to over UAH 185 mn. The case was successfully closed.

Subject: Inclusion in lists of risky taxpayers

**Construction company
loses a risky taxpayer's
status**

Complainee:

Main Department of the State
Tax Service (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from the company registered in Kirovohrad region. The enterprise disagreed with the tax decision on its compliance with the taxpayer's risk criteria. The decision received by the complainant in the e-cabinet, was rather general in substance, and therefore it was unclear why exactly the tax authority considered the enterprise to be a VAT risky taxpayer.

In spite of the fact that the complainant submitted the explanations along with the relevant documents to the MD STS with the purpose to confirm the reality of its business activity, it could not achieve neither the tax decision review, nor at least getting more details on the reasons for its inclusion in the risky taxpayers' list. Thus, the company solicited help from the Business Ombudsman Council.

ACTIONS TAKEN:

Having examined the case materials, the investigator supported the position of the construction company and acknowledged the complaint was substantiated. The Council recommended the MD STS to objectively, comprehensively and thoroughly consider its explanations and newly submitted documents, and exclude the enterprise from the risky taxpayers' list. Otherwise, the Council asked the tax authority to provide exhaustive and substantial information on the reasons for compliance of the company with the taxpayer's risk criteria.

As the result of the MD STS processing of the Council's appeal, it was revealed that the real grounds for taking the decision on compliance of the construction company with the risky criteria was the fact of its absence at the registered legal address that was recorded by the MD SFS in Kirovohrad region. After receiving this reply, the complainant repeatedly appealed to the MD STS having added copies of the Lease Agreement and the Form #20-OPP, and informed about its readiness to receive tax officials in order to prove the company's real location. The Council, in turn, asked the tax authority to immediately update information on the complainant's location.

RESULT ACHIEVED:

The MD STS updated the information about the construction company's current legal address and excluded it from the risky taxpayers' list. The case was successfully closed within a month after the complaint was received by the Council. This became possible due to a prompt response of the tax authority to both Council's requests.

Subject: Inclusion in lists of risky taxpayers

Decision on “riskiness” of mini-markets from Kharkiv region cancelled

Complainee:

State Tax Service (STS),
Main Department of the STS
in Kharkiv region (MD STS)

COMPLAINT IN BRIEF:

In summer 2020, a company — a small chain of mini-markets operating in Kharkiv region, turned to the Council. The complaint concerned systematic suspension of tax invoices by the MD STS in connection with the established taxpayer's risk criteria.

During the preliminary analysis, the Council found that in autumn 2019, within a criminal proceeding, an investigative judge arrested the registration limit in the SEA VAT of companies that allegedly fictitiously purchased goods from one supplier. Among such companies was the Council's complainant, who had to appeal against this arrest.

Having confirmed his belonging to the real sector of economy, the complainant succeeded in lifting the arrest, but almost at the same time the MD STS began blocking his tax invoices. Following submission of additional documents, the complainant's tax invoices were eventually registered, but this process objectively created issues for the company and damaged business relations with contractors due to the delay in registration.

With the entry of the Procedure No. 1165 (the CMU Resolution dated 11.12.2019) into force, the MD STS decided that the complainant met the riskiness criteria, indicating the grounds — clause 8 of the Taxpayer's Riskiness Criteria — "established relationships with counterparties with signs of riskiness" without any concretization. The complainant was submitting explanations and documents to the tax office to refute his riskiness, but it did not bring any result. Thus, the company decided to seek the Council's help.

ACTIONS TAKEN:

The Council acknowledged the complaint as substantiated. The BOC investigators team referred the complaint's subject to processing of the expert group with the participation of the MD STS under the Memorandum of Partnership and Cooperation between the State Tax Service of Ukraine and the Council. The Council asked the tax authority to give a comprehensive explanation on the reasons why the complainant was included in the risky taxpayers' list. It turned out later that the complainant appeared in the “risky” list due to transactions with its supplier, which had actually been involved in the criminal proceeding and because of which the registration limit in the SEA VAT was arrested last year.

The Council's investigators together with the company examined the issue of materials and explanations that were necessary to submit to prove the complainant's non-compliance with the risky taxpayers' criteria.

RESULT ACHIEVED:

After the complainant submitted a new package of documents, the MD STS excluded the company from the risky taxpayers' list. The case was successfully closed.

Subject: Inclusion in lists of risky taxpayers

Way out from risky taxpayers' list

Complainee:

The State Tax Service (STS),
Main Department of the STS
in Kyiv City (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a construction equipment supplier. The company disagreed with the tax authority's decision on inclusion of the enterprise in the risky taxpayers' list. The tax authority had doubts that the company did not have employees other than its founder (both director and logistics specialist in one person), and there was no information about the purchased services and equipment. According to the STS, the company carried out "unrealistic" business transactions.

It turned out that the company, in fact, launched its operations not long ago, it had plans for its activity expansion and recently got a bank loan. The first months of work of the new entrepreneur were uneasy: in the beginning, the company did not get any profit at all. Only half a year later the company concluded agreements with clients for special equipment lease. Having found itself in the risky taxpayers' list, the enterprise could lose its clients, and most importantly, opportunities for further development. The complainant decided to save its business with the Business Ombudsman Council's support.

ACTIONS TAKEN:

The investigator examined the case file and acknowledged that the complaint was substantiated. The Council recommended the STS to exclude the company from the risky taxpayers' list since it did not comply with the risk criteria. The subject of the complaint was raised for consideration of the working group with the participation of the STS and the Council. In order to confirm the reality of business operations the complainant submitted additional documents and explanations to the tax authority.

RESULT ACHIEVED:

The STS examined the company's activity more thoroughly and cancelled the decisions on the complainant's compliance with the risky taxpayers' criteria. The case was successfully closed.

Subject: Inclusion in lists of risky taxpayers

Compromise reached:
enterprise recognized as
unrisky VAT taxpayer

Complainee:
The Main Department of the
STS in Kyiv City (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from an enterprise located in Kyiv city which has over 20 years of experience in the market of conveyor belts and their derivatives and provides services for conveyor equipment. The company complained about its inclusion in the risky taxpayers' list, that it had learnt from its e-office. The reason for such a decision, stated therein, was the formation by the complainant of a VAT tax credit under operations with a risky contractor.

In order to avoid undesirable consequences, the enterprise submitted to the tax authority additional documents with information about the company and its activities. In particular, the enterprise gave explanations on business transactions with the alleged risky supplier, and also decided not to include such a tax credit in the VAT return for the relevant tax period.

However, unfortunately for the complainant, the provided explanations and documents did not help the company to refute its "riskiness" from the tax authority's perspective. Furthermore, in the revised decision about the company's compliance with the taxpayers' risk criteria, there was a statement about another risky supplier, under operations with whom the complainant formed its VAT tax credit, and this time such a credit had been duly reflected in its VAT return. Therefore, the company turned to the Business Ombudsman Council for help.

ACTIONS TAKEN:

Having examined the case file, the Council's investigator recognized the complaint as largely substantiated. Following the complaint's discussion within the expert group, the MD STS suggested that the complainant waived the share of its VAT credit amounting to nearly UAH 180k, which had been formed as a result of alleged business transactions with risky contractors, and pay the respective amount of VAT to the budget. The complainant decided to make a compromise with the tax authority, though expressed a desire to further discuss the mechanism for waiving such a tax credit with the tax officials, taking into account peculiarities of its current activities under quarantine period. Therefore, the Council further aimed to enhance communication between the company and the tax authority in order to settle the situation.

In accordance with the Rules of Procedure of the Business Ombudsman Council, where appropriate and relevant, and subject to cooperation of the relevant parties, the Business Ombudsman shall make an effort to assist such parties in reaching an amicable settlement regarding the subject matter of their dispute.

Thus, with the Council's facilitation, the tax authority provided the complainant with comprehensive advice on how to properly waive the disputed tax credit by drawing up tax invoices for conditional

sale and reflecting them in the adjustment calculations of VAT liabilities for the previous periods. Having complied with the received recommendations, the company repeatedly submitted a notice of its non-compliance with the risk criteria.

In turn, the Council recommended the MD STS to provide a proper assessment of the complainant's actions aimed at confirming its non-compliance with the taxpayers' risk criteria, and depending on the result:

- in case it is established that the complainant no longer meets the taxpayer's risk criteria — to decide on the non-compliance of the complainant with such criteria and to exclude it from the risky taxpayers' list;
- otherwise — to provide comprehensive explanations regarding additional actions to be taken by the complainant in order to be excluded from the risky taxpayers' list.

RESULT ACHIEVED:

The MD STS upheld the Council's recommendations and excluded the company from the risky taxpayers' list. The case was successfully closed.

Subject: VAT invoice suspension

State Tax Service unblocks company's tax invoice

Complainee:

The State Tax Service (STS), the Main Department of the STS in Kyiv City (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a Kyiv-based agricultural company on its tax invoice registration suspension. After attempting to register the tax invoice, the complainant was informed that the document had been accepted, but registration was suspended. According to the tax authority, the transaction for supply of goods met one of business transaction risk criteria. To confirm the reality of business operations for supply of grain, the company provided copies of documents and explanations about the specific nature of the company's activity and relationships with counterparties. However, the tax authority did not change the decision. Trying to find out the reasons for tax invoice suspension, the company turned to the Business Ombudsman Council.

ACTIONS TAKEN:

The investigator examined the circumstances of the case and found the complaint was substantiated. The complainant's case proved there was violation of his legitimate interests by a state body. Given that the complainant provided tax authorities with a complete set of documents to confirm the reality of the disputed business transaction, the Council recommended the STS to ensure a comprehensive review of the agricultural company's complaint and

take evidence confirming reality of the transaction into account. The Council's investigator noted that since the previous tax invoice within deliveries under the same agreement was registered without any issues, the motives for the tax authority's actions in this case were unclear.

RESULT ACHIEVED:

The STS accepted the Council's recommendations and registered the agricultural company's tax invoice. The case was successfully closed.

Subject: Non-enforcement of court decisions on VAT registration

Court decision's entry into force — the STS promptly registers company's tax invoices

Complainee:

The State Tax Service of Ukraine (STS of Ukraine)

COMPLAINT IN BRIEF:

Inclusion in the risky taxpayers' list and, as a result, tax invoices suspension further became the reason for a Kharkiv logistics company's appeal in court. According to the tax office, the complainant made risky business transactions, as long as in August-September 2019 it supplied more goods (services) than purchased. Thus, the enterprise's contractors were unable to form a tax credit under the relevant transactions amounting in total to UAH 65k.

The Court acknowledged the tax decisions had been illicit and obliged the STS of Ukraine to register the complainant's tax invoices.

The current legislation contains strict (and even to some extent unrealistic) norms for the tax authorities concerning deadlines for enforcement of such court decisions, that is the day of the court decision's entry into legal force upon its receipt by the controlling authority. Therefore, after entry of the court decision on tax invoices registration into force, the complainant lodged a complaint to the BOC challenging the inactivity of the STS of Ukraine. The Council's team started the relevant investigation.

It is important to point out that the STS of Ukraine developed internal acts that regulate an issue of tax invoices registration following the court decisions in a more realistic way. The Council ascertained that the real period for the STS structural departments to normally perform all the internal procedures aimed at enforcing a court decision on registration of tax invoices, is 15-20 working days from the date of receipt of such a court decision by the tax authority. However, even this deadline, according to the Council's observations, is not always met in practice.

ACTIONS TAKEN:

Having examined the case materials, the investigator in charge recognized the complaint as substantiated and supported the company's position. The Council recommended the STS of Ukraine to cease the alleged malpractice of the tax authority and register

the complainant's tax invoices. In particular, the Council sent the STS two official letters and also organized the company's case discussion at the Expert Group meeting with the participation of the STS representatives under the Memorandum of Partnership and Cooperation between the Council and the STS of Ukraine. Given the Council's experience, the meetings of such expert groups enhance the effective interaction with state bodies and speed up consideration of entrepreneurs' cases.

Furthermore, in the recent Systemic Report of the Council "Administration of Taxes, Paid by Business" the issue of non-enforcement of court decisions of this category of cases had been acknowledged to be systemic, hence the Council issued a set of systemic recommendations to the STS of Ukraine and the Ministry of Finance of Ukraine aimed at resolving the situation as such at large.

RESULT ACHIEVED:

The STS of Ukraine implemented the Council's recommendations and promptly registered the company's tax invoices. In particular, the complainant's tax invoices were registered within one month since the relevant court decision entered into legal force. The case was successfully closed.

Subject: Non-enforcement of court decisions on VAT registration

Court decision is subject to enforcement

Complainee:

The State Tax Service of Ukraine (STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a car repair and maintenance service company. The company complained about the failure of the STS to enforce the court decision, according to which the tax authority had to increase the company's registration limit amount in the SEA VAT by UAH 1mn. The court decision came into force a year and a half ago, but the tax authority refused to enforce it voluntarily. At the same time, the company appealed to the Decisions Enforcement Department of the State Enforcement Service (Enforcement Service) of the Ministry of Justice. The Enforcement Service initiated two enforcement proceedings at the complainant's request and even informed the STS of a criminal offense commission. Despite the complainant's long-lasting communication with the STS, the tax authority ignored the court decision enforcement. The Business Ombudsman Council started investigating the company's complaint.

ACTIONS TAKEN:

After examining the case file, the investigator found out the complaint contained signs of violation of rights and legitimate interests of the enterprise. The Council recommended the STS to take prompt measures and enforce the court decision in the company's case. The investigator emphasized that according to the

Constitution of Ukraine, a court decision should be mandatory for execution by all public authorities. In particular, the Council stressed that current actions of the STS violated the principle of the rule of law and were a criminal offense.

RESULT ACHIEVED:

With the Council's facilitation, the STS complied with the court decision and increased the registration limit by over UAH 1 mn, for which the company had the right to register tax invoices. The complainant thanked the Council for assistance: *"Thank you for helping us. Special thanks to the investigator who directly dealt with our issue. We are sure that the situation would not have been resolved without the Business Ombudsman's Office involvement. We wish you strength, creative inspiration and success in your activities being vital for the Ukrainian business"*. The case was successfully closed.

Subject: Tax termination/renewal/refusal of VAT taxpayers' registration

Tables of taxpayer data of shipping company accepted

Complainee:

The State Tax Service (STS),
Main Department of the STS
in Odesa region

COMPLAINT IN BRIEF:

The Council received a complaint from a company that provides transportation and cargo handling services at Chornomorsk Sea Port. The enterprise complained that the tax authority disregarded tables of VAT taxpayer data and suspended registration of company's invoices. As a rule, such tables are submitted to clarify information about the company's business activities and help to prevent blocking of tax invoices.

The reason for the tax decision concerning the company was that the types of activity indicated in the tables did not correspond to existing fixed assets of the payer. However, according to the complainant, the tax conclusions lacked concrete argumentation: it was unclear what sort of fixed assets were missing. Neither audits, nor expert examination was conducted in order to justify the company's activity suspension. Trying to appeal against the unlawful decision on the disregard of the tables of taxpayer data, the enterprise additionally submitted the explanation on existing technical equipment and other fixed assets to the MD STS. Nevertheless, it did not help to change the tax decision. Due to possible negative consequences for the company and its clients, the enterprise turned to the Council for help.

ACTIONS TAKEN:

The investigator commenced immediate consideration of the company's case and recognized the complaint as substantiated. Addressing the MD STS in writing, the Council recommended to reconsider its decision and approve the tables of taxpayer data to unblock tax invoices taking into account provided documents and explanations.

Along with that, the BOC organized an expert group meeting with the participation of the MD STS foreseen by the Memorandum of Partnership and Cooperation between the STS and the BOC. As a result of the meeting, the complainant re-submitted the tables of VAT taxpayer data. The controlling authority accepted it having examined all the given documents.

RESULT ACHIEVED:

The MD STS upheld the Council's recommendations. The fact that the tax authority received the tables of taxpayer data was confirmed by the complainant. The expert group meeting with the involvement of the STS territorial body proved its effectiveness. The case was successfully closed.

Subject: Tax termination/renewal/refusal of VAT taxpayers' registration

VAT payer's data tables accepted

Complainee:

The Main Department of the State Tax Service in Kyiv region (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a farming enterprise from Kyiv region, which had been growing crops for over 28 years. The MD STS suspended registration of the enterprise's tax invoices. The complainant provided the MD STS with VAT payer's data tables with explanations, but the tax authority did not accept them for consideration referring to its activity types being non-correspondent with the taxpayer's fixed assets. The company insisted its fixed assets fully corresponded with its conducted activity types and it had documented proof thereof. The company's CEO contacted the SFS hotline for consultations and resolving the issue extrajudicially. At this stage, the Business Ombudsman Council came to the company's rescue.

ACTIONS TAKEN:

The investigator examined complaint materials and found the complaint substantiated. In particular, the Council supported the company's position and noted the weight of its arguments. The Council recommended that the STS accept the complainant's data tables, or, if there were any legal grounds for that, inform of the reasons for rejection. The complaint was discussed with the participation of the MD STS at the expert group meeting under the Memorandum of Partnership and Cooperation between the BOC and the STS. As a follow-up of the meeting, although the MD STS decided to accept the taxpayer's data tables, the STS later denied such actions. The STS turned back to one of the old arguments about the insufficient number of employees in the company. The company had to send taxpayer's data tables to the tax authority again with detailed explanations of the specific nature of its activity due to seasonality of agricultural works.

Subject: Tax other

Qualifying period for steel plant employees recognized
Complainee:

The State Tax Service of Ukraine (STS)

RESULT ACHIEVED:

After carefully studying the company's documents, the STS followed the Council's recommendations and accepted taxpayer's data tables. The complainant himself later informed the Council of the positive decision of the tax authority: "The biggest problem that hindered the work of the enterprise was resolved. Let me express my sincere gratitude to your institution". The case was successfully closed.

COMPLAINT IN BRIEF:

The Business Ombudsman Council received a complaint from a steel plant that manufactures metal equipment for cars and railway components. The enterprise that is located in Mariupol went through hard times due to the Anti-Terrorist Operation (ATO) in the region: markets loss, forced suspension of manufacturing and even a bankruptcy threat.

However, the plant faced one more challenging experience that forced it to turn to the Council for help. The enterprise disagreed with the tax decision about a simultaneous existence of the UAH 52 mn of overpayment and a debt for payment of the single social contribution (SSC) that reached UAH 37 mn. It turned out that the tax authority detected an arrear at the time of the opening the bankruptcy proceeding against the complainant earlier in March 2017. Overpayment arose due to adjustment of the SSC amounts by the complainant following a right of the enterprise with manufacturing capacities in the ATO zone not to accrue and pay a SSC.

Hence, the enterprise adjusted the previously accrued SSC amounts having reflected that in the tax reporting. Moreover, the complainant had not reduced its tax liability by the SSC amounts deducted from the plant's employees. The enterprise asked the STS to settle the dispute multiple times, since the overpayment fully covered the debt amount. Nevertheless, the tax authority refused to recognize the overpayment of the SSC amount.

Such inconsistency in the tax audit system could result in non-recognition of the retirement employment period of the plant's employees and provoke social tensions in the team. The Council commenced immediate consideration of the complaint.

ACTIONS TAKEN:

The investigator acknowledged the complaint was substantiated. The Council appealed to the STS and asked to correct the data regarding existence of tax arrears and repay the enterprise's SSC debt for the disputed period.

The Council initiated the complaint's consideration at the meeting of the expert group with the STS participation under the Memorandum of Partnership and Cooperation between the BOC and the STS.

RESULT ACHIEVED:

The STS upheld the Council's recommendations. Shortly after the expert group meeting the complainant contacted the investigator in charge and thanked the Council for its help: *"Thanks to joint cooperation of the Business Ombudsman Council and the enterprise's administration, the settlement of the disputed issue concerning recognition of a qualifying period of the plant's employees till June 2020 inclusive was possible to achieve. The agreement was also reached with the State Tax Service and the Pension Fund of Ukraine on the procedure for repayment of the existing SSC debt of enterprises for the disputed period of 2015-2017."* The case was successfully closed.

Subject: Tax other

Common sense victory:
enterprise receives fuel
trading license

Complainee:
The State Tax Service (STS)

COMPLAINT IN BRIEF:

Oil Premium Trading House LLC, a Zaporizhia-based fuel and lubricants supplier approached the Business Ombudsman Council. The company could not obtain a fuel wholesale trading license from the STS for a long time (the license).

During the summer of 2020, the complainant applied to the STS for a license several times in a row, but received refusals every time as if due to an error in the submitted documents. It turned out that an incorrect address in the permit for operation of hazardous machinery, mechanisms and equipment (one of the documents submitted with the application) had been indicated. In particular, only the land plot postal code without the letter "A" was specified. The complainant corrected inaccuracy in the address almost immediately. However, it just so happened that at this very time the labor protection legislation got deregulated. In particular, a permitting procedure was replaced by a declarative one.

The complainant approved a declaration of compliance of material and technical facilities with labor protection legislation requirements for corresponding equipment (Declaration). After that, the complainant applied to the STS for a license again and this time was denied once again. The STS still insisted that the applicant should have provided the permit rather than the Declaration as part of the application. The STS backed up its position by the fact that the law regulating the procedure for issuing licenses uses the term “permit”, not “declaration”. The Council helped clear up the situation.

ACTIONS TAKEN:

During investigation of the complaint and position preparation, the Council's investigator emphasized the inconsistency of legislation in the field of fuel trade licensing and use of hazardous equipment. Thus, positive changes and deregulation occurred in the use of hazardous equipment were not properly taken into account in fuel trade licensing. This is quite a common problem of the so-called “quality of the law” arising from time to time when it comes to regulating complex areas. Such a conflict can be resolved by applying a systemic approach interpretation of legislation as the Council's investigator in charge repeatedly stressed during discussion of circumstances of the complaint. We also had to mention the presumption of legality of taxpayer's decisions, which means that in case of law ambiguity, the decision must be made in favor of a taxpayer.

RESULT ACHIEVED:

After lengthy discussions, the STS nevertheless accepted the Council's recommendations and issued a long-awaited license for the company giving the right to wholesale fuel. The complainant thanked the investigator and the Council's team for their assistance: *“We present our compliments and express gratitude to the Business Ombudsman Council's team for prompt, high-quality, professional and efficient work in consideration of our complaint. The systematic operation of the Business Ombudsman Council allowed us to restore our legal right and obtain a license and to focus on doing business and further development of the enterprise without a considerable waste of time and money on litigation. We believe that the Business Ombudsman Council ensures effective systematic communication of business with the government, state bodies and local government authorities, represents and protects business interests in state bodies and helps build the rule of law in the state”*. The case was successfully closed.

Subject: Tax other**STS reimburses court costs to Mykolaiv enterprise****Complainee:**

The State Tax Service (STS),
Main Department of the STS
in Mykolaiv region (MD STS)

COMPLAINT IN BRIEF:

The Business Ombudsman Council received a complaint from Mykolaiv enterprise, a seller of agricultural equipment. The company complained that the tax authority did not enforce the court decision concerning registration of tax invoices. According to the decision, the MD STS registered the complainant's tax invoices on the day of their submission. However, it did not agree to enforce the ruling on the costs write-off (court fees and legal fees for a lawyer).

After the court decision entered into force, the enterprise appealed to the enforcement body — the State Treasury Service. The Treasury Service refused to reimburse the court costs referring to the moratorium for indisputable write-off of court fees and reimbursement of legal fees for a lawyer established until January 1, 2021. At the same time, in the State Treasury Service's position the debtor was not banned from voluntary enforcement of the court decision. Since the complainant did not succeed in recovering costs, the Council's team commenced the complaint consideration.

ACTIONS TAKEN:

Having examined the case materials, the Council asked the STS to voluntarily enforce the court decision. In response, the tax service asked for the company's bank account details. It was interesting that right at this moment, the Constitutional Court cancelled the moratorium for indisputable write-off of court costs. Therefore, there was no other justification of the tax authority's inaction.

RESULT ACHIEVED:

The STS enforced the court decision and transferred funds for court costs to the complainant's bank account. The case was successfully closed.

CUSTOMS ISSUES

Subject: Customs clearance delay/refusal

Half a year customs delay defeated

Complainee:

State Customs Service
(Customs Service), Volyn
Customs of the State
Customs Service (regional
customs)

COMPLAINT IN BRIEF:

The Council received a complaint from a laser hair removal devices supplier. The company complained the regional customs detained its cargo during customs control. The complainant's cargo arrived at the customs checkpoint of Volyn Customs and had to go to Kyiv Customs of the Customs Service. Customs officers detained the company's cargo and examined it, concluding that the company had violated customs regulations by transporting new devices under the guise of the already used ones. The customs temporarily seized the devices.

According to the established procedure, the customs authority draws up a report on violations to be considered in court after receipt of materials from the supervisory authority. It is noteworthy, the report on violations was drawn up by customs officers promptly, however, the preliminary date of materials' consideration in court was planned for almost half a year later.

The complaint insisted that there were no reasons for that, and so the materials have to be submitted to court as soon as possible.

As long as the customs authority delayed submission of materials on complainant's violations to the court, the company decided to turn to the Business Ombudsman Council for help.

ACTIONS TAKEN:

After examining the circumstances of the case, the investigator found the complaint substantiated. The Council recommended that Volyn Customs and the Customs Service send materials necessary for the trial as soon as possible. The customs authority explained the delay by waiting for a response to an international legal request from the country the complainant's cargo had departed from. The Council then again requested customs authorities to speed up transferring materials to the court. Given the fact almost four months have passed since "violation" was found by the supervisory authority, the Council arranged an expert group meeting with the participation of the Customs Service administration. During the hearing of the complaint, it was informed of materials having been referred to the court.

RESULT ACHIEVED:

The Council's successful mediation paid off. The customs submitted necessary materials to the court and the company managed to exercise its right to protection judicially without unreasonable delays. The case was closed.

ACTIONS OF THE NATIONAL POLICE

Subject: National Police inactivity

Grain plunderer brought to responsibility

Complainee:

The Main Department of the National Police in Kirovohrad Oblast (MD NP)

COMPLAINT IN BRIEF:

Two agricultural companies from Kirovohrad region complained to the Business Ombudsman Council about inactivity of law enforcement agencies. According to the complainants, the police ineffectively investigated criminal proceedings initiated for misappropriation of 11,280 tons of corn grain of the complainants for the amount of over UAH 55 mn.

For two years, the companies cooperated with the feed milling plant on a contractual basis. Agricultural companies transferred grain for storage and further processing. However, one day the plant was unable to ship 300 tons of corn at the agricultural company's request "due to its absence", as its CEO defiantly replied in a letter.

Apart from the fact that the CEO of the plant was also a deputy of one of the district councils, police investigators found that he managed to misappropriate the grain from other enterprises, including foreign investment ones, for spectacular amounts (UAH 180 mn).

Despite the available evidence the police received as a result of interrogation of witnesses and examinations, they were in no hurry to hand over the suspicion notice to the feed milling plant top management. Having suffered great material damage, agricultural companies turned to the Council for help.

ACTIONS TAKEN:

The investigator examined circumstances of the case and found the complaint substantiated. The Council established that the applicants' legitimate interests could indeed be violated by ineffective activities of law enforcers. In a letter to the Prosecutor General's Office and the National Police, the Council recommended to ensure a prompt, full and impartial investigation of criminal proceedings and an appropriate decision to be made in the case of agricultural companies.

RESULT ACHIEVED:

Law enforcers accepted the Council's recommendations. The Prosecutor General's Office informed the feed milling plant CEO of suspicion of committing a crime first, and later chose detention as a measure of restraint with the alternative of bail, the amount of which was almost equal to the value of misappropriated grain. *"Our staff is sincerely grateful to the Business Ombudsman Council for assistance and expresses its deep respect. We would like to extend our special appreciation to the investigator in charge, who was concerned about the issue and did everything possible (within the law and powers granted to him) for law enforcement agencies to make an objective and lawful decision",* the complainants' lawyer thanked.

ACTIONS OF STATE REGULATORS

Subject: Other state regulators

Ministry of Ecology approves complainant's documents in the fourth attempt

Complainee:

The Ministry of Ecology and Natural Resources (Ministry of Ecology)

COMPLAINT IN BRIEF:

The Council received a complaint from a Kharkiv-based scientific and technical enterprise. The company failed to include information about itself in the list of companies justifying air pollutant emissions volumes. To be included in this list, the complainant applied to the Ministry of Ecology with a package of necessary documents. However, the Ministry of Ecology refused to include the complainant in the respective list due to a number of technical shortcomings in the submitted documents. Despite a number of attempts, the complainant received constant denials in view of various deficiencies in the submitted documents.

ACTIONS TAKEN:

The investigator examined the circumstances of the case and found the complaint substantiated. The Council recommended the Ministry of Ecology to ensure a proper consideration of the application for inclusion of the complainant in the list of enterprises having the right to provide services for measuring volumes of air pollutants emissions. During complaint investigation, thanks to efforts of the investigator, a transparent dialogue between the complainant and the Ministry was established. Thus, the Ministry put forward an exhaustive list of remarks on the documents submitted by the complainant to correct the deficiencies.

RESULT ACHIEVED:

The Ministry of Ecology accepted the Council's recommendations and listed the complainant in the respective catalogue. The Council managed to build proper communication between the company and the state body and overcome the misunderstandings that had arisen earlier. The company thanked the investigator in charge for promptness in resolving the complaint. The case was successfully closed. Taking the opportunity, it is worth noting the constructive and transparent dialogue of the Ministry of Ecology.

Subject: Other state regulators**Special entrepreneur
defends her right to free
legal aid****Complainee:**

The Ministry of Justice of
Ukraine (MinJust), Lviv Legal
Aid Bureau (Bureau)

COMPLAINT IN BRIEF:

The Council received a complaint from a private entrepreneur from Lviv. The businesswoman complained that Lviv Legal Aid Bureau had refused to provide her with free secondary legal aid. The woman wanted to appeal the court decision on dismantling a summer playground near her cafe. However, in the opinion of the Bureau, the entrepreneur did not belong to the list of categories of persons who, according to Article 14 of the Law "On Free Legal Aid", are entitled to such support from the state. The woman, being a disabled person of group II, was outraged by actions of the Bureau. She defended her position by insisting on constitutionally guaranteed rights of a disabled person to social protection. The entrepreneur asked the Business Ombudsman Council to start investigating her case immediately.

ACTIONS TAKEN:

After examining the complaint, the investigator supported the private entrepreneur's position. The BOC concluded that the position of the Bureau might have been unbalanced. The Council stressed that free secondary legal aid is a type of state guarantee aimed at creating equal opportunities for citizens to access justice.

The Business Ombudsman Council recommended that Lviv Local Center for Free Secondary Legal Aid reporting to the Bureau, provide legal support to the complainant. The Council found that when applying for free legal aid, the entrepreneur had provided all the necessary documents regarding her disability and justified belonging to the category of persons entitled to receive legal support. Therefore, there were objective grounds for the Bureau to meet the needs of an entrepreneur with disabilities.

RESULT ACHIEVED:

Thanks to the Council's mediation, Lviv Legal Aid Bureau reviewed its decision and agreed to provide the complainant with free legal aid. The entrepreneur thanked the team of investigators: *"I want to thank you and the BOC team for their professional approach to resolving our complaint."* The case was successfully closed.

ACTIONS OF THE MINISTRY OF JUSTICE

Subject: MinJustice Registration Service

**Lviv plant fights back
raider attack**

Complainee:
The Ministry of Justice
of Ukraine (MinJust)

COMPLAINT IN BRIEF:

The Council received a complaint from Lviv building and artistic ceramics plant. The company complained that the notary had changed information about the plant's head in the Unified State Register (USR) having violated the law and the company's charter. Instead of the highest governing body's decision, the registrar made changes based on a completely different document. In accordance with the charter of the plant, the decision to terminate the powers of the enterprise's head is made by the General Meeting, the meeting of which did not take place. Instead, the Supervisory Board decided to dismiss the current head. Due to the illegal appointment of a new chief executive after appealing to the MinJust Collegium for reviewing complaints against decisions, actions or omission of the state registrar (the MinJust Collegium), the company sought help from the Business Ombudsman Council.

ACTIONS TAKEN:

The investigator upheld the company's position and found the complaint substantiated. After examining the case file, the Council concluded that when making changes to the USR, the registrar should have been guided by the decision of the General Meeting rather than the Supervisory Board.

The Council recommended that the Ministry of Justice ensure a full and comprehensive review of the company's complaint and restore true information about the plant's head in the event of a breach of the law. In particular, the Council asked the MinJust Collegium to carefully check legality of the private notary's registration actions.

RESULT ACHIEVED:

Having accepted the Council's recommendations, the MinJust Collegium satisfied Lviv enterprise's complaint. The MinJust canceled controversial registration actions and restored information on the CEO of the building and artistic ceramics plant. The registrar's access to the USR was blocked for a month. The case was successfully closed.

Subject: MinJustice Enforcement Service**Inactivity of State Enforcement Service — a story of Donetsk enterprise****Complainee:**

The Ministry of Justice of Ukraine (MinJust), Enforcement Department of East Interregional Department of MinJust in Donetsk Region (SES)

COMPLAINT IN BRIEF:

The Council received a complaint from a research and production company in the field of energy. The company complained that the SES did not properly ensure enforcement of the court decision concerning debt repayment by the state-owned enterprise. In particular, it did not provide full information at the complainant's request. Despite the fact that the court decision came into force and was legally binding, the debt recovery did not take place. The company asked the SES and the MinJust to provide information on the reasons for the delay and the status of the court decision enforcement. However, in response to the complainant's request, the MinJust did not provide the requested information in full, but only stated that the debtor's property was located in the temporarily occupied territory of Ukraine and was wanted. The company decided to appeal against the SES inactivity through the Business Ombudsman Council.

ACTIONS TAKEN:

After reviewing the case materials, the investigator found that the complaint was substantiated. The Council recommended the SES to provide information to the complainant regarding the measures taken by the state body aimed at the court decision enforcement. It should be noted that in the case of our complainant, his debtor is a state-owned enterprise, and according to the law, the state guarantees execution of such court decisions.

RESULT ACHIEVED:

After the Council's interference, the SES provided information requested by the complainant. The case was closed.

ACTIONS OF LOCAL GOVERNMENT AUTHORITIES

Subject: Local government authorities — rules and permits

**Internet providers from
Dnipro defend the right to
network equipment**

Complainee:

Dnipro City Council (DCC)

COMPLAINT IN BRIEF:

The Council received a complaint from the Telecommunication Chamber of Ukraine — a specialized business association bringing together communication, television, and Internet service providers (Association). The complaint was in the interest of one of the largest national ISPs (the complainant). The Association and the complainant argued about omission of Dnipro City Council. Thus, in 2019, DCC Executive Committee decided to take an inventory and put abandoned telecommunication equipment in two districts of Dnipro city onto utility companies' books. The implementation of this decision involved the inventory of approximately 2k of residential buildings.

The Association and the complainant stated that there was a high risk that networks and equipment owned by certain providers could be erroneously assigned to the so-called ownerless property. Under the mentioned circumstances, the Association and the complainant repeatedly requested DCC to provide information on the certain ownerless equipment found during the inventory. The Association wanted to make sure that there was no equipment among ownerless property belonging to Dnipro providers. However, they received numerous refusals to provide such information.

ACTIONS TAKEN:

After examining the complainant's background, the Council agreed with the Association's and the complainant's arguments. As part of the investigation, the Council began communicating with DCC management and respective DCC department officials. During correspondence and discussion of the complaint's circumstances, the Council's investigator in charge repeatedly stressed the need for the municipal body to adhere to a "good administration" principle. This principle is that a municipality should not only ensure making formally lawful decisions, but make them consistent, predictable and proportionate. Interaction of the municipal body with telecommunication providers should be as transparent as possible. Therefore, guided by this principle, DCC should have arranged the inventory process of possibly ownerless property in such a way as to minimize errors and their negative consequences. Telecommunication service providers operating in the corresponding districts of Dnipro city are entitled to receive such information.

RESULT ACHIEVED:

Dnipro City Council accepted the Council's recommendations and overturned the disputable decision. The complainant thanked the Council for assistance: "We truly thank you for your efforts and professionalism which resulted in support and protection of business interests in government agencies. The Business Ombudsman institution is indeed an effective mediator in communication of business with state institutions, particularly local government authorities. The investigator in charge organized consideration of the case properly and used all possible communications for a dialogue with Dnipro municipality representatives". The case was successfully closed. Taking the opportunity, it is worth noting the Association's and the complainant's representatives' proactive position, as well as the constructive and transparent dialogue of DCC.

Subject: Local government authorities — land plots

Kyiv RSA approves land-use development project for construction company's lease

Complainee:

Kyiv Region State
Administration (Kyiv RSA)

COMPLAINT IN BRIEF:

A building materials retailer from Kyiv region appealed to the Business Ombudsman Council. The enterprise could not get approval of a land-use development project for lease of 9 hectares. The complainant planned to place store and ancillary buildings in Makariv district of Kyiv region. Kyiv RSA allowed to take on the land plot lease for the complainant earlier in winter 2013. The enterprise had a special permit for using mineral resources at this land plot and approved a detailed construction plan with the district council. However, it could not conclude a lease agreement with Kyiv RSA. The company submitted all the necessary documents to the local government authority in order to approve the land-use development project, but the process of approval continued for months. Thus, the Council's team commenced consideration of the complaint.

ACTIONS TAKEN:

Having examined the appeal's files and analyzed legislation provisions, the investigator recognized the complaint as substantiated. In the Council's view, Kyiv RSA officials created unlawful administrative barriers by not approving the land-use development project. According to the Land Code of Ukraine, state bodies are obliged to approve or deny approval of land-use projects for lease within ten working days from the date of a document receipt. In particular, legislation stipulates that additional consideration of citizens' appeals requires no more than one month.

The Council detected existence of local government authority's malpractice. The BOC recommended Kyiv RSA to immediately consider the enterprise's complaint and approve the land plot's lease. The investigator highlighted that state bodies should follow the "good governance" principle: to act in a timely and appropriate and consistent manner in civil law.

RESULT ACHIEVED:

Kyiv RSA upheld the Council's recommendations and approved the land-use development project for the complainant's lease of the land plot. The case was closed.

LEGISLATION DRAFTS / AMENDMENTS

Subject: Deficiencies in regulatory framework other

When legislative amendments are necessary, the BOC is here to help

Complainee:

The Ministry of Energy and Environmental Protection of Ukraine

COMPLAINT IN BRIEF:

An energy company from Luhansk approached the Council. The company complained that the Ministry of Energy and Environmental Protection had delayed bringing current legal framework in line with the requirements of the Law "On Electricity Market". For this reason, the company could not directly receive payments from budgetary institutions for electricity consumed.

According to the novelties introduced by the Law, the energy company from Luhansk has begun conducting electricity distribution activities in 2019. Based on the license, the company supplied electricity not only to local power grids of Luhansk region, but also to hostilities territory. However, in connection therewith, the complainant bore an additional financial burden. The company additionally performed works and services within the scope of licensed activities and had to purchase new equipment from time to time, as well as fuel and lubricants for power grids destroyed as a result of military actions.

Following a conference call with the former Ministry of Regional Development, Construction and Housing, Luhansk Regional State Administration submitted proposals for amendments to Resolution No.477 to the Ministry of Energy and Environmental Protection first and then to the Prime Minister himself. However, since the issue remained unresolved for the complainant, the Business Ombudsman Council commenced the complaint's investigation.

ACTIONS TAKEN:

The investigator examined the case file and recognized the complaint as substantiated. The Council recommended that the Ministry of Energy and Environmental Protection amend the CMU Resolution No. 447 to enable the company to receive budget funds for electricity distribution services. In particular, to discuss the subject of complaint, the Council asked the Ministry of Energy and Environmental Protection to hold the tripartite working group meeting with participation of the Council's investigator, the line ministry and the complainant.

RESULT ACHIEVED:

Thanks to the Council's interference, on October 28, 2020, the Cabinet of Ministers adopted Resolution No.1028 "On Amendments to Resolution of the Cabinet of Ministers dated July 6, 2016 No. 447". The complainant thanked the Council for assistance: "It is thanks to the assistance and perseverance of the Business Ombudsman Council that we are finally able to receive budget funds for electricity distribution services, additional works and licensed activities related services, as well as other payments (penalties, fines, etc.), provided by other regulations. It is difficult to overestimate the importance of your facilitation in solving a good deed, which actually warms our team working in hostilities environment". The case was successfully closed.

3.COOPERATION WITH STAKEHOLDERS

One of the Business Ombudsman Council's key goals is to provide effective systemic communication of business with state bodies and local government authorities, as well as state-owned enterprises or subordinate to government agencies. Our map of stakeholders includes various entities, but in this section we will talk about major parties: state bodies, business partners and the media.

3.1. THE STATUS OF THE DRAFT LAW "ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE"

The Business Ombudsman Council currently operates on the basis of 2014 Resolution of the Cabinet of Ministers of Ukraine. However, we are striving for sustainability of the institution that would exist notwithstanding ruling administrations, economic conditions or the COVID-19 realities.

Back in 2014, in order to secure the legal status of the institution in the form of law, the Cabmin instructed in its Resolution the Ministry of Economic to promptly prepare the draft law on the Business Ombudsman Institution.

The BOC promotes underpinning of the institution's status and competences at the legislative level. Thus, a Law "On the Business Ombudsman

Institution in Ukraine" was jointly drafted by 39 members from almost all factions of the Verkhovna Rada of Ukraine (the VRU) and registered in VRU under No.3607 in June 2020. The draft law was supported by the Cabinet of Ministers and three VRU Committees: the Committee on Economic Development, the Committee on Anti-Corruption Policy and the Committee on Ukraine's Integration into the European Union. The draft law provisions correspond to the Venice Principles on the Protection and Promotion of the Ombudsman Institutions (BOI) worldwide, approved by the Council of Europe. In addition, Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, supported all key regulations of the draft law.

In Q4 2020, the following work has been done in order to promote the necessity to adopt the law on the Business Ombudsman Institution (BOI) among stakeholders:



ENGAGEMENT OF VRU DEPUTIES AND COMMITTEES

The Business Ombudsman presented the draft law to the Verkhovna Rada Committee on Ukraine's Integration into the European Union. The Committee analyzed the document for compliance with the EU law and Ukraine's obligations under the Association Agreement. The MPs unanimously concluded that the document does not contradict Ukraine's European integration course. Deputies voiced some recommendations on the bill provisions.

Thus, the bill already has the support of three Committees — before that the document was supported by the Committee on Economic Development and the Committee on Anti-Corruption Policy.

The Business Ombudsman had two meetings (the EBRD representative participated during the second one) with Olga Sovgyrya, the Permanent Representative of the VRU in the Constitutional Court who is also the Deputy Chairman of the Committee, Chairman of the Subcommittee on Political Reform and Constitutional Law of the VRU Committee on Legal Policy. Having addressed all the concerns of the draft law, raised by Ms Sovgyrya, we prepared the reply. The document is to provide a consistent reply and explanations to possible questions that may arise in connection with the law adoption.

The Business Ombudsman also met with several other MPs and it was suggested to re-register the enhanced version of the bill before the first reading at the plenary session of the Verkhovna Rada in order to eliminate controversial elements. We are currently working on the legal refinement of the bill in order to take into account recommendations for improvement proposed by the VRU Deputies.

The BOC addressed all 422 MPs of the Verkhovna Rada of Ukraine of the IX convocation providing them with a brochure "Why we need the BOI law?" and brochure with frequently asked questions about the draft law. The Business Ombudsman asked MPs to support the draft law on the Business Ombudsman institution as an integral part of the anticorruption infrastructure of Ukraine.

ENGAGEMENT OF THE PRESIDENT AND MAJOR ANTI-CORRUPTION STATE BODIES

Having prepared a respective reasoning, the Business Ombudsman appealed to the President of Ukraine Volodymyr Zelenskyy in writing for support and boost of the BOI bill movement in the Parliament. Acknowledging all the previous actions of the President to endorse the BOC activities, the Business Ombudsman emphasized, that the repeated statement of the President with the support of the legislative regulation of the Business Ombudsman status and its activities in Ukraine can have a crucial influence on the position of the MPs on this issue.

Jointly with the EBRD and the National Investment Council of Ukraine, the Business Ombudsman met with the Head of the National Agency for Prevention of Corruption. The parties discussed the possibility to include a provision on the BOI law adoption to the Anti-corruption Strategy of Ukraine 2020-2024 as a tool to minimize corrupt practices and improve business climate.

ENGAGEMENT OF MEDIA AND OTHER PARTNERS

During speeches at conferences and seminars, in broadcasts on TV and radio, in numerous media publications, the Business Ombudsman, his Deputies, and other dedicated team members take every opportunity to stress the need to adopt a law on the Business Ombudsman Institution.

The Business Ombudsman met with several Diplomatic Missions which also expressed the willingness to support the BOI draft law. As a result, they wrote letters to the VRU stating the need to stabilize the legal status of the BOI with a view to improve the business climate in Ukraine and attract foreign investments.

Adoption of the law is needed to make sure the rule of law is maintained in Ukraine and all possible instruments for protecting business are applied. Furthermore, support of the law by the MPs will give a good signal for Ukrainian and international investors that may wish to make more contribution to business development in the country. Within the Istanbul Anti-Corruption Action Plan, the OECD recommended the Government of Ukraine to strengthen the BOC by adopting the law providing the BOC with necessary powers for effective work.



3.2. COOPERATION WITH STATE BODIES

Since its inception in 2015, the BOC has signed

12
MEMORANDA
OF COOPERATION
WITH



- the State Tax Service
- the State Customs Service
- the State Fiscal Service
- the Prosecutor General's Office
- the State 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
- 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.

Activities of expert groups, established under Memoranda of Cooperation with respective state bodies, in Q4 2020:

	Number of meetings and/or online discussions	Number of cases considered during these meetings
State Tax Service	17	165
State Customs Service	3	16
Prosecutor General's Office	2	39
National Police	1	15
Total	23	235

There were no meetings of the expert group set up under the Memorandum with the National Agency on Corruption Prevention. The only case against the NACP we had recently was successfully resolved at the middle-management level. At the same time, not mentioning the high-level meetings, the Council cooperates with the NACP through contributing to development of **Typical Anti-Corruption Programme for Legal Entities**. This quarter six meetings took place.

The BOC representative is taking an active part in the meetings of the **Expert Council on the preparation of Generalized Tax Consultations under the Ministry of Finance**, which has finally resumed its activities after a year break. The BOC recommended to intensify the Expert Council's work in the recent systemic report on administering of taxes. Due to this, the Expert Council has met online four times in Q4 2020, four working subgroups have been set up, and the Ministry of Finance is close to issuing the first generalizing tax consultations in a long time.

3.3. KNOWLEDGE WEBINARS WITH UNBA

This quarter turned out to be particularly busy in terms of online events, which we organized jointly with partners. Together with the Ukrainian National Bar Association, we conducted **6 practical webinars** for advocates. The UNBA, as a professional organization uniting **58,000 barristers** of Ukraine, is interested in continuous training of its members, and the BOC — as a unique institution for business protection can share such practical knowledge. Moreover, lawyers often represent entrepreneurs who seek help from the BOC, so it is especially important for them to understand the specifics of our work and the set of tools we can offer to increase the chances for clients to successfully resolve cases.

**IN OCTOBER-DECEMBER 2020, JOINTLY WITH UNBA,
WE ORGANIZED THE FOLLOWING WEBINARS:**

06.10 RAIDERSHIP IN STATE REGISTER: EFFECTIVE COUNTERACTION



1. Illegal registration actions;
2. Novelties in the legislation in the sphere of state registration;
3. Appeals against registration actions: procedural issues;
4. Special aspects of the case law in appealing against decisions of the Anti-Raidership Collegium of the Ministry of Justice;
5. Prevention of raidership related to registration actions: important steps.

20.10 ADMINISTRATIVE APPEAL IN THE SPHERE OF PUBLIC PROCUREMENT AND ECONOMIC COMPETITION: RACTICAL RECOMMENDATIONS

1. Common violations of law during public procurement;
2. Procedure of filing complaints in the field of public procurement to the Collegium of the Antimonopoly Committee;
3. Participation of the Business Ombudsman Council in the consideration of complaints in the field of public procurement: practical cases and recommendations;
4. Monitoring of public procurement procedures by the State Audit Service of Ukraine as a control mechanism: practical aspects;
5. How to avoid additional pressure from the AMCU and manage the expectations of the regulator.



03.11 BUSINESS ISSUES AT CUSTOMS: HOW TO ACT

1. Appeal to the Business Ombudsman Council as a mechanism to protect the interests of business in relations with customs authorities;
2. Strategies to protect the interests of enterprises in case of non-recognition of the declared customs value;
3. Interference of law enforcement agencies in customs clearance.



17.11 COMPLIANCE POLICIES AND COVID-19: WHAT SHOULD CLIENTS PAY ATTENTION TO?



1. Which areas of compliance have mostly changed and how it has affected decision-making;
2. How the Covid-19 changed corporate compliance culture;
3. An overview of the changes caused by Covid-19 in certain areas of compliance and how this will influence customer policies.

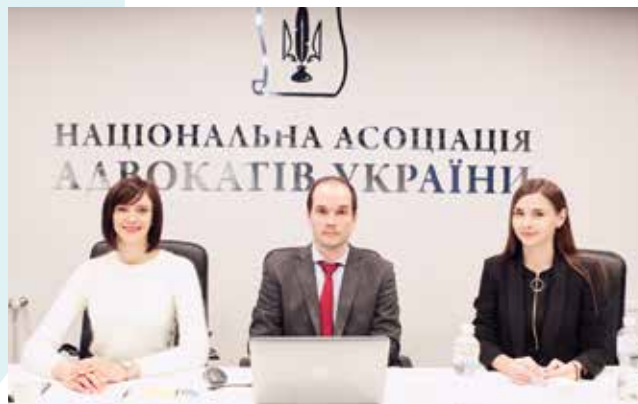
01.12 EFFECTIVE INTERACTION WITH STATE BODIES: BOC EXPERTISE

1. Goal setting and planning interaction with a state body;
2. Client preparation before meeting with a public official;
3. Expectation management
4. Monitoring of a complaint's appeal/ complaints/approvals;
5. Soft skills, hints and tips;
6. Effective cooperation with BOC.



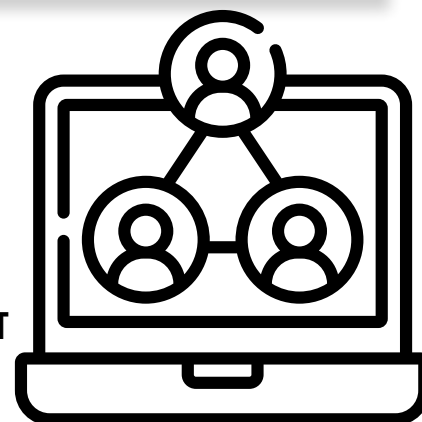
10.12 CLASSIFICATION OF GOODS, VIOLATION OF CUSTOMS RULES AND POST-AUDIT: BOC ROLE AND EXPERIENCE

1. Violation of customs rules:
 - The role of the Business Ombudsman Council in considering complaints concerning violations of customs regulations.
 - Recommendations of the Business Ombudsman Council.
2. Classification of goods:
 - Common issues following the the Business Ombudsman Council's expertise;
 - The importance of case law in resolving disputable issues.
3. Post-customs audit:
 - Current state and experience of the Business Ombudsman Council;
 - Recommendations of the Business Ombudsman Council.



At one of the recent webinars

800
PARTICIPANTS
FROM DIFFERENT
REGIONS OF
UKRAINE.



According to the procedure of the Bar Council of Ukraine, each lawyer must annually improve his / her professional level: study for 10-16 hours, depending on work experience, and receive credit points. One credit score for advanced training of lawyers is equal to one hour of training. The general organization of lawyers' professional development of in Ukraine is carried out by the Bar Council of Ukraine. The process is carried out by UNBA; regional bar councils; UNBA Higher School of Advocacy and other accredited operators.

The Expert Council on Accreditation and Certification has accredited the speakers of the BOC and webinar programs with their participation as those on which credit points can be obtained.

Thanks to this, we managed to increase interest to online events, which we organized together with UNBA, and to attract a large number participants during events.



RECORDINGS OF ALL EVENTS ARE
AVAILABLE ON OUR YOUTUBE
CHANNEL



3.4. BOC RECOGNITION

Since its inception, the Business Ombudsman Council became one of the key institutional pillars of Ukraine's anticorruption and ADR architecture. Operating independently, confidentially and serving entrepreneurs on a free of charge basis, the BOC tackles malpractices at the part of public authorities at the pre-trial stage and thus contributes to creation of better conditions for doing business in Ukraine. The role of the Council in solving entrepreneurs' individual and systemic issues was acknowledged multiple times by our stakeholders. In Q4 2020, two DBOs had an honor to receive prestigious awards for the work performed for the BOC.

THE DEPUTY BUSINESS OMBUDSMAN TETYANA KOROTKA GOT A HIGH DISTINCTION AWARD OF THE PRESIDENT OF THE ITALIAN REPUBLIC.

During the diplomatic reception at the Embassy of Italy in Ukraine, Tetyana Korotka became an honorary Cavaliere de Ordine della Stella d'Italia. Dr Korotka supported Italian Embassy in the activities carried out over the last few years within the G7 Ambassadors Group for reforms, providing a constant contribution in terms of expertise on improving the country's business environment. She also has provided constant support for protection of Italian companies in Ukraine in various disputes that have occurred. The award was presented to the Deputy Business Ombudsman by H.E. Ambassador of Italy in Ukraine Davide La Cecilia. The BOC recognition in international arena proves high reputation of the institution in business protection and signifies the efforts made to attract foreign investment are highly praised by international partners.



The list of the most eminent lawyers is yearly issued by the publisher. Iaroslav Gregirchak got a high appreciation of his activities in protecting business and improving effective cooperation with state bodies. Yuridicheskaya Praktika underlined Iaroslav's contribution to public debate and solution of systemic business issues. Representing the BOC, Iaroslav Gregirchak occupied a notable position in the list equally with Ukrainian top ranking officials from the Supreme Court, the Verkhovna Rada, the Council of Judges, the High Council of Justice, the Cabinet of Ministers, the National Advocate's Association and the Association of Ukrainian Lawyers. Among them are Denys Bugay, Valentyn Gvozdiy, Valentyna Danishevska, Taras Kachka, Andriy Kostin, Maksym Libanov, Oleksiy Malovatsky, Bohdan Monych and Andriy Ovsienko. It is remarkable that the results and impact of the BOC's activities on the socio-political life of the country are valued on such a high scale.

3.5. PUBLIC OUTREACH AND COMMUNICATIONS

The Business Ombudsman Council uses public communication to report trends of business appeals, voice systemic business issues and suggest their possible solutions.

It is worth mentioning that we cooperate with media only on the free of charge basis, providing expert opinions from our side, 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 results of our work. High level of legal expertise and the ability to consistently convey the important message through is also highly appreciated by media channels — our experts are frequent authors at major online platforms, speakers at forums and seminars, guests in TV and radio studios.

PUBLICATIONS

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

27000+
TIMES,

99.9%
MENTIONS BEING
POSITIVE AND
NEUTRAL.

Estimated value of publications in Q4 2020, based on the assessment of the ECOSAP media monitoring agency, was

UAH 1.2
MILLION

In Q4 2020, we cooperated with the following media:

BUSINESS MEDIA:

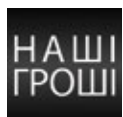


CENSOR.NET

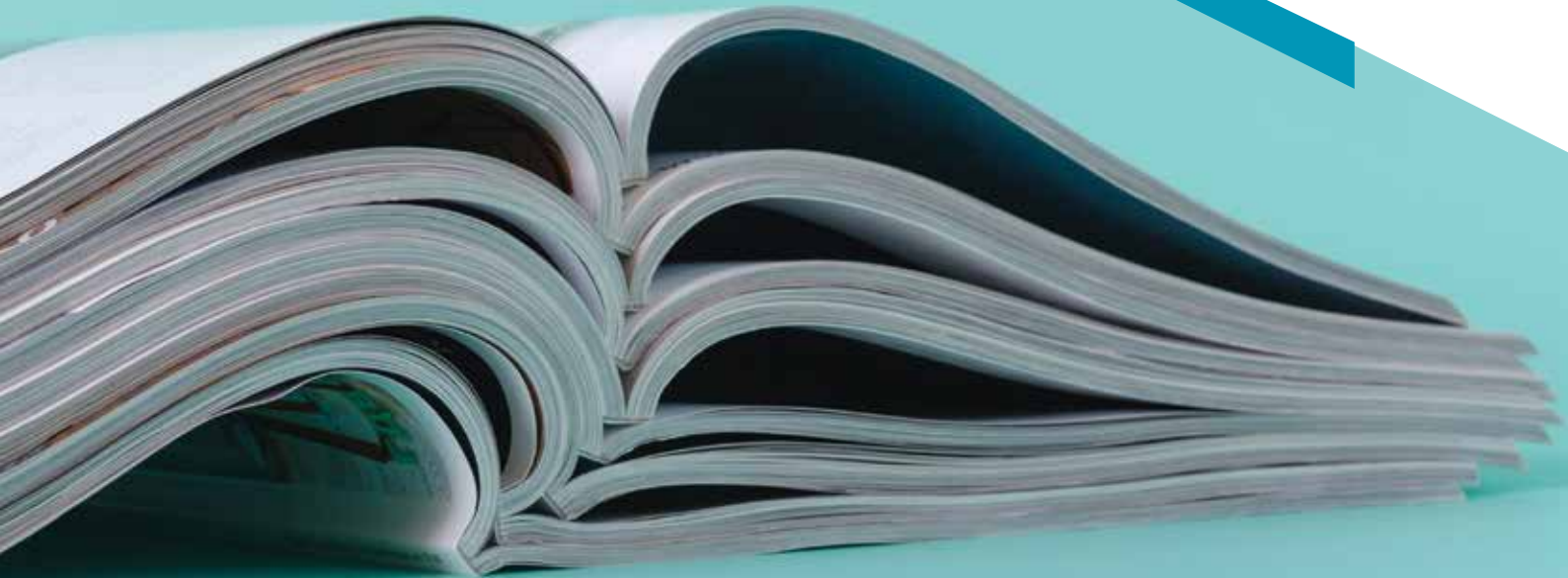
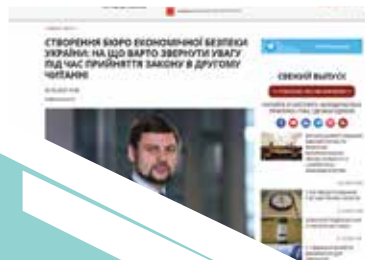
Kyiv Post



ЕКОНОМІЧНА ПРАВДА



SPECIALIZED LEGAL MEDIA:

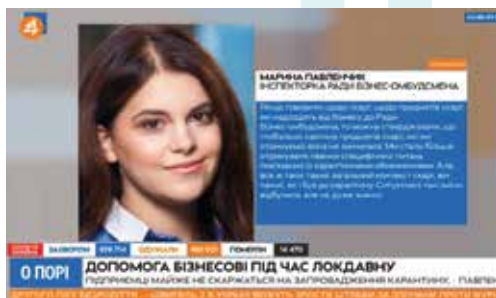


Channel 4



TV AND RADIO:

UA:Pershyi



First Business Channel



Pohlyad: Kyivshchyna



Pravda TUT



Ukraine 24



Espresso TV



SOCIAL MEDIA

THE BUSINESS OMBUDSMAN COUNCIL ACTIVELY REPORTS ON ITS ACTIVITIES IN SOCIAL MEDIA:

- Tells about successfully closed cases and complex cases of entrepreneurs
- Informs about actual events with participation of the BOC employees. Streams them live
- Highlights systemic issues of business and suggests ways to solve them
- Shares own publications about important issues for entrepreneurs
- Reports about results of its operation quarterly
- Publishes feedbacks of complainants
- Shares videos with the BOC employees' appearance on TV and at public events
- Communicates with followers and replies to private messages
- Creates own content. Makes videos

THE BOC IS ALL OVER SOCIAL MEDIA:



Facebook
(@BusinessOmbudsmanUkraine)



YouTube
(@Рада бізнес-омбудсмена)



LinkedIn
(@Business Ombudsman Council)



Instagram
(@business_ombudsman_council)



Twitter
(@bus_ombudsman)

FOLLOW US

If you wish to be the first who receives news about the BOC results for companies conducting business in Ukraine, learn useful pieces of advice, read recent publications with analysis and expert view on systemic business issues and stay in touch, please follow us in the Business Ombudsman Council social media pages.



EVENTS

01-02.10.2020

Athens Democracy Forum

Organized by
The New York Times

07.10.2020



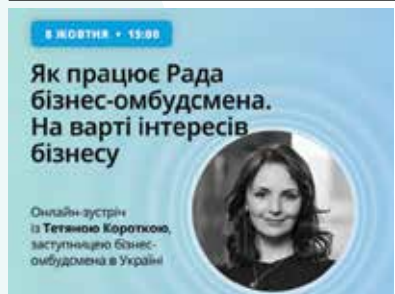
Meeting of the Committee on Ukraine's integration in the European Union
Organized by
Committee of the Verkhovna Rada of Ukraine on Ukraine's integration in the European Union

07-09.10.2020

Yearly EBRD Meeting 2020

Organized by
EBRD

08.10.2020



Motivational meeting with participants of the program "Business Support Organizations School"
Organized by
USAID Competitive Economy Program

08.10.2020

Meeting of the Nomination Committee of the Cabinet of Ministers

Organized by
Cabinet of Ministers of Ukraine

13.10.2020

Discussion "Privatization Program in Ukraine 2020-2021"

Organized by
U.S.-Ukraine Business Council

15.10.2020



Meeting of the Committee of the Verkhovna Rada of Ukraine on Legal Policy
Organized by
Committee of the Verkhovna Rada of Ukraine on Legal Policy

21.10.2020



III Business & Legal Real Estate Forum
Organized by
Yuridicheskaya Praktika publishing house

22.10.2020



Swiss Business Meeting with Business Ombudsman
Organized by
Embassy of Switzerland in Ukraine

22.10.2020



Webinar "When Court Decisions Are Not Enforced by State: Practical View on a Matter"
Organized by
Marchenko Partners

22.10.2020

Presentation of Ukrainian Study on Legal Issues of Small and Medium-sized Enterprises in Ukraine
Organized by
EU Pravo-Justice Project and CEDEM

23.10.2020

Meeting with the Director of National Anti-Corruption Bureau of Ukraine (NABU) Artem Sytnyk
Organized by
 National Anti-Corruption Bureau of Ukraine (NABU)

23.10.2020

Business Protection Forum
Organized by
 Ukrainian Advocates' Association and Law&Business Studio

29.10.2020

Presentation of Results of Fifth Annual Survey of Exporters and Importers. Episode 2
Organized by
 Institute of Economic Research and Policy Consulting

29.10.2020

Presentation of the first Ukraine Road PPP Program in Ukraine
Organized by
 Ministry of Infrastructure of Ukraine, Ukravtodor, World Bank and International Financial Corporation

03.11.2020

Meeting of the Nomination Committee of the Cabinet of Ministers
Organized by
 Cabinet of Ministers of Ukraine

05.11.2020

The Big Tax Talks: Tax Conference for Business
Organized by
 Dictum Law Firm

05.11.2020

Meeting of the Temporary Special Commission of the Verkhovna Rada on Protection of Investors' Rights
Organized by
 Temporary Special Commission of the Verkhovna Rada on Protection of Investors' Rights

11.11.2020

Ukrainian Arbitration Forum
Organized by
 Yuridicheskaya Praktika publishing house

12.11.2020



Presentation of the Business Ombudsman Council at the Second Meeting of Business Ombudsman Institutions in Eastern Europe and Central Asia

Organized by
OECD

12.11.2020



High Level Discussion "Reforming the State Tax Service Through the Lenses of the Tax Officers and Tax Payers' Integrity"

Organized by
Ukrainian Network of Integrity and Compliance (UNIC)

19.11.2020

Meeting with the Independent Association of Banks of Ukraine

Organized by
Ukrainian Network of Integrity and Compliance (UNIC)

19.11.2020



Tax&Business Talks

Organized by
Ukrainian Advocates' Association
and Law&Business Studio

24.11.2020



Meeting with the Head of Donetsk Regional State Administration

Organized by
Donetsk Regional State Administration

25.11.2020

Regional webinar "Strengthening the Role of Private Finance in Infrastructure Development"

Organized by
OECD

25.11.2020



Discussion "New Start: Strategies and Resources for Overcoming the Consequences of the Coronacrisis for SMEs"

Organized by
EU Delegation to Ukraine
and Liga.net

25.11.2020



VII International Arbitration Readings in Memory of Academician Igor Pobirchenko
Organized by
International Commercial Arbitration Court (ICAC)

27.11.2020

Meeting of the National Council on Anti-Corruption Policy chaired by the President of Ukraine Volodymyr Zelenskyy
Organized by
 National Council on Anti-Corruption Policy

27.11.2020

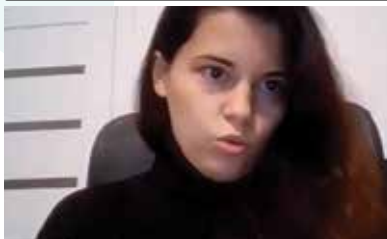
State Tax Service Board Meeting
Organized by
 State Tax Service of Ukraine

30.11.2020

Meeting with the Head of the National Agency on Corruption Prevention Oleksandr Novikov
Organized by
 National Agency on Corruption Prevention

02.12.2020

Second meeting of the international program "Anti-Corruption Collective Action in Ukraine"
Organized by
 UN Global Compact

04.12.2020

Webinar "Corruption Detectors Protection — Supporting Allies in Building a Fair Business"
Organized by
 Ukrainian Network of Integrity and Compliance (UNIC)

04.12.2020

Online Panel Discussion "Conceptual Aspects of the Competition-Antimonopoly Reform"
Organized by
 American Chamber of Commerce in Ukraine

07.12.2020

Webinar "Reporting of Non-Resident Representative Offices and Establishment of Quarterly Unified Reporting with SSC, Personal Income Tax and Military Tax"
Organized by
 Martyniv Law Firm

08.12.2020

Webinar "Internal Investigation: Practical Aspects and Main Trends 2020"
Organized by
 Ukrainian Network of Integrity and Compliance (UNIC)

09.12.2020

Conference dedicated to the International Anti-Corruption Day
Organized by
 EBRD

09.12.2020

Meeting of the Committee of Business and Investors' Protection with the Business Ombudsman Council

Organized by

Ukrainian National Bar Association (UNBA)

10.12.2020

Ukraine moving forward in 2021: Celebrating the 25th Anniversary of the U.S.-Ukraine Business Council

Organized by

U.S.-Ukraine Business Council

10.12.2020

Online meeting with G7 Ambassadors (presentation of the Law "On the Business Ombudsman Institution in Ukraine")

Organized by

Business Ombudsman Council

10.12.2020



Presentation of Results of Fifth Annual Survey of Exporters and Importers. Third episode. Presentation Smuggling and "gray imports", corruption at customs "

Organized by

Institute of Economic Research and Policy Consulting

11.12.2020



Webinar "Transparent and Competitive Procurement — Company's Security" and "Third Party Verification as a Compliance Outpost"

Organized by

Ukrainian Network of Integrity and Compliance (UNIC)

11.12.2020



International Conference "Ukraine — Investment Harbor in the Time of Change"

Organized by

Ukraine Invest

14.12.2020

Meeting "Anti-Corruption Reforms in Eastern Europe and Central Asia: Focus on Conflict of Interests and Asset Declarations"

Organized by

OECD

28.12.2020



Round table "Conclusions of 2020 for Advocates in the Sphere of Business Protection: Quarantine as a Main Trend of the Year"

Organized by

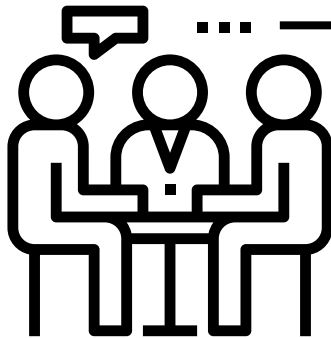
Ukrainian Advocates' Association

4. ADMINISTRATIVE ISSUES



Since March 2020, when the quarantine measures were adopted in Ukraine, the Business Ombudsman Council has granted its employees an opportunity to voluntarily switch to a remote mode of operation.

Despite the new realities caused by the COVID-19 pandemic, the institution continues its active work aiming to protect business from state bodies' malpractice. The BOC interacts with state bodies and complainants online and via videoconferences. It should be highlighted that all the investigations are conducted and the cases are considered in a timely and regular manner.



At the same time, the Council never refuses to hold working meetings in person depending stakeholder's preference. Therefore, the quarantine did not affect or radically change neither uninterrupted functioning of the Council, nor effective work of the team. In the last quarter of 2020, the number of complaints lodged with the Council has even exceeded the pre-coronavirus level.

In November 2020, a survey conducted among the BOC team members, showed that the majority of the employees supported distance work in view of the current conditions. They also expressed a desire to keep the mode everyone adapted to and learned to benefit from for the future, even when the lockdown is over.

In this way, the Council was able to reduce

45%

of the office space.



In December 2020, the Business Ombudsman Council signed the rent agreement reducing office premises by 45%, starting from January 2021.

**INDEPENDENTLY.
CONFIDENTIALLY.
FREE OF CHARGE.**





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www.boi.org.ua
[www.facebook.com/
BusinessOmbudsmanUkraine](https://www.facebook.com/BusinessOmbudsmanUkraine)