

01 January – 31 March 2021

# QUARTERLY REPORT

**REPORT  
FOCUS:**

**ANALYSIS  
OF COMPLAINTS  
BY INDUSTRIES**



## THE BOC IS FUNDED

The Business Ombudsman Council is financed from the Ukraine Stabilisation and Sustainable Growth Multi-Donor Account (MDA) managed by the EBRD. Contributors to the MDA are Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Sweden, Switzerland, the United Kingdom, the United States and the European Union, the largest donor.

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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

### DEAR FRIENDS, COLLEAGUES AND PARTNERS,

In Q1 2021, the BOC received 425 business complaints concerning malpractice of state bodies that is 26 complaints (or 6% less) than in Q4 2020. However, the number of completed investigations was 10% higher than in Q4 2020. With the BOC facilitation, entrepreneurs managed to return and save UAH 126 mn in January-March 2021. Among complainants, who completed feedback forms, 97% were satisfied with cooperation with the BOC.

The key reason for a decrease in the number of complaints was a decline of appeals on tax invoice suspension: from 99 in Q4 2020 to 44 in Q1 2021. However, non-enforcement of court decisions regarding tax invoice registration was the most widespread subject of appeals for the first time since the BOC inception – in the reporting period, we received 56 such complaints. Challenging tax audits results was the second most common subject of business complaints – we received 49 appeals in this regard, despite the current moratorium on most tax inspections in Ukraine. Entrepreneurs complained 27 times about inclusion in “risky” lists of taxpayers. Businesses also complained more about unreasonably initiated tax criminal cases as compared to Q4 2020 (+ 7%) and Q1 2020 (+14%). At the same time, the number of appeals concerning electronic administration of VAT and termination of agreements on recognition of electronic reporting went down.

For the first time since Q1 2020, tax issues accounted for less than 60% of the total number of appeals. Meanwhile, both relative and absolute figures of complaints concerning the National Police, the Prosecutor's Office, customs and state-owned



Business Ombudsman  
**Marcin Świącicki**

*Marcin Świącicki*

enterprises went up. The number of appeals regarding the National Police almost doubled as compared to Q4 2020 and Q1 2020. The driver of such growth were complaints on procedural abuse and inaction of the National Police. Almost one third of appeals against the law enforcement block was related to the Prosecutor's Office. Entrepreneurs also complained more about procedural abuse of prosecutors: + 120% compared to Q4 2020 and + 22% compared to Q1 2020. The number of appeals about actions of the State Security Service decreased as compared to Q4 2020 (by 22%, from 9 to 7), but increased as compared to Q1 2020 (by 75%, from 4 to 7).

Compared to Q4 2020 and Q1 2020, entrepreneurs complained more about actions of state regulators. Inter alia, the number of appeals concerning DABI and the StateGeoCadastre was on a rise. The number of complaints on customs issues also increased – in particular, one complained three times more on delays in customs clearance of goods. For the first time in a long time, actions of state-owned companies hit the TOP-5 subjects of appeals. We received 12 complaints in this regard, which is 50% more as compared to Q4 2020 and 20% more than in Q1 2020. Entrepreneurs also complained more about abuse of authority by employees of state enterprises.

Under Memoranda signed between the BOC and key state bodies, in the reporting quarter 25 meetings of expert groups took place, at which 188 business cases were considered. State bodies implemented 88% of individual BOC recommendations.

Among systemic recommendations issued since launch of our operations, in the reporting quarter state bodies implemented the following ones:

- The Verkhovna Rada passed a law obliging local government authorities to re-conclude land lease agreements with new real estate property owners under a simplified and transparent procedure;
- The Verkhovna Rada adopted a law abolishing the obligation to keep paper employment record books;

- The Cabinet of Ministers approved the National Economic Strategy for the period up to 2030, which includes measures that have not lost their relevance in connection with expiration of the SME Development Strategy until 2020;
- The Ministry for Development of Economy, Trade and Agriculture granted access for SMEs to information on funding opportunities, technical assistance and training materials on financial literacy portal for entrepreneurs.

Jointly with partners the BOC continued organizing practical webinars for business. Together with the Ministry for Development of Economy, Trade and Agriculture and the SME Development Office (SMEDO), we conducted events devoted to tax issues, cooperation with law enforcement bodies, state regulators and local government authorities. We held online meetings with the Ukrainian National Bar Association devoted to monitoring of business partners, government supervision over entrepreneurship during the lockdown and business complaints relating to quarantine restrictions. We also co-organized two events about tax audits and tax invoice suspension with the American Chamber of Commerce and its member law firms. In 2021, the Ukrainian League of Industrialists and Entrepreneurs, a member of our Supervisory Board, joined the initiative of practical webinars with the BOC. In March, we held the first event of the series (on business and tax issues), which we are going to continue throughout the year.

Work on a draft law on the Business Ombudsman Institution proceeded to a new stage. To take remarks of the Main Scientific and Expert Department of the Verkhovna Rada and Parliamentary Committees into account, in February 2021, the MPs returned the document to the dedicated committee for finalization. On April 28, the Verkhovna Rada Committee on Economic Development recommended a new version of the draft law to be considered in the first reading at the plenary session of the Verkhovna Rada.

# Q1 2021 AT A GLANCE

**425**  
COMPLAINTS  
RECEIVED

**321**  
CASES  
CLOSED

**-6%**  
as compared  
to Q4 2020

**-8%**  
as compared  
to Q1 2020

**+10%**  
as compared  
to Q4 2020

**+9%**  
as compared  
to Q1 2020



**88%**

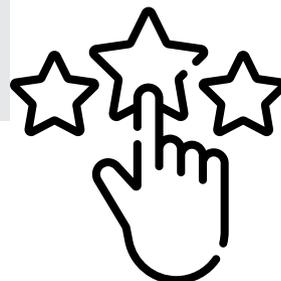
OF CASE-BY-CASE  
RECOMMENDATIONS  
WERE IMPLEMENTED  
BY STATE BODIES

DIRECT  
FINANCIAL  
IMPACT:

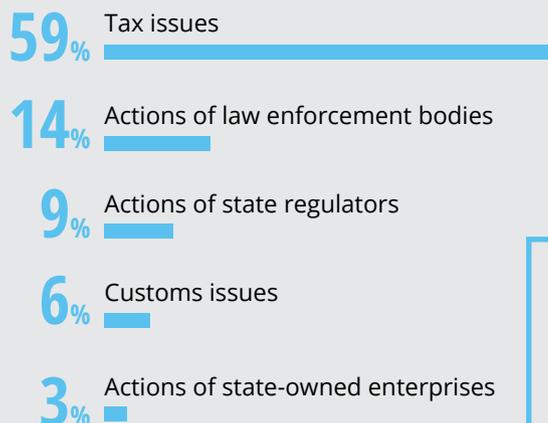
UAH  
**126**  
MN

**97%**

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



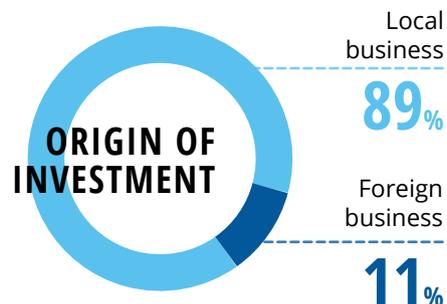
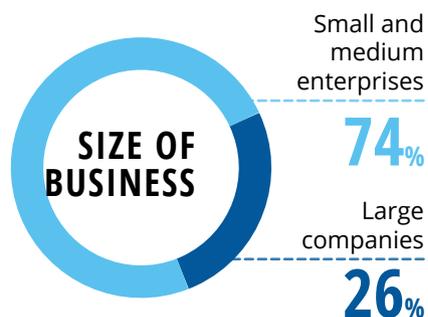
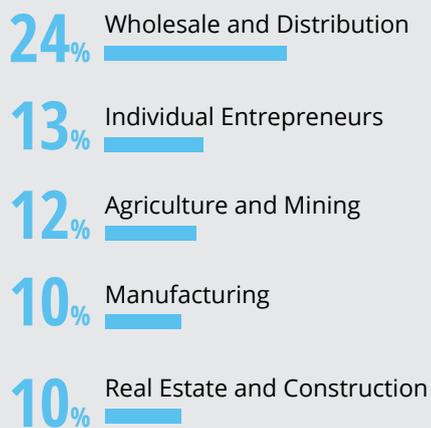
## TOP-5 BLOCKS OF COMPLAINTS



## TOP-5 MOST ACTIVE REGIONS



## TOP-5 INDUSTRIES



# 1.COMPLAINT TRENDS

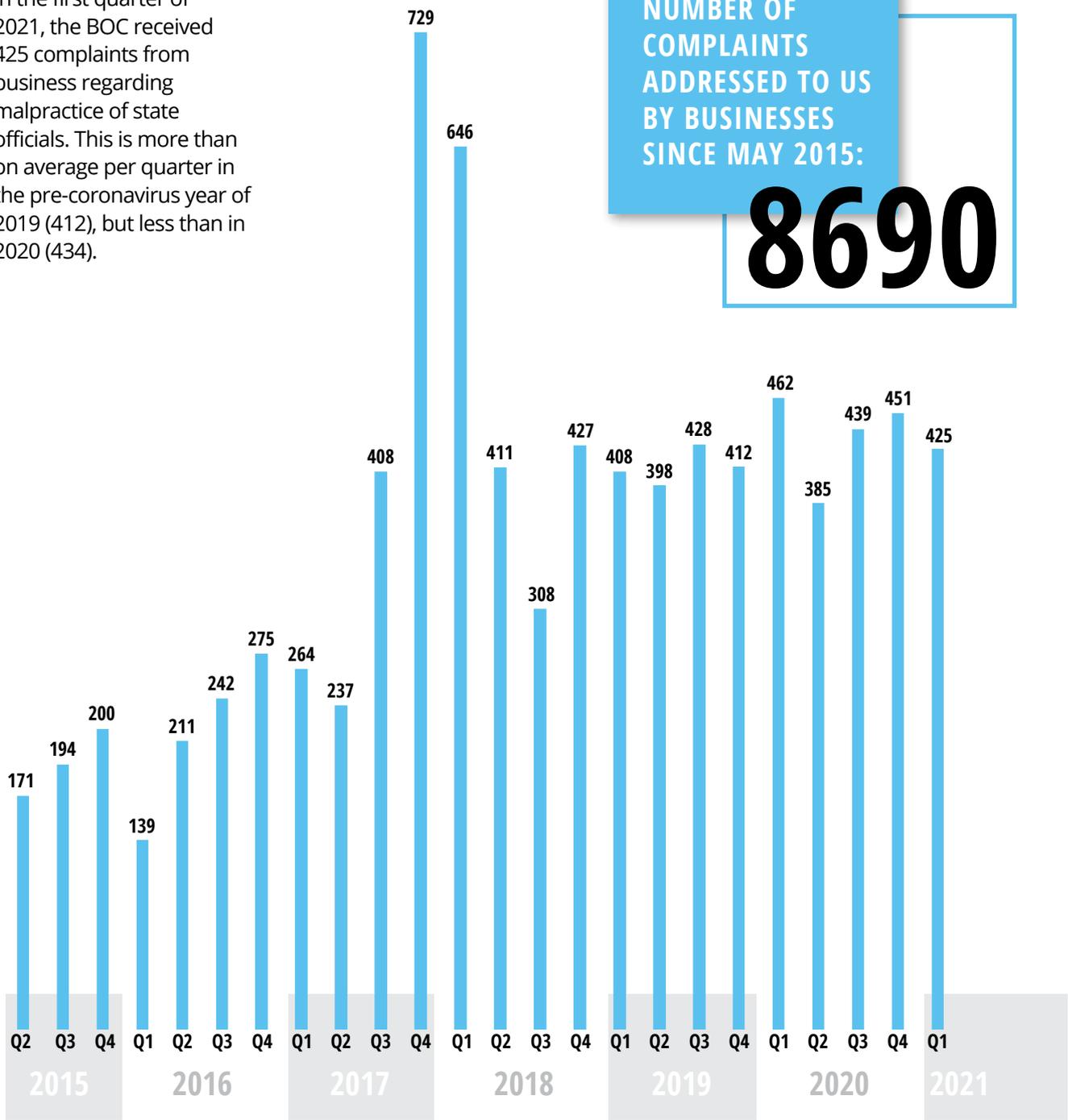
## 1.1. VOLUME AND NATURE OF COMPLAINTS RECEIVED

(Clause 5.3.1 (a) of Rules of Procedure)

In the first quarter of 2021, the BOC received 425 complaints from business regarding malpractice of state officials. This is more than on average per quarter in the pre-coronavirus year of 2019 (412), but less than in 2020 (434).

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

**8690**



**TOP-10****SUBJECTS OF COMPLAINTS IN Q1 2021**

| <b>SUBJECT</b>   | <b>Q1 2021</b> | <b>Q4 2020</b> | <b>Q1 2020</b> |
|--|----------------|----------------|----------------|
| <b>TAX ISSUES</b>  | <b>249</b>     | <b>289</b>     | <b>270</b>     |
| Non-enforcement of court decisions on VAT invoice registration | 56             | 49             | 42             |
| Tax inspections  | 49             | 44             | 90             |
| VAT invoice suspension   | 44             | 99             | 19             |
| Inclusion of taxpayers in "risky" lists                        | 27             | 29             | 49             |
| Tax criminal cases   | 16             | 15             | 14             |
| VAT electronic administration                                  | 7              | 10             | 12             |
| VAT refund   | 4              | 4              | 1              |
| Tax termination/renewal/refusal of VAT payers registration     | 1              | 5              | 1              |
| Tax other  | 45             | 34             | 40             |
| <b>STATE REGULATORS' ACTIONS</b>                               | <b>38</b>      | <b>31</b>      | <b>20</b>      |
| State Architecture and Construction Inspectorate (DABI)        | 6              | 2              | 2              |
| StateGeoCadastre   | 5              | 3              | 4              |
| Antimonopoly Committee of Ukraine (AMCU)                       | 2              | 2              | 1              |
| Other state regulators   | 25             | 24             | 10             |
| <b>NATIONAL POLICE ACTIONS</b>                                 | <b>37</b>      | <b>20</b>      | <b>19</b>      |
| National Police procedural abuse                               | 25             | 12             | 8              |
| National Police inactivity                                     | 9              | 2              | 1              |
| National Police criminal case initiated                        | 1              | 0              | 1              |
| National Police other  | 2              | 1              | 3              |
| <b>CUSTOMS ISSUES</b>  | <b>26</b>      | <b>18</b>      | <b>18</b>      |
| Customs valuation  | 7              | 11             | 9              |
| Customs clearance delay/refusal                                | 6              | 2              | 6              |
| Overpaid customs duties refund                                 | 1              | 0              | 0              |
| Customs administrative proceedings                             | 1              | 1              | 0              |
| Customs criminal proceedings                                   | 0              | 1              | 0              |
| Customs other  | 11             | 3              | 3              |

| <b>SUBJECT</b>   | <b>Q1 2021</b> | <b>Q4 2020</b> | <b>Q1 2020</b> |
|--|----------------|----------------|----------------|
| <b>PROSECUTOR'S OFFICE ACTIONS</b>                                 | <b>17</b>      | <b>12</b>      | <b>14</b>      |
| Prosecutor's Office procedural abuse                               | 11             | 5              | 9              |
| Prosecutor's Office inactivity                                     | 4              | 6              | 2              |
| Prosecutor's Office criminal case                                  | 1              | 0              | 2              |
| Prosecutor's Office corruption allegations                         | 0              | 1              | 0              |
| Prosecutor's Office other  | 1              | 0              | 1              |
| <b>STATE-OWNED ENTERPRISES' ACTIONS</b>                            | <b>12</b>      | <b>8</b>       | <b>10</b>      |
| State-owned enterprises abuse of authority                         | 3              | 2              | 7              |
| State-owned enterprises /commercial disputes                       | 1              | 0              | 1              |
| State-owned enterprises other                                      | 8              | 6              | 2              |
| <b>LOCAL SELF-GOVERNMENT AUTHORITIES' ACTIONS</b>                  | <b>11</b>      | <b>13</b>      | <b>33</b>      |
| Local government authorities – land plots                          | 2              | 3              | 5              |
| Local government authorities – rules and permits                   | 1              | 3              | 10             |
| Local government authorities – investment disputes                 | 0              | 0              | 1              |
| Local government authorities – other                               | 8              | 7              | 17             |
| <b>STATE SECURITY SERVICE ACTIONS</b>                              | <b>7</b>       | <b>9</b>       | <b>4</b>       |
| State Security Service procedural abuse                            | 5              | 6              | 3              |
| State Security Service inactivity                                  | 2              | 0              | 0              |
| State Security Service criminal case initiated                     | 0              | 1              | 0              |
| State Security Service other                                       | 0              | 2              | 1              |
| <b>LEGISLATION DRAFTS/AMENDMENTS</b>                               | <b>5</b>       | <b>6</b>       | <b>5</b>       |
| Deficiencies in regulatory framework state regulators              | 0              | 1              | 2              |
| Deficiencies in regulatory framework local councils/municipalities | 0              | 0              | 0              |
| Deficiencies in regulatory framework tax                           | 0              | 0              | 2              |
| Legislation drafts/amendments                                      | 0              | 1              | 0              |
| Deficiencies in regulatory framework other                         | 5              | 4              | 1              |
| <b>MINISTRY OF JUSTICE ACTIONS</b>                                 | <b>4</b>       | <b>12</b>      | <b>13</b>      |
| Department of State Registration and Notary                        | 3              | 6              | 7              |
| Department of State Enforcement Service                            | 1              | 6              | 6              |

## TAX ISSUES

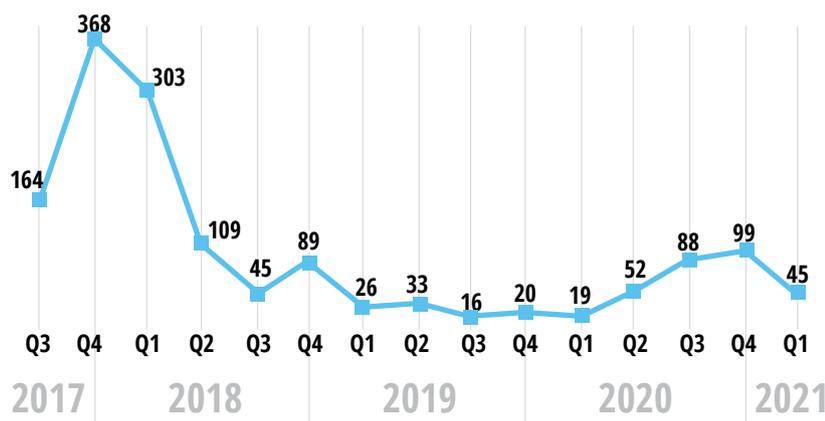
In Q1 2021, the BOC received 249 complaints on tax issues, which is 14% (50 complaints) less than in Q4 2020. At the same time, within the tax block we observed the changing trends of business complaints. Thus, the number of appeals concerning **non-enforcement of court decisions on registration of tax invoices** increased by 14% as compared to Q4 2020 and by 33% as compared to Q1 2020. For the first time since launch of operations this subject became the most widespread among all business complaints – in the reporting quarter we received 56 appeals in this respect.

Appealing results of **tax audits** became the second most common subject of complaints – we received 49 appeals in this regard (+ 11% as compared to Q4 2020), even despite the acting moratorium on most tax inspections in Ukraine.

The BOC received 44 complaints regarding **suspension of tax invoices** – which is by 55 (56%) less than in Q4 2020, but 132% more than in Q1 2020. We believe, that this significant reduction in the number of appeals (– 45 complaints in comparison with the previous quarter) to a greater extent led to an overall decrease in the tax block's complaints as compared to Q4 2020 (– 50 complaints in total).

After introduction of moratorium on tax inspections in March 2020 suspension of tax invoices remained almost the only way to respond to VAT abuse. On February 3, 2021, the Cabinet of Ministers practically lifted the moratorium on inspections. Now, in addition to blocking invoices, a traditional tool of tax control – tax audits became available. But this is only hypothetical, as complaints in this category are characterized by a certain "volatility", as you can see on the diagram below:

### Dynamics of appeals concerning tax invoices suspension



We received 27 complaints concerning **inclusion of taxpayers in the "risky" lists**, which is 7% and 45% less than in Q4 2020 and Q1 2020, respectively.

Entrepreneurs complained more about ungrounded **tax criminal** cases compared to Q4 2020 (+7%, from 14 to 15) and Q1 2020 (+14%, from 14 to 16).

At the same time, the number of appeals concerning **electronic administration of VAT** and **termination of agreements on recognition of electronic reporting** went down.

## ACTIONS OF LAW ENFORCEMENT BODIES

We received a total of 61 complaints concerning malpractice of law enforcers. The number of appeals regarding actions of the National Police has almost doubled compared to Q4 2020 (from 20 to 37) and Q1 2020 (from 19 to 37). The source of such growth were appeals about procedural abuse and inaction of the **National Police**. Overall, the National Police was in focus of 61% of all complaints involving law enforcement bodies.

Almost one third (28%) of appeals with respect to law enforcers concerned the **Prosecutor's Office**. Entrepreneurs also complained more about procedural abuse of prosecutors: +120% (from 5 to 11) compared to Q4 2020 and +22% compared to Q1 2020.

The number of complaints concerning actions of the **State Security Service** decreased compared to Q4 2020 (by 22%, from 9 to 7), but went up compared to Q1 2020 (by 75%, from 4 to 7).

## ACTIONS OF STATE REGULATORS

In comparison with Q4 2020 and Q1 2020, entrepreneurs complained more about malpractice of state regulators: by 23% (from 31 to 38) by 90% (from 20 to 38), respectively. In particular, the number of appeals concerning **DABI** and the **State Geocadastr** has increased.

## CUSTOMS ISSUES

The number of business issues at the customs, which companies addressed to the BOC in the reporting quarter, also grew: by 44% as compared to both Q4 2020 and Q1 2020 (from 18 to 26). In particular, the number of appeals regarding delays in customs clearance tripled (from 2 to 6 versus the previous quarter).

## ACTIONS OF STATE COMPANIES

For the first time in a long time, actions of state-owned companies hit the TOP-5 subjects of appeals. We received 12 complaints in this respect, which is 50% more than in Q4 2020 and 20% more than in Q1 2020. In particular, entrepreneurs complained more about abuse of power by employees of state-owned enterprises.

## OTHER ISSUES

With regard to other subjects from the TOP-10 subjects of complaints – actions of local government authorities, the Ministry of Justice, legislation drafts and amendments – we observed a decrease in the number of appeals as compared to Q4 2020 and Q1 2020.



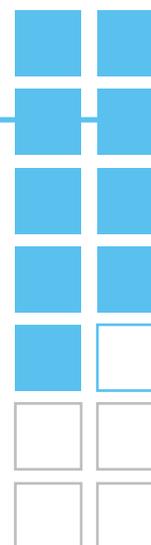
## 1.2. TIMELINES OF THE PRELIMINARY REVIEW OF COMPLAINTS

(Clause 5.3.1 (b) of Rules of Procedure)

IN Q1 2021,  
THE AVERAGE  
TIME FOR  
PRELIMINARY  
REVIEW OF A  
COMPLAINT WAS

**9 WORKING DAYS.**

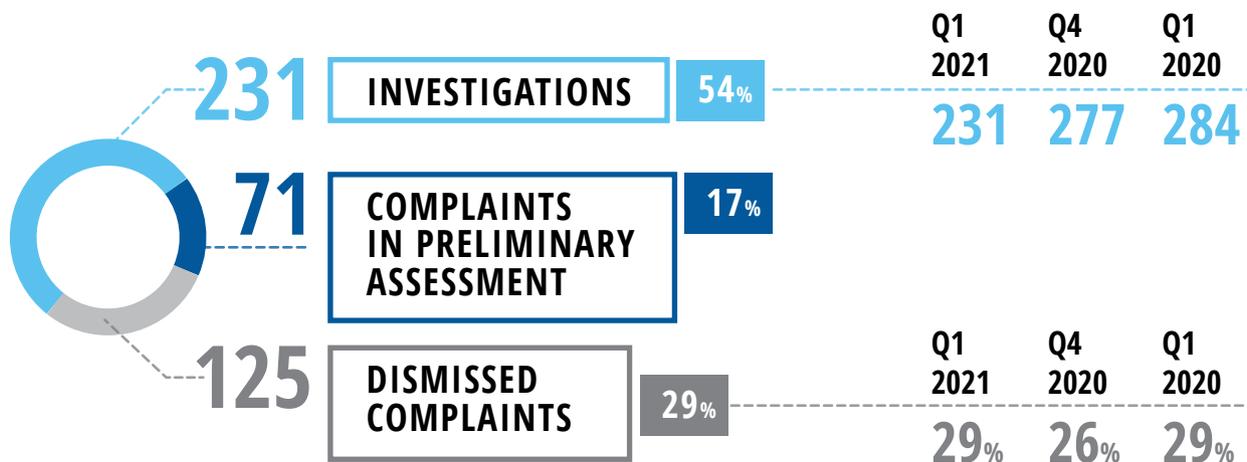
It means that we fit our Rules of Procedure's target of 10 working days.



## 1.3. NUMBER OF INVESTIGATIONS CONDUCTED AND GROUNDS FOR DISMISSING COMPLAINTS

(Clause 5.3.1 (c) of Rules of Procedure)

In Q1 2021, the BOC undertook 231 investigations, which amounts to 54% of complaints received. The rest of appeals remained at the stage of preliminary assessment (17%) or was dismissed as not fitting the Council's eligibility criteria (29%) as of March 31, 2021.



| <b>MAIN REASONS FOR COMPLAINTS<br/>DISMISSAL IN Q1 2021</b>  | <b>Q1<br/>2021</b> | <b>Q4<br/>2020</b> | <b>Q1<br/>2020</b> |
|--|--------------------|--------------------|--------------------|
| Complaints outside Business Ombudsman's competence   | 65                 | 70                 | 75                 |
| Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made | 22                 | 25                 | 23                 |
| In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation                                       | 10                 | 18                 | 13                 |
| A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration                            | 8                  | 4                  | 7                  |
| The complaint had no substance, or other agencies or institutions were already investigating such matter                               | 7                  | 5                  | 11                 |
| Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings                               | 5                  | 4                  | 6                  |
| Complainant requested to withdraw the complaint  | 4                  | 1                  | 3                  |
| Investigation by the Business Ombudsman in a similar case is pending or otherwise on-going; and  | 3                  | 5                  | 0                  |
| Complaint was filed after the expiry of the limitation period  | 1                  | 0                  | 3                  |

The most widespread reason (52%) for complaints dismissal – they were outside the Business Ombudsman's competence. Active court proceedings (18%) and lack of cooperation from the complainant's side (8%) were also noticed in Q1 2021.

**WE WOULD LIKE TO THANK THE BUSINESS OMBUDSMAN COUNCIL FOR FRUITFUL AND EFFECTIVE COOPERATION. IT WAS THANKS TO THE INTERVENTION OF THE BUSINESS OMBUDSMAN COUNCIL'S REPRESENTATIVES THAT THE COURT DECISION WAS ENFORCED BY THE STATE TAX SERVICE OF UKRAINE. WE ARE CONVINCED ABOUT THE EFFECTIVENESS OF SUCH A MECHANISM AS THE BUSINESS OMBUDSMAN COUNCIL, WHICH AIMS TO PROTECT SMALL AND MEDIUM-SIZED BUSINESSES, AS WELL AS TO ASSIST BUSINESSES AFFECTED BY MALPRACTICE IN PROTECTING THEIR RIGHTS AND FREEDOM OF DOING BUSINESS OR PROTECTING FROM UNLAWFUL INTERFERENCE IN THEIR ECONOMIC ACTIVITY.**

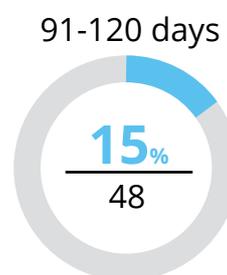
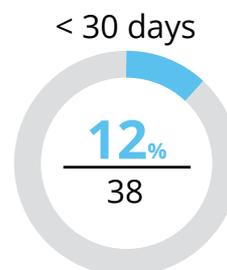
**OLEH DOVBOSHCHUK  
DIRECTOR OF NESS PV LLC**

## 1.4. TIMELINES OF CONDUCTING INVESTIGATIONS

(Clause 5.3.1 (d) of Rules of Procedure)



### RATIO OF CLOSED CASES BY DAYS:



The majority of cases – 242, which is 76% of all closed cases in Q1 2021, were investigated within 90 days, as standardly envisaged in our Rules of Procedure.

## 1.5. GOVERNMENT AGENCIES SUBJECT TO THE MOST COMPLAINTS

### TOP-12 COMPLAINÉES

|  | Number of complaints received in<br><b>Q1 2021</b> | Number of complaints received in<br><b>Q4 2020</b> | Number of complaints received in<br><b>Q1 2020</b> |
|--|--|--|--|
| State Tax Service  | 233  | 275  | 258  |
| National Police  | 38   | 35   | 32   |
| State Customs Service  | 26   | 18   | 18   |
| Prosecutor's Office  | 17   | 12   | 12   |
| Tax Police   | 15   | 15   | 14   |
| State Enterprises  | 11   | 8  | 11   |
| Local government authorities                                   | 11   | 13   | 33   |
| Ministry for Development of Economy Trade and Agriculture      | 9  | 8  | 8  |
| Ministry of Social Policy                                      | 8  | 9  | 4  |
| State Security Service   | 7  | 9  | 4  |
| Parliament, the Cabinet of Ministers, the President of Ukraine | 7  | 5  | 5  |
| Ministry of Finance  | 7  | 2  | 3  |

Traditionally, the State Tax Service leads the ranking of the BOC complainees. However, in the reporting quarter, the number of appeals concerning the State Tax Service decreased by 15% versus Q4 2020 (from 275 to 233) and by 10% versus Q1 2020 (from 258 to 233).

The National Police went second in the anti-rating – entrepreneurs lodged with us 38 complaints regarding malpractice of this law enforcement body, which is 9% and 19% more than in Q4 2020 and Q1 2020, respectively. The number of appeals with respect to the Prosecutor's Office also increased to 17 complaints: +42% as compared to both Q4 2020 and Q1 2020.

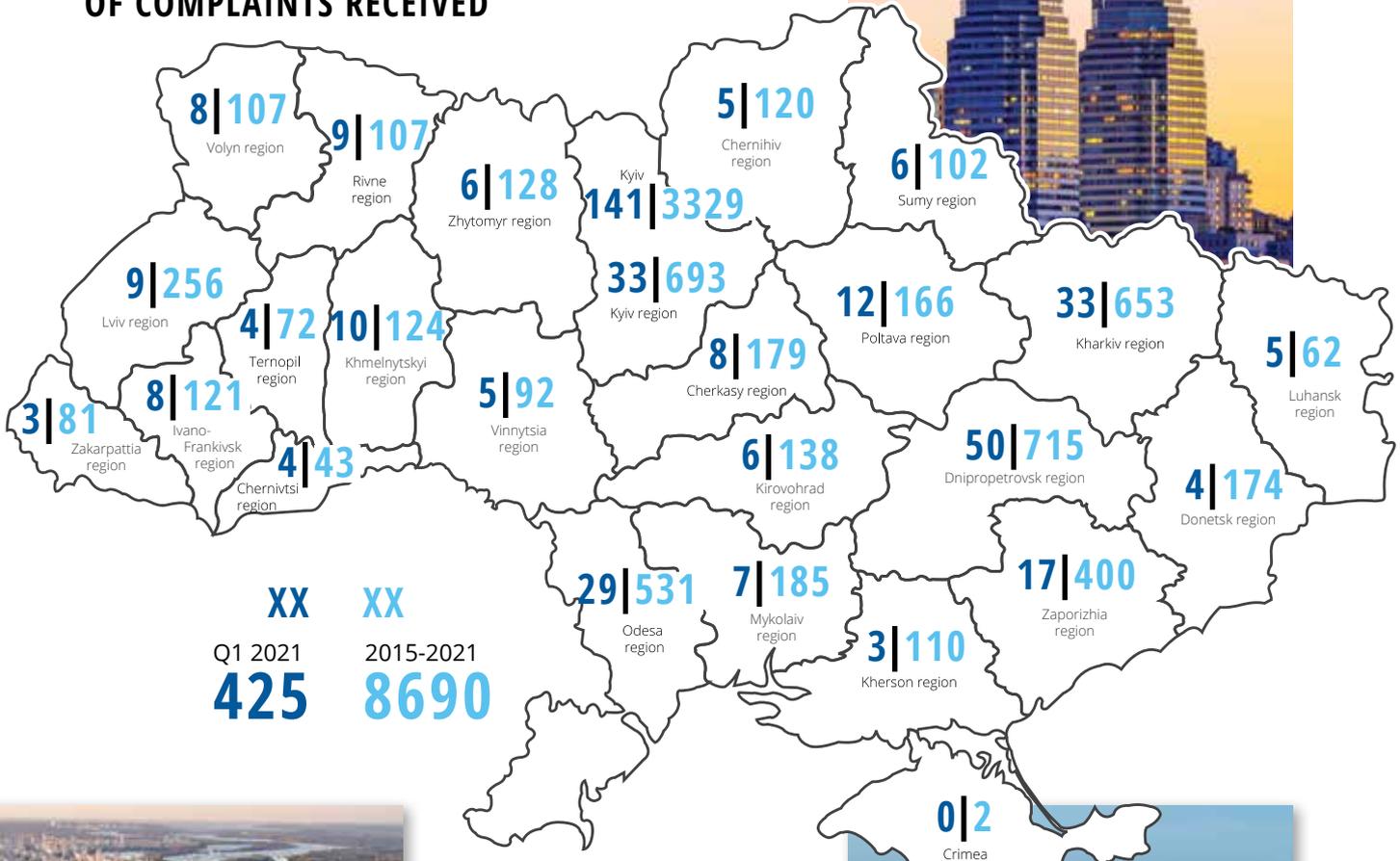
We received 26 complaints concerning the State Customs Service, which is 44% more than in Q4 2020 and Q1 2020.

Among the other TOP-12 complainees of Q1 2021, the number of appeals increased in comparison with the previous quarter as for state-owned enterprises (+38%), the Ministry for Development of Economy, Trade and Agriculture (+13%), the Verkhovna Rada, the Cabinet of Ministers and President (+40%) and the Ministry of Finance (+250%). At the same time, the number of complaints about the actions of local government authorities (-15%) and the State Security Service of Ukraine (-22%) went down.

**OTHER COMPLAINNEES INCLUDE:**

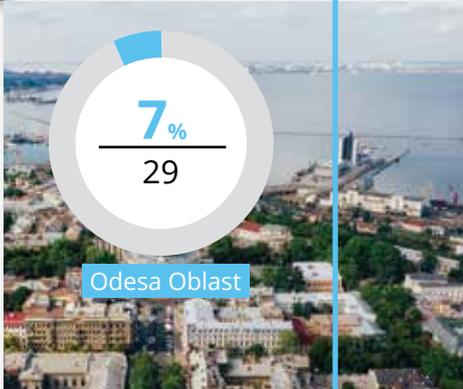
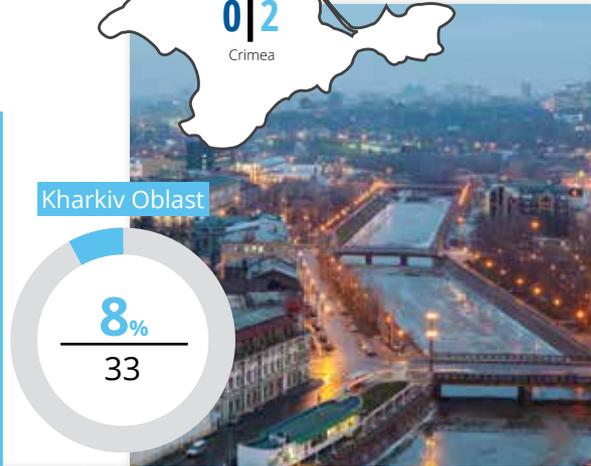
|   | Number of<br>complaints<br>received in<br><b>Q1 2021</b> | Number of<br>complaints<br>received in<br><b>Q4 2020</b> | Number of<br>complaints<br>received in<br><b>Q1 2020</b> |
|---|--|--|--|
| Ministry of Territories and Communities Development                     | 5  | 2  | 4  |
| Ministry of Justice   | 4  | 12   | 14   |
| Ministry of Infrastructure  | 2  | 1  | 2  |
| Antimonopoly Committee of Ukraine                                       | 2  | 2  | 1  |
| State Service of Ukraine on Food Safety and Consumer Protection         | 2  | 0  | 0  |
| Communal Services of Ukraine  | 2  | 1  | 1  |
| Ministry of Education and Science                                       | 2  | 0  | 0  |
| Commercial and other courts   | 1  | 5  | 3  |
| State Border Guard Service  | 1  | 0  | 1  |
| Ministry of Ecology and Natural Resources                               | 1  | 1  | 3  |
| State Funds   | 1  | 1  | 2  |
| Ministry of Strategic Industries  | 1  | 0  | 0  |
| State Regulatory Service  | 1  | 1  | 0  |
| National Bureau of Investigation of Ukraine                             | 1  | 2  | 10   |
| National Commission for State Regulation of Energy and Public Utilities | 1  | 0  | 1  |

## 1.6. GEOGRAPHICAL DISTRIBUTION OF COMPLAINTS RECEIVED



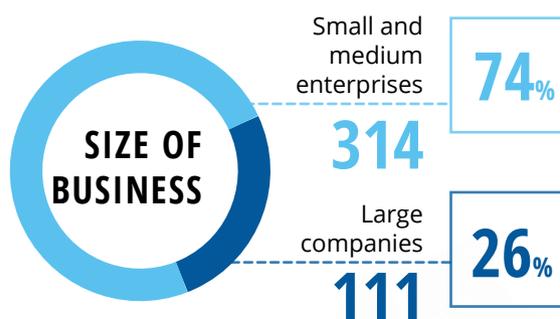
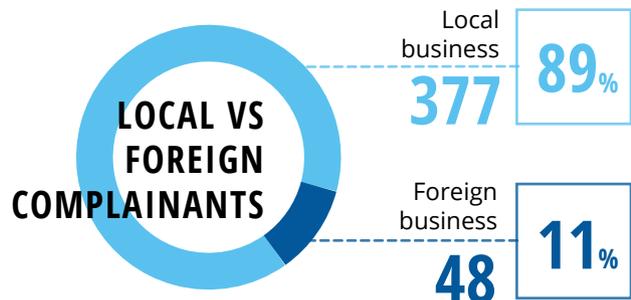
XX  
Q1 2021  
**425**

XX  
2015-2021  
**8690**



As before, most business complaints came to us from Kyiv and Kyiv Oblasts. In the reporting quarter, 43% of appeals were from these two oblasts, which is logical, given the share of enterprises registered there. Dnipropetrovsk (12%), Kharkiv (8%) and Odesa (7%) Oblasts also hit the TOP-5 oblasts list by the number of complaints.

## 1.7. COMPLAINANTS' PORTRAIT



The number of complaints from individual entrepreneurs continues to grow – in the reporting quarter, this group of complainants for the first time in the years of the institution's activities ranked second by the number of appeals with a share of 13%.

As before, we were most often approached by wholesale and retail trade representatives, but as compared to the previous quarter and the same period in 2020, the number of appeals decreased — by 10% and 13% respectively. As compared to Q4 2020, the number of complaints from agribusiness also decreased. At the same time, manufacturers of various types of products (+2%) and developers (+13%) complained more to the BOC.

It is the classic trend observed by the Business Ombudsman Council since launch of operations that the share of Ukrainian companies lodging complaints with the institution is prevailing. In Q1 2021, the Council received 89% of appeals from local business. When it comes to foreign companies, the number of complaints from businesses with foreign investment this time amounted to 11%.

The BOC equally treats all the complainants appealing to the institution for help.

### TOP-5 COMPLAINANTS' INDUSTRIES

| SUBJECT                      | Q1 2021 | Q4 2020 | Q1 2020 |
|------------------------------|---------|---------|---------|
| Wholesale and Distribution   | 104     | 115     | 120     |
| Individual Entrepreneur      | 56      | 53      | 42      |
| Agriculture and Mining       | 50      | 72      | 33      |
| Manufacturing                | 44      | 43      | 58      |
| Real Estate and Construction | 44      | 39      | 55      |
| All other                    | 127     | 129     | 154     |

## OTHER INDUSTRIES IN Q1 2021 INCLUDE:

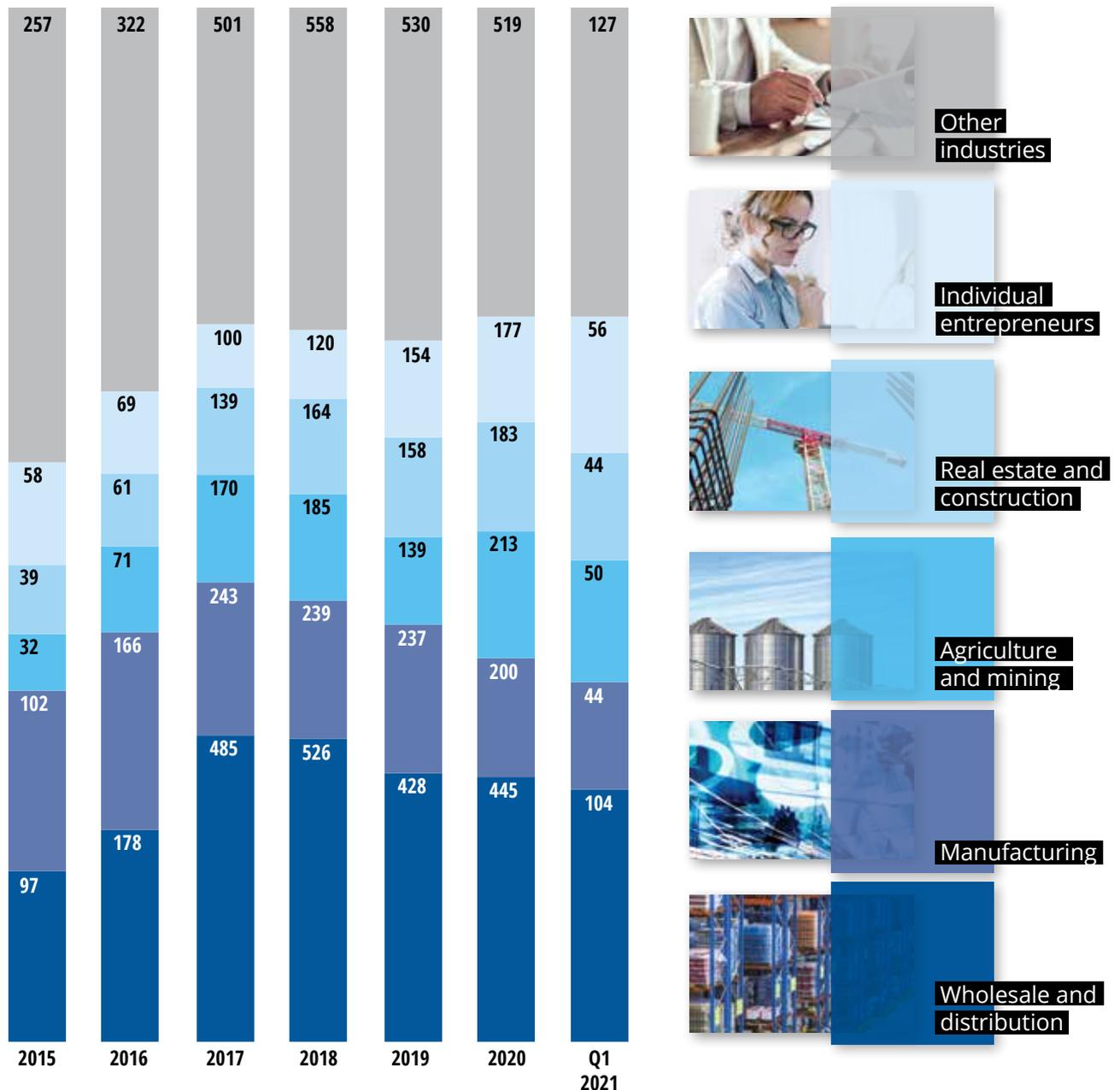
|   |    |  |   |
|---|----|--|---|
| Autotransport   | 16 | Hire, rental and leasing                             | 2 |
| Retail  | 15 | Transportation and Storage                           | 2 |
| Physical Person   | 13 | Waste collection and disposal                        | 2 |
| Repair and Maintenance Services   | 7  | Computer and Electronics                             | 1 |
| Energy and Utilities  | 7  | Delivery services                                    | 1 |
| Education   | 6  | Fishing services                                     | 1 |
| Financial Services  | 5  | Activity in the field of architecture                | 1 |
| Consulting  | 5  | Advertising  | 1 |
| Oil and Gas   | 5  | Farming  | 1 |
| Public Organizations  | 4  | Public administration                                | 1 |
| Forestry and logging  | 4  | Maintenance of buildings and territories             | 1 |
| Information and Telecommunications  | 4  | Health, Pharmaceuticals, and Biotech                 | 1 |
| Processing Industry   | 3  | Production of movies and videos, television programs | 1 |
| Warehousing   | 3  | Technical testing and research                       | 1 |
| Scientific research and development   | 2  | Non-profit   | 1 |
| Activities in the field of culture and sports, recreation and entertainment | 2  | Other  | 1 |
| Electric installation works   | 2  | Accommodation services                               | 1 |
| Banks   | 2  | IT companies   | 1 |
|   |    | Social assistance                                    | 1 |

## 1.8. REPORT FOCUS: ANALYSIS OF COMPLAINTS BY INDUSTRIES

When investigating 8700 business appeals on state bodies malpractice, received since May 2015, we dealt with representatives of over 40 spheres of economic activities. The majority of appeals came from the following TOP-5 industries:

### NUMBER OF COMPLAINTS RECEIVED FROM TOP-5 INDUSTRIES BY YEARS

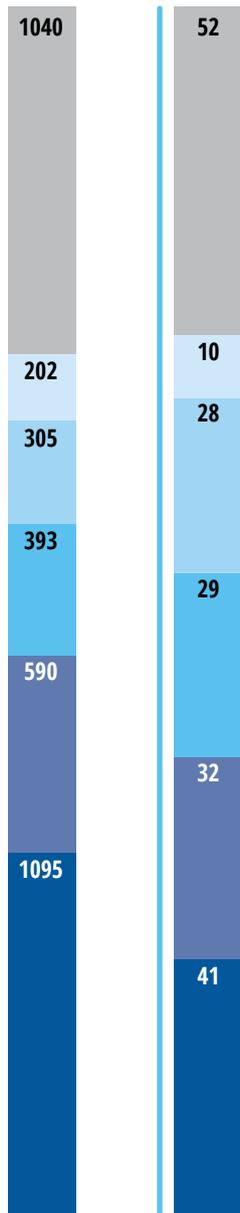
(May 2015-March 2021)



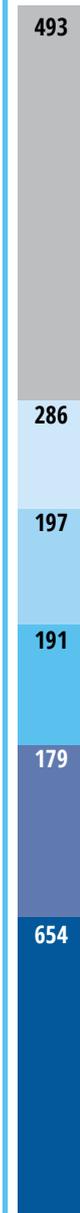
## STATUSES OF CLOSED CASES

(May 2015-March 2021)

### CLOSED WITH SUCCESS



### CLOSED WITHOUT SUCCESS



### CLOSED WITH RECOMMENDATIONS

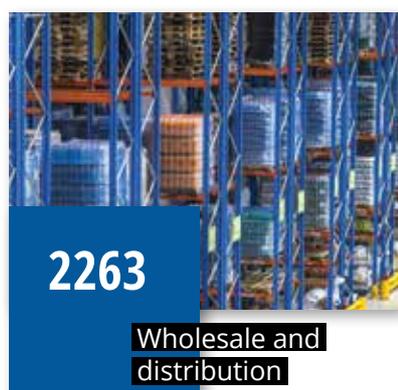


The share of successfully closed cases among wholesalers and distributors is 67%, which is 5 pp above average (62%). With respect to manufacturers and agribusiness/mining the share of cases resolved in favor of business was 65% and 63% respectively, which is also above average. At the same time, as for developers and private entrepreneurs this figure was a bit lower – 58%. Every second case of private entrepreneurs was closed with an immediate desirable result for business (52%).

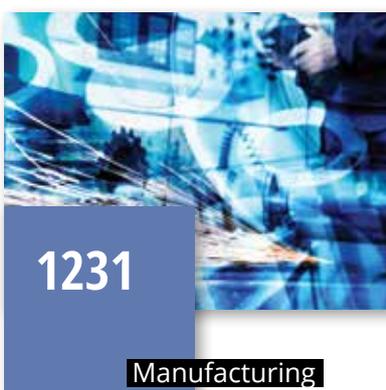
## TOP-3 SUBJECTS OF APPEALS BY EACH INDUSTRY

(May 2015-March 2021)

The share of successfully closed cases among wholesalers and distributors is 67%, which is 5 pp above average (62%). With respect to manufacturers and agribusiness/mining the share of cases resolved in favor of business was 65% and 63% respectively, which is also above average. At the same time, as for developers and private entrepreneurs this figure was a bit lower – 58%. Every second case of private entrepreneurs was closed with an immediate desirable result for business (52%).



|                        |            |
|------------------------|------------|
| VAT invoice suspension | <b>562</b> |
| Tax inspections        | <b>293</b> |
| VAT risky taxpayer     | <b>171</b> |



|                        |            |
|------------------------|------------|
| VAT invoice suspension | <b>200</b> |
| Tax inspections        | <b>191</b> |
| Other state regulators | <b>91</b>  |



|                               |            |
|-------------------------------|------------|
| VAT invoice suspension        | <b>237</b> |
| Tax inspections               | <b>128</b> |
| VAT electronic administration | <b>48</b>  |



|                        |            |
|------------------------|------------|
| VAT invoice suspension | <b>129</b> |
| Tax inspections        | <b>90</b>  |
| VAT risky taxpayer     | <b>63</b>  |



|                        |            |
|------------------------|------------|
| Tax other              | <b>152</b> |
| Tax inspections        | <b>93</b>  |
| Other state regulators | <b>52</b>  |

Tax inspections was the only subject of complaints which hit the TOP-3 list of every industry in the focus of analysis. Suspension of tax invoices was also among the three most widespread reasons of appeals for all industries except for individual entrepreneurs. The other most common subjects were: inclusion into lists of risky taxpayers, VAT electronic administration, other actions of state regulators.

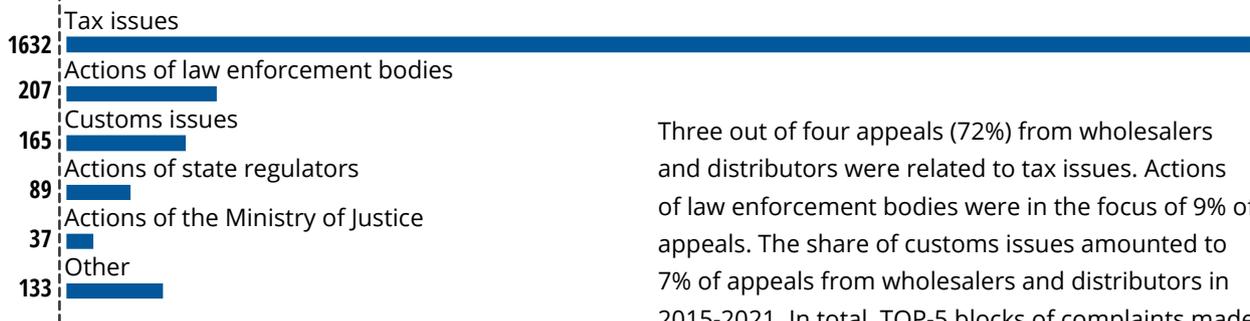


**WHOLESALE AND DISTRIBUTION:**

**2263**

**TOP-5 BLOCKS OF COMPLAINTS**

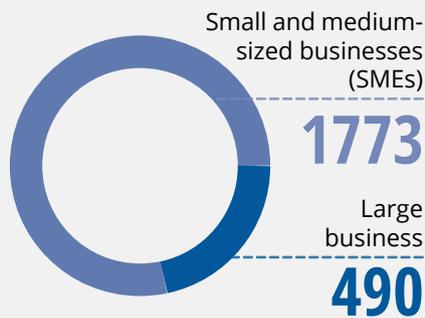
(May 2015-March 2021)



Three out of four appeals (72%) from wholesalers and distributors were related to tax issues. Actions of law enforcement bodies were in the focus of 9% of appeals. The share of customs issues amounted to 7% of appeals from wholesalers and distributors in 2015-2021. In total, TOP-5 blocks of complaints made up 94% of appeals from representatives of wholesale and distribution.

**SIZE OF BUSINESS**

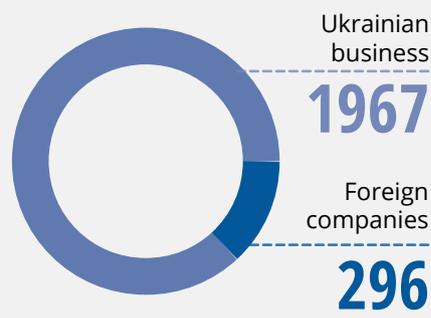
(May 2015-March 2021)



Among wholesalers, which turned to us, 78% were SMEs.

**ORIGIN OF INVESTMENT**

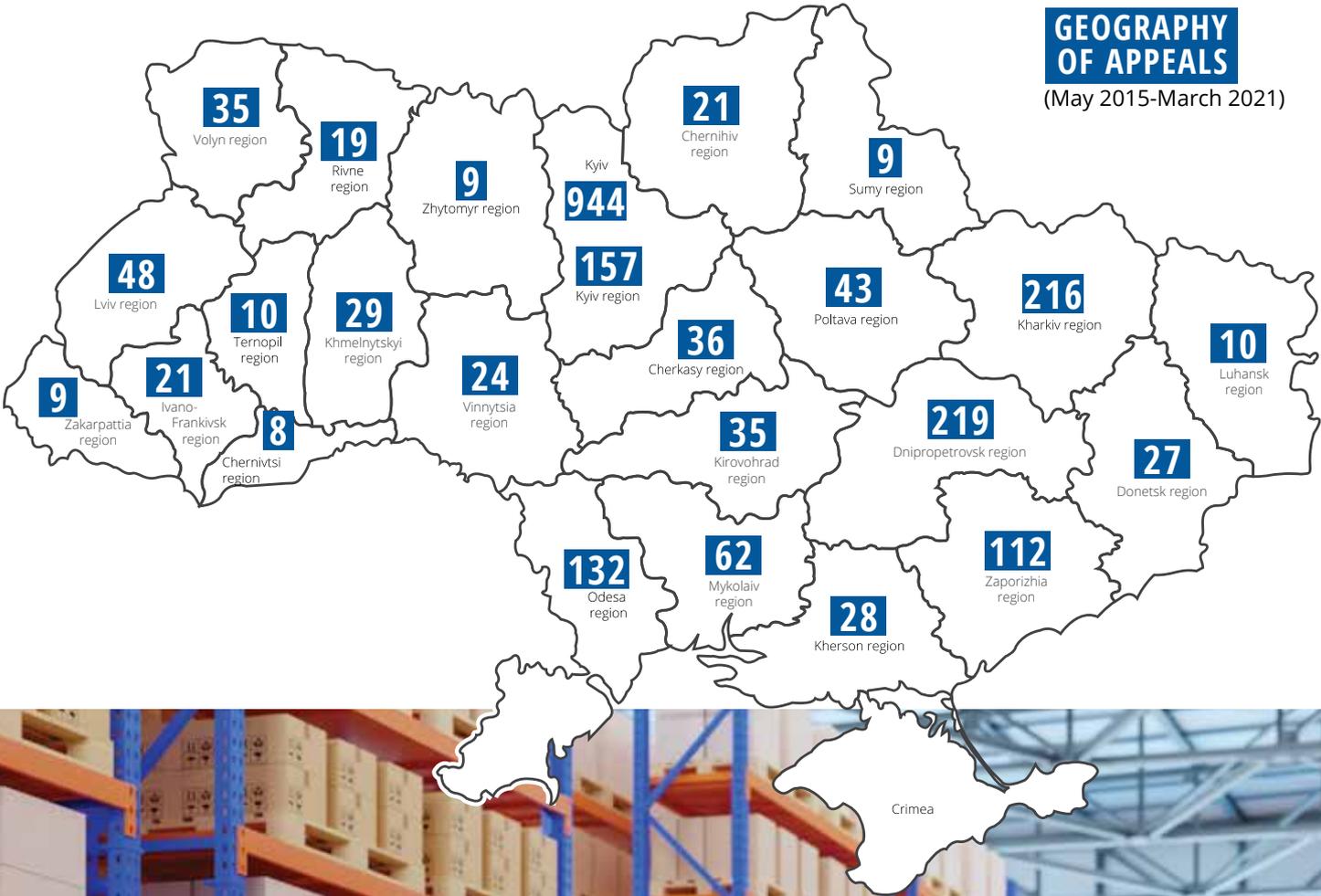
(May 2015-March 2021)



A prevailing majority of them (87%) were Ukrainian companies.

# GEOGRAPHY OF APPEALS

(May 2015-March 2021)



## EXAMPLES OF CASES

### UNPRECEDENTED: SFS DROPS FINE WORTH UAH 2.3 BN FOR METRO

The largest German investor in Ukraine – METRO Cash & Carry Ukraine (METRO) disagreed with the tax audit conclusions, according to which the company had to pay a fine worth UAH 2.3 bn. The State Fiscal Service (SFS) insisted that Mykolaiv hypermarket violated rules for posting cash in the amount of UAH 485 mn. However, the Mykolaiv hypermarket registered cash similarly to all other stores of the retail chain. It used this registration method for a long time and its correctness had been confirmed by several tax audits.

The BOC started investigation of the complaint and presented to the SFS arguments that the complainant did not violate cash entering rules. The Council's investigator, as well as the Business Ombudsman and his Deputy, met with the SFS leadership team for several times to personally communicate their arguments on protecting legal rights of METRO. After the BOC mediation, the SFS satisfied the company's complaint and completely dropped the fine.

### KYIV CUSTOMS REFUNDS OVER UAH 4 MN TO FOZZY FOOD

A leading Ukrainian retailer, Fozzy Food appealed to the Council regarding a refund of excessively paid customs duties. Disagreeing with the imported products' customs value designated by the complainant, Kyiv Customs adjusted it up. Accordingly, the complainant paid more taxes to the budget. In order to prove the correctness of the declared customs value and return the overpayment, the retailer appealed relevant decisions of the Kyiv Customs in courts. In 2013-2014, courts decided in favor of the Complainant and ordered customs authorities to refund overpaid amounts. However, with regard to most supplies, Kyiv Customs refused to return funds. Meanwhile, the amount of a refund on other deliveries and litigation were gradually increasing.

The Council recommended that the SFS and Kyiv Customs comply with the court's ruling. Thanks to the BOC facilitation, the customs promptly satisfied several claims of the complainant regarding the refund of UAH 3.9 mn.

### UKRAFLORA CARGO SUCCESSFULLY CROSSES A BORDER

The cargo of a floristic company Ukraflora LLC was stuck at the customs border. The complainant also complained that the customs officers conducted numerous long-term customs inspections of boxes, pallets of warehouses presented for customs clearance and it caused considerable financial expenses for the enterprise.

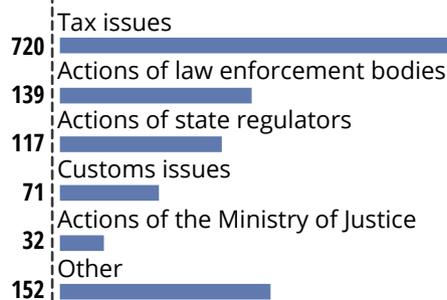
The BOC recommended the Volyn Customs to prevent possible violations of the legitimate interests of the complainant during customs clearance. After the Council's facilitation, the numerous reviews of the company's cargo stopped and the complainant's supplies successfully passed through customs clearance procedure.

## MANUFACTURING



### TOP-5 BLOCKS OF COMPLAINTS

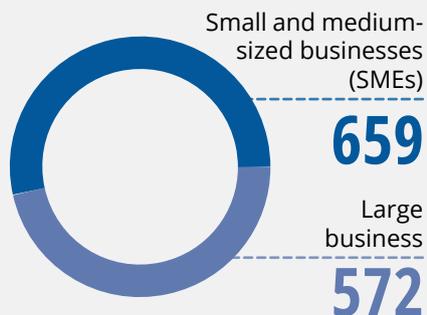
(May 2015-March 2021)



In comparison with wholesalers, the portfolio of complaints, lodged by manufacturers, was less concentrated – TOP-5 blocks amounted to 88% of appeals. Tax issues made up 58% of all industry appeals. Every tenth appeal (11%) from manufacturers concerned actions of law enforcers. Actions of state regulators generated 10% of complaints from manufacturers, while customs issues – 6%.

### SIZE OF BUSINESS

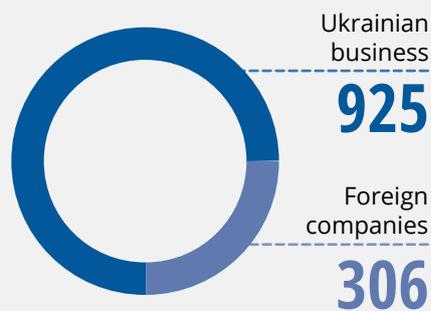
(May 2015-March 2021)



The share of large business among manufacturers was the highest among all TOP-5 industries – 46%. This is 18 pp higher than the share of large business among all BOC complainants.

### ORIGIN OF INVESTMENT

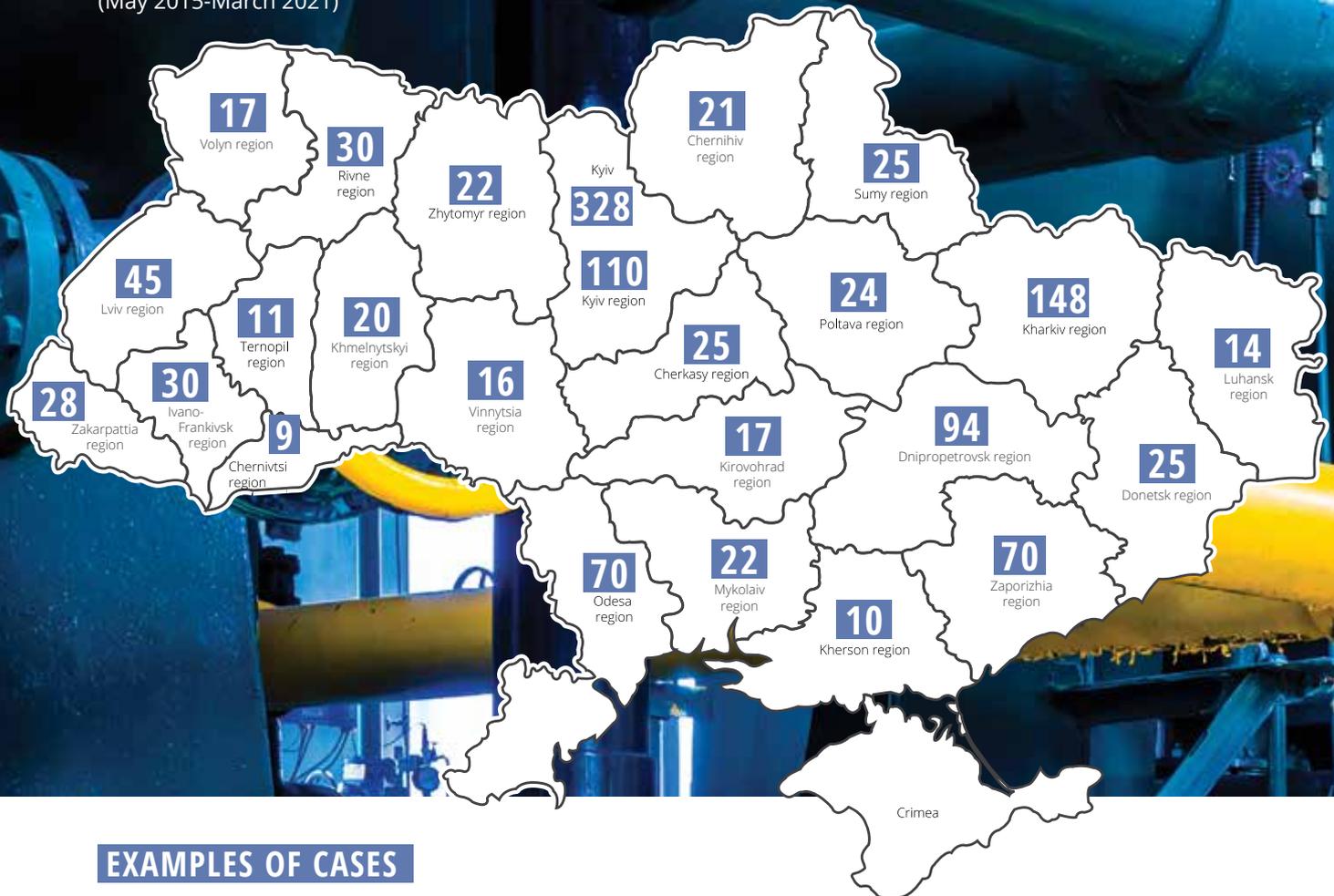
(May 2015-March 2021)



Three quarters of applicants (75%) were Ukrainian companies, which is 9 pp higher than the average rate among companies, turning to the BOC.

## GEOGRAPHY OF APPEALS

(May 2015-March 2021)



## EXAMPLES OF CASES

### STS AGREES TO DROP ADDITIONAL PAYMENTS FOR FERRERO UKRAINE LLC WORTH UAH 3 MN

FERRERO UKRAINE LLC, an official importer of well-known finished confectionary products of FERRERO Group, disagreed with the tax audit results. The State Tax Service (STS) imposed additional payments on the company amounting to UAH 3 mn in taxes. The tax authority stated that the complainant had understated his VAT and income tax liabilities. The tax officers' conclusions were based on the previous audit results.

After reviewing the case file, the Council found out that despite the additional audit, tax officers did not find any new violations, which would not have been previously denied by the complainant. The new audit report largely contained provisions of the previous one. The BOC asked the STS to adhere to a good governance principle in its actions and drop additional payments for the company. The case was closed successfully.



## RAIDER ATTACK AGAINST ECONIA STOPPED

Econia, a producer of drinking water and baby food, addressed the Council over a raider attack at their plant in Cherkasy Oblast. According to the Complainant, about 15 people broke into company premises claiming that they owned the plant. Apparently, these individuals had, through illegal registration actions at the State Registry of Property Rights to Real Estate, registered ownership of assets that were actually and legally owned by the complainant. These unlawful registration actions were the result of a court order dated back to 2007. Company management noted that this wasn't the first attempt to take over their business. The raider story began in 2008, when Econia purchased the premises of a bankrupt company. In 2010, the first attempt to take over the plant was attempted, but the court confirmed that Econia had acquired the building legally. However, after the Council interfered, the Ministry of Justice satisfied the company's appeal and declared the unauthorized registration actions null and void. The case was closed successfully.

## SFS REFUNDS "AZOVMASH" A PROFIT TAX OVERPAYMENT WORTH UAH 2MN

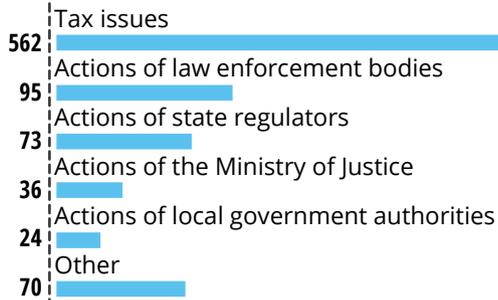
Azovmash, a Mariupol-based manufacturer of railway cars and heavy machinery could not get a profit tax overpayment of UAH 2 mn since 2014. The company had addressed the district, appellate and high administrative courts of Ukraine, all of whom had ruled in the complainant's favor. However, the Mariupol Tax Office and Mariupol treasury failed to carry out these rulings and evaded a refund in every possible way.

The Council recommended that the SFS and the State Treasury Service of Ukraine check the procedures for refunding the complainant. Due to the BOC intervention, a case that had gone unresolved for over three years was successfully closed in six weeks.



### TOP-5 BLOCKS OF COMPLAINTS

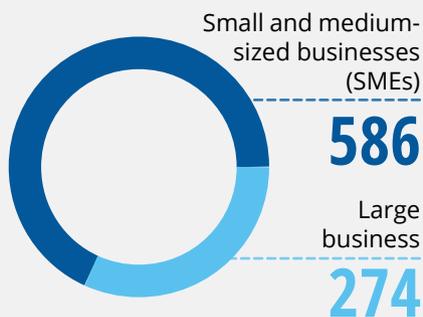
(May 2015-March 2021)



Tax issues amounted to 65% of appeals from agricultural and mining companies. Actions of law enforcement bodies (11%) and state regulators (8%) became the second and third most common issues for agricultural and mining spheres. Unlike other industries, actions of the Ministry of Justice hit the fourth position in TOP-5 with a 4% share.

### SIZE OF BUSINESS

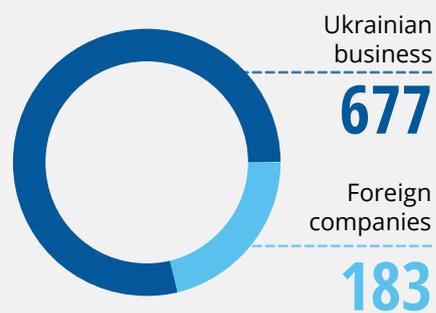
(May 2015-March 2021)



Over two thirds of appeals (68%) came from small and medium-sized businesses.

### ORIGIN OF INVESTMENT

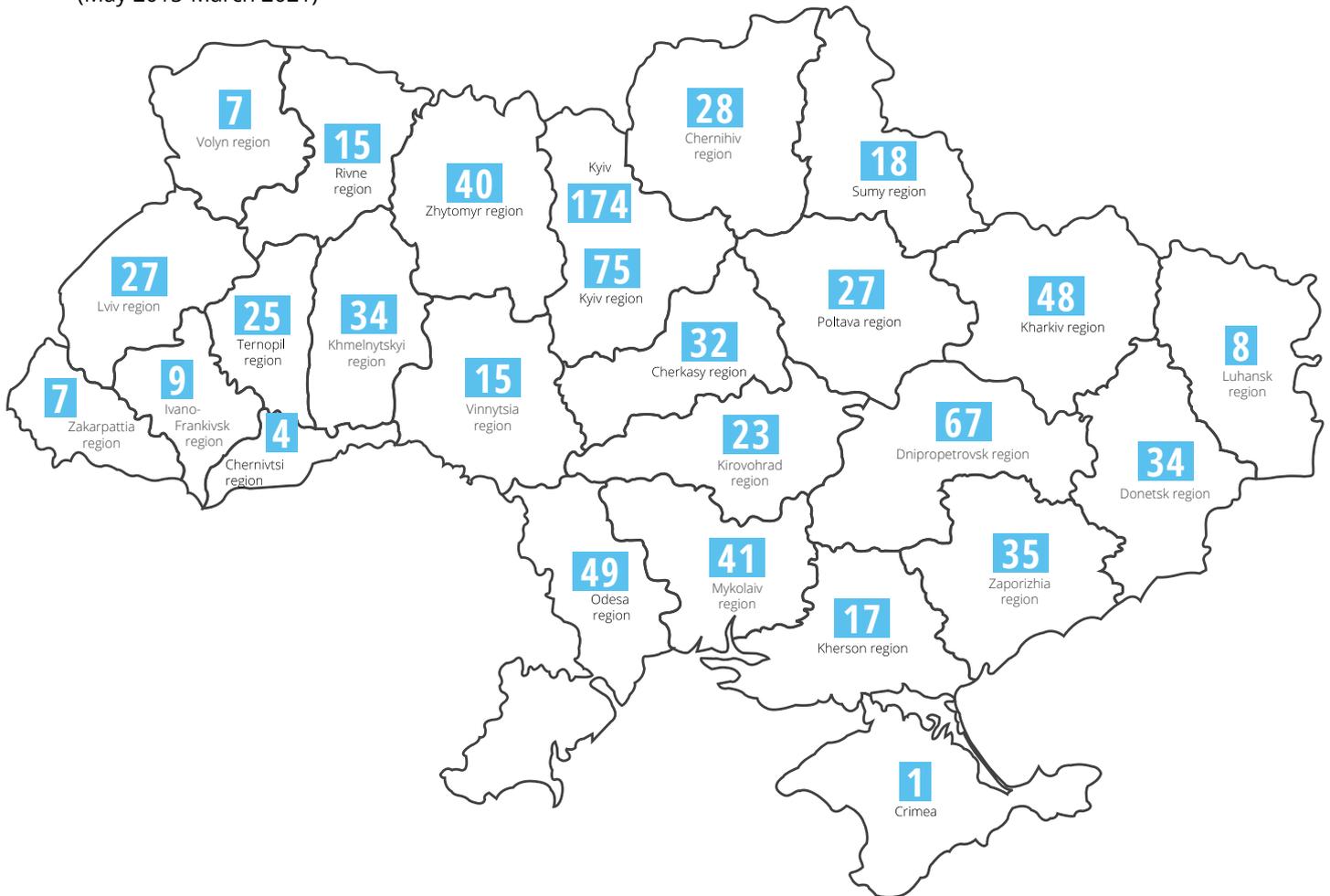
(May 2015-March 2021)



Ukrainian companies prevailed (79%) among these spheres of complaints.

## GEOGRAPHY OF APPEALS

(May 2015-March 2021)



## EXAMPLES OF CASES

### RAIDERSHIP ATTACK ON AGRICOMPANY FROM RIVNE FOUGHT BACK

An agricompany from Rivne region complained about illicit registration actions of the state registrar with its regard. The changes were made into the statutory document of the company as well as the director's and the shareholder's names were replaced with other names. The complainant stated that neither the director nor shareholders the empowered representatives to sign any documents authorizing such registration actions.

The Council investigated the complained and acknowledged it was substantiated. The BOC investigator recommended that the Ministry of Justice cancel illicit registration actions in respect of the complainants and ensure that the initial data about the company would be restored in the register. After the Council's interference, the raidership attack on the agricompany was successfully fought back.

## EXAMPLES OF CASES

### SSS CLOSES CRIMINAL CASE AND RETURNS PROPERTY TO AGRO-CHEMICAL IMPORTER AVGUST-UKRAINE LLC

The importer and wholesale distributor of agro chemicals Avgust-Ukraine faced a groundless criminal case, filed against it by Kyiv office of the State Security Service. It resulted in a court ruling to seize over 350 t of agrochemicals for expert assessment. At the same time, the State Security Service (SSS) refused to pay for assessment services. Meanwhile, the Prosecutor General's Office turned the criminal case over to the National Police of Ukraine for further investigation.

The BOC addressed letters to the SSS asking to verify the legality of the seizure of the complainant's property. The subject of the complaint was raised at the meeting with the SSS officials and during the Expert Group meeting at the office of the National Police. Only after the Council's facilitation, the criminal case against the company had been closed and the company's property was returned.

### SFS DROPS CRIMINAL CASE AGAINST AGROKHIM 2001 MANAGEMENT AFTER 2 YEARS

Agrokhim 2001 LLC had been unsuccessfully trying for over 18 months to have a criminal case against the company's management closed by the State Fiscal Service (SFS). The Cherkasy SFS initiated criminal proceedings over alleged non-payment of taxes by the director of the company years ago. After the agricompany challenged the SFS actions in court, it ruled in the company's favor and declared the tax decision null and void. Nevertheless, Cherkasy SFS continued to pressure the company and insisted that the investigation continue.

The Council asked the SFS to execute the court ruling. The issue was discussed at the expert group meeting with the SFS. With the assistance of the Council, a case that had dragged on for more than two years was finally closed.



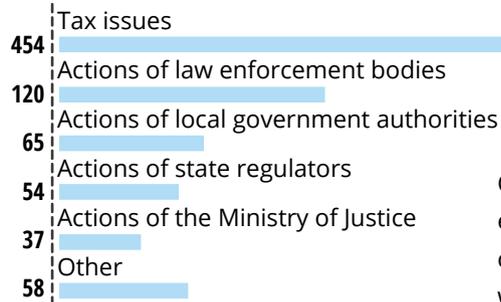
## REAL ESTATE AND CONSTRUCTION



860

### TOP-5 BLOCKS OF COMPLAINTS

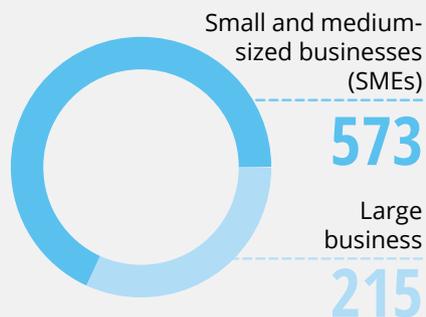
(May 2015-March 2021)



Over a half (57%) of appeals lodged by representatives of real estate and construction concerned tax issues. Circa 15% of complaints were related to actions of law enforcement bodies, which is the highest share among all TOP-5 industries. The third position was occupied by actions of local government authorities, which caused 8% of appeals from developers.

### SIZE OF BUSINESS

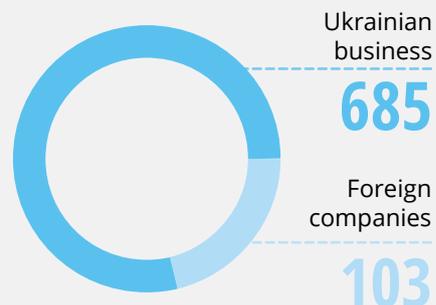
(May 2015-March 2021)



Small and medium-sized enterprises amounted to 73% of complainants within the real estate and construction.

### ORIGIN OF INVESTMENT

(May 2015-March 2021)



87% of companies from the real estate and construction sphere were local, only 13% – with foreign investments.

## GEOGRAPHY OF APPEALS

(May 2015-March 2021)



## EXAMPLES OF CASES

### CONSTRUCTION COMPLETED — THE COMPANY RECEIVES A LONG-AWAITED CERTIFICATE FROM DABI

A construction company SMILE DEVELOPMENT from Kyiv finished construction of apartment buildings (Optymisto Housing Complex) in Kyiv region. In order to set apartment buildings into operation, the company had to receive a conformity certificate from DABI that would confirm completed construction works. However, the controlling authority refused to issue such a document and as a result, setting of buildings into operation was delayed.

The Council appealed to DABI and recommended to ensure a due and impartial consideration of the complaint's application, and issue the conformity certificate of the construction objects of Optymisto Housing Complex. Thanks to the BOC's facilitation, DABI issued the conformity certificate of the constructed apartment buildings. The first three buildings were set into operation.

## EXAMPLES OF CASES

### BIIR PROPERTY FINALLY BECOMES THE LEGAL OWNER OF PURCHASED REAL ESTATE

BIIR Property, a subsidiary of BIIR Danish engineering company, could not become the legal owner of the recently purchased real estate. In order to expand business in Ukraine, in September 2019, the investor purchased a building in Odesa with an area of almost 2000 m<sup>2</sup>. The premises purchase agreement was concluded through “Prozorro” electronic bidding (procurement) system. In total, the building for the future office cost the company over UAH 9 mn. However, the complainant was unable to register his legitimate right to his own real estate.

The Council investigated the case and brought up the company’s complaint for consideration at the meeting of the expert group with the Prosecutor General’s Office. The BOC efforts were paid off and the criminal proceedings pushed by a hostile party were closed.

### SFS REGISTERS TAX INVOICES IN ELECTRONIC FORM FROM INTERA-STROJ LLC

A construction company INTERA-STROJ LLC lodged a complaint with the BOC regarding the unjustified refusal of officials of Kremenchuk State Fiscal Service (SFS) to register tax invoices saying that the agreement on recognizing electronic document might be terminated. The complainant applied to the Kremenchuk SFS with a request to clarify the issue, but to no avail. The BOC investigator discussed the complaint with executives of Kremenchuk tax office and considered the case at the working group meeting with the participation of the BOC and the SFS administration. Following working group meeting results, the tax invoices of the construction company were successfully registered.

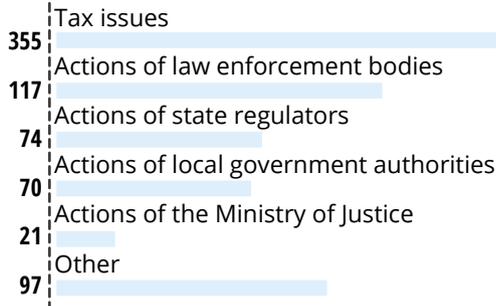
## INDIVIDUAL ENTREPRENEURS



**734**

### TOP-5 BLOCKS OF COMPLAINTS

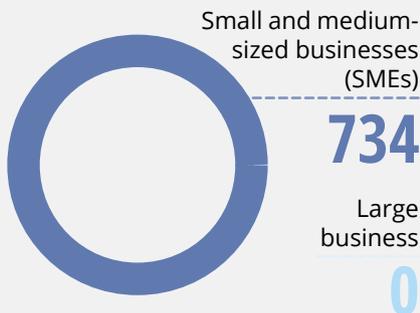
(May 2015-March 2021)



The portfolio of appeals from private entrepreneurs was the most dispersed among all TOP-5 industries. Tax issues amounted to only 48% of appeals. The share of law enforcement bodies was the highest among TOP-5 industries – 16%. Actions of state regulators (10%) and local government authorities (10%) were in focus among the major number of appeals from individual entrepreneurs.

### SIZE OF BUSINESS

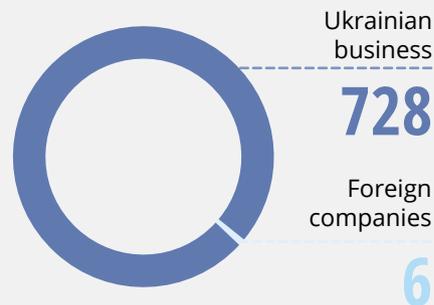
(May 2015-March 2021)



According to our classification, all private entrepreneurs run small/medium-sized businesses.

### ORIGIN OF INVESTMENT

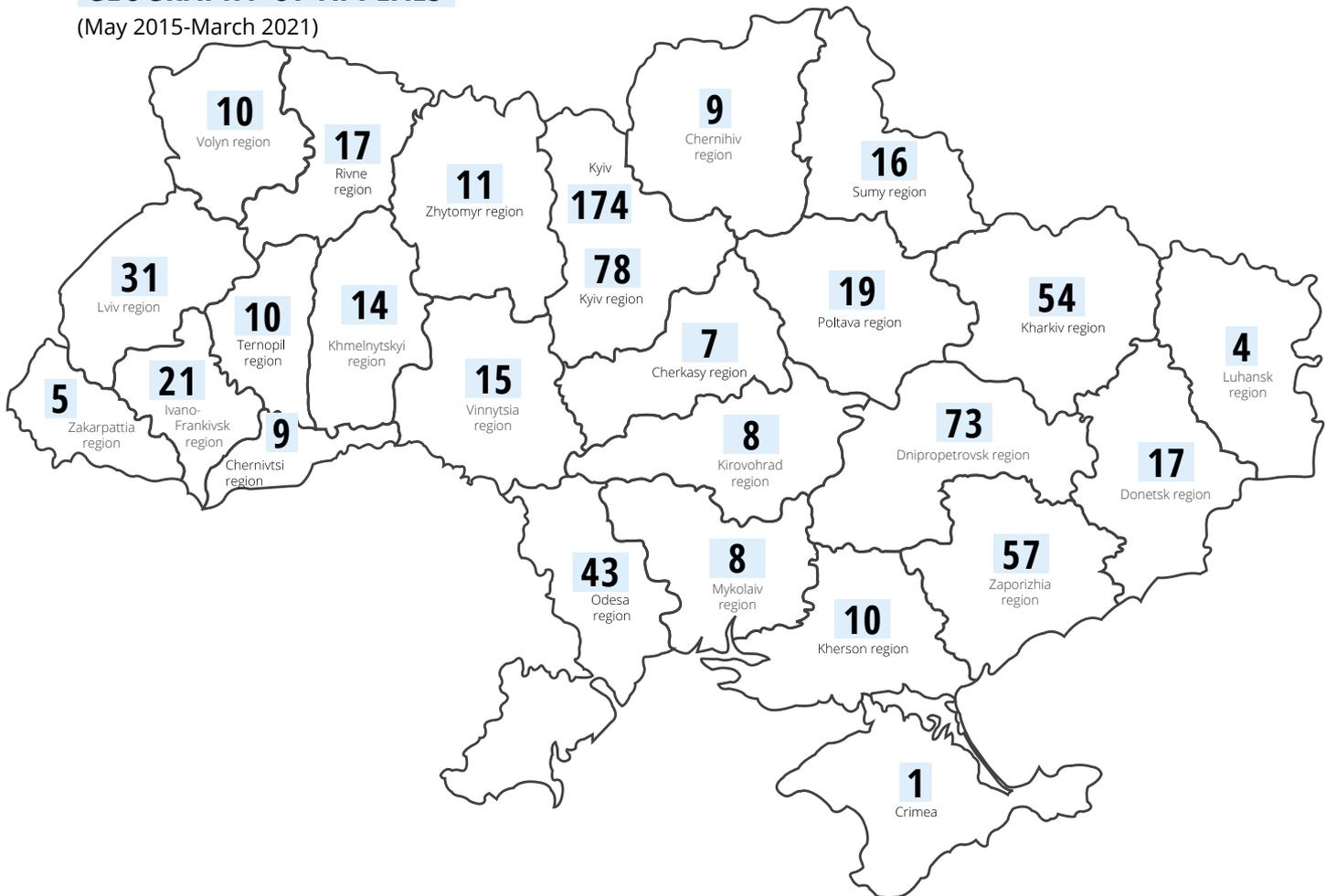
(May 2015-March 2021)



Less than 1% of our applicants among private entrepreneurs represented businesses with foreign investment.

## GEOGRAPHY OF APPEALS

(May 2015-March 2021)



## EXAMPLES OF CASES

### INCREDIBLE STORY ABOUT NOT QUITE TERMINATED ENTREPRENEUR STATUS

A private entrepreneur argued that state bodies were unable to completely register a termination of her entrepreneurial activity. As a result, the businesswoman had a debt to the tax authority, but only learnt about it nine months after she terminated her business activity. However, the state registrar made a mistake. Instead of performing “decision to terminate” and “termination” registration actions the registrar performed only the first one. The termination of business activity remained “incompletely” registered. Under the law, every private entrepreneur, even an inactive one, has to pay a unified social contribution (USC) from a

minimum salary. The debt of the USC was already over UAH 6k.

Following a continuous mediation of the BOC, the tax authority corrected the information on allegedly existing nine-month-old USC debt in the taxpayer’s integrated card. At the Council’s request the tax authority informed the state executor on withdrawal of a previously sent debt collection request. Based on this request, the enforcement proceedings were closed and the complainant’s accounts were unblocked, without the enforcement fees and enforcement proceedings costs not being charged.

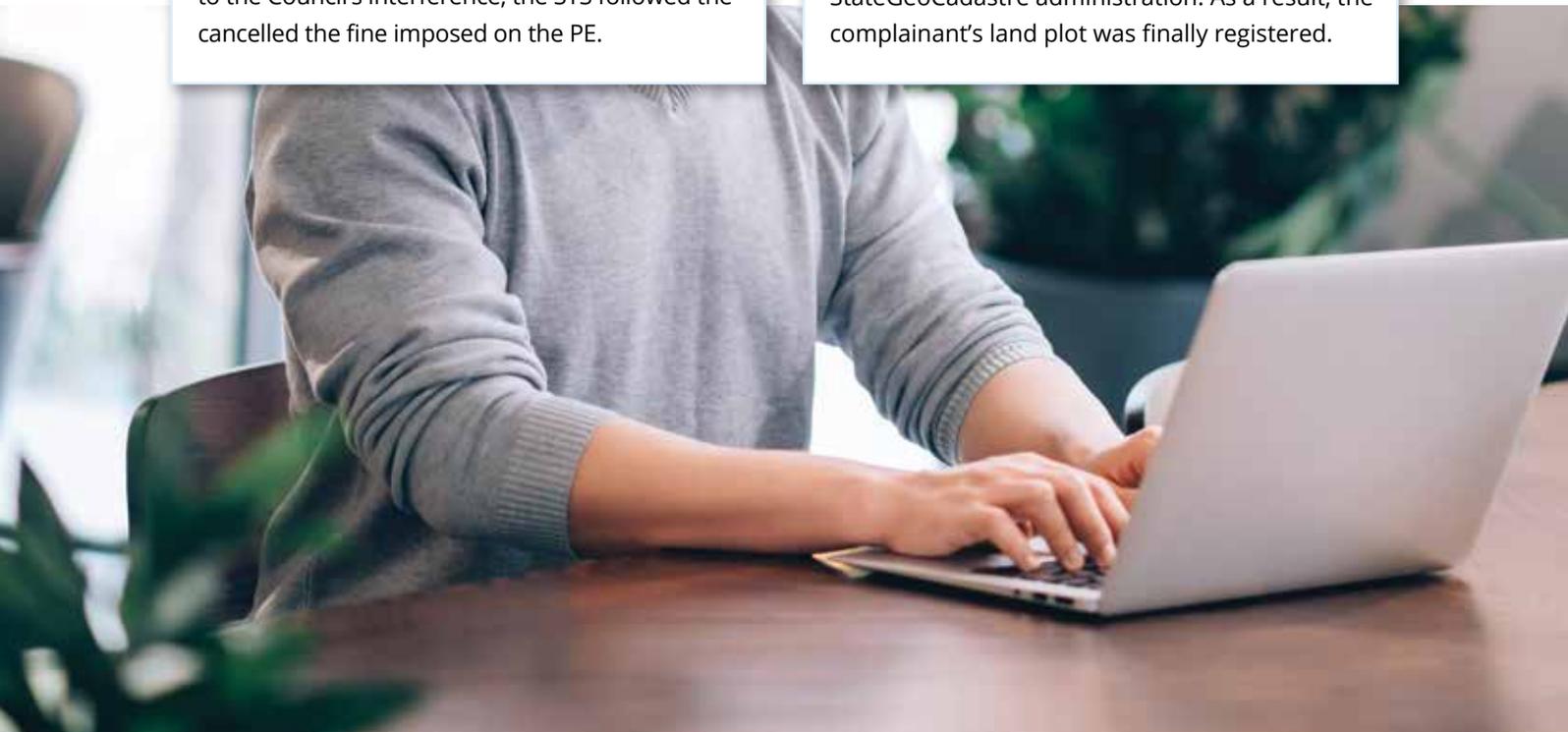
## EXAMPLES OF CASES

### LEGAL SUPPORT FOR INDIVIDUAL ENTREPRENEURS

A private entrepreneur from Kyiv disagreed with the tax audit findings. According to the tax authority, he did not pay a single tax to the budget on time and fined the complainant for UAH 54k. During investigation it turned out that the entrepreneur had made a technical error in payment purpose and specified an incorrect taxpayer code. Thus, payments were not linked to the complainant's account, although tax amounts had been credited to the treasury account in full. Besides, it turned out that the private entrepreneur made a mistake in the single taxpayer's tax return, where he had specified the amount of taxes for the last quarter on his own, although at that time he was on the general taxation system and was not a single taxpayer any longer. Under investigation the BOC investigator presented all the arguments to the tax service and provided evidence that the complainant timely and fully made the respective tax payments. Due to the Council's interference, the STS followed the cancelled the fine imposed on the PE.

### GREAT VICTORY FOR AN ORDINARY MAN

A private entrepreneur could not register a land plot. While planning to open a family store, the entrepreneur prepared a package of necessary documents and submitted them to the StateGeoCadastre. Despite the fact that different permitting authorities approved this building design, the StateGeoCadastre refused to register it because of an allegedly unjustified change in the functional use and a broken chronology of the land management project. The Council upheld the complainant's position in writing by turning to the StateGeoCadastre. Meanwhile, the court acknowledged the private entrepreneur's documentation complied with legislation requirements and the state body unreasonably refused the complainant. In order to settle a long-lasting conflict between the parties, the Council helped to arrange a personal meeting of the complainant with the StateGeoCadastre administration. As a result, the complainant's land plot was finally registered.



## 1.9. FEEDBACK

Feedback is an important form of communication with clients as it gives an opportunity for the Business Ombudsman Council to understand its complainants' sentiments, assess effectiveness of services rendered and define areas requiring improvement.

After closing the investigation (either with or without success) we always send a request for feedback to every complainant.

We ask companies to assess our work based on the following criteria:

- ✓ **CLIENT CARE AND ATTENTION TO THE MATTER**
- ✓ **UNDERSTANDING THE NATURE OF THE COMPLAINT**
- ✓ **QUALITY OF WORK PRODUCT**

Complainants are asked to indicate the level of satisfaction with the BOC assistance in solving their cases.

**97**  
**COMPLETED**  
**FEEDBACK**  
**FORMS**

**94**  
**APPLICANTS**  
**SAID THEY WERE**  
**SATISFIED WITH**  
**WORKING WITH US**

in such a way the  
client satisfaction  
level reached

**97%**

“

**I WOULD LIKE TO THANK YOU VERY MUCH FOR YOUR PARTICIPATION AND ASSISTANCE PROVIDED TO THE COMPANY IN THE SITUATION RESULTED FROM THE SFS'S INFLUENCE. YOU HAVE A VERY COOL, INCREDIBLY PROFESSIONAL AND HIGH-QUALITY APPROACH. IN SUCH CASES, YOU MAKE A SIGNIFICANT CONTRIBUTION TO IMPROVING INVESTMENT CLIMATE. THIS IS NOT ONLY ASSISTANCE TO A PARTICULAR ENTERPRISE, BUT ALSO IMPROVEMENT OF BUSINESS CULTURE IN UKRAINE AS A WHOLE AND ENSURING THE PRINCIPLE OF THE RULE OF LAW IN OPERATION OF LAW ENFORCEMENT AGENCIES.**

**VOLODYMYR YEFYMENKO**  
ATTORNEY OF DNIPRO-VENDOR LLC

**AN ACTIVE PARTICIPATION OF THE BOC INVESTIGATOR HELPED TO RETURN TEMPORARILY SEIZED PROPERTY TO ITS LEGITIMATE OWNER AND THUS RESTORE THE VIOLATED RIGHTS OF THE CONSTRUCTION COMPANY. WE ARE GRATEFUL FOR YOUR ACTIVITIES, WHICH HELP TO RESTORE VIOLATED RIGHTS OF BUSINESS ENTITIES AND HELP TO IMPROVE CONDITIONS FOR DOING BUSINESS IN UKRAINE IN GENERAL.**

**SERHIY GONCHARENKO**  
CEO OF DOSVID 2002 LLC

“

**WE THANK THE ENTIRE TEAM OF THE BUSINESS OMBUDSMAN COUNCIL FOR THEIR HELP AND ASSISTANCE IN RESOLVING THE ISSUE RAISED IN THE COMPLAINT. SPECIAL THANKS TO THE INVESTIGATORS WHO DEALT DIRECTLY WITH THIS ISSUE. WE HOPE THAT THE BUSINESS OMBUDSMAN COUNCIL'S TEAM WILL CONTINUE PAYING ATTENTION TO PROTECTING BUSINESS INTERESTS AND PROMOTING GOOD GOVERNANCE AT ALL LEVELS.**

**IHOR MOROZ**  
CEO OF WATER CENTER URF LLC

WE WOULD LIKE TO EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR ASSISTANCE IN RESOLVING THE ISSUE OF CEASING ILLEGAL INTERFERENCE OF THE STATE FISCAL SERVICE IN OUR COMPANY'S ACTIVITIES. WE APPRECIATE YOUR ASSISTANCE, WHICH HAS LED TO SUCCESSFUL PROTECTION OF OUR RIGHT FOR DOING BUSINESS, RETURN OF ILLEGALLY SEIZED PROPERTY, FUNDS AND CLOSURE OF CRIMINAL PROCEEDINGS.

**OLENA KOVTUN**  
CEO OF DNIPRO-VENDOR LLC

WE WOULD LIKE TO EXPRESS OUR DEEP AND SINCERE GRATITUDE TO YOU FOR YOUR ASSISTANCE IN RESOLVING THE ISSUE OF ILLEGAL INTERFERENCE IN THE ECONOMIC ACTIVITIES OF THE COMPANY BY FISCAL AUTHORITIES. THANKS TO THE COORDINATED AND HIGH-QUALITY WORK OF YOUR TEAM, DUE TO TIMELY AND WELL-GROUNDED APPEALS OF THE BUSINESS OMBUDSMAN COUNCIL TO THE PROSECUTOR GENERAL'S OFFICE OF UKRAINE AND THE STATE FISCAL SERVICE IN DNIPROPETROVSK REGION, THREATS AGAINST EMPLOYEES, UNFOUNDED CALLS AND PRESSURE OF REGULATORY AUTHORITIES WERE CEASED. THIS ALLOWS TO CARRY OUT OUR ECONOMIC ACTIVITY EFFECTIVELY GUIDED BY THE PRINCIPLES OF TRANSPARENCY AND UNCONDITIONAL ADHERENCE TO REQUIREMENTS OF LEGISLATION OF UKRAINE, INTRODUCTION OF EUROPEAN AND THE HIGHEST BUSINESS STANDARDS AND RULES OF DOING BUSINESS.

**OKSANA PURIK**  
DIRECTOR OF KYIV-TORG LLC

“

WE EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR HELP, EFFECTIVE COOPERATION, BALANCED AND PROFESSIONAL APPROACH TO THE CASE. THIS IS NOT THE FIRST TIME WE HAVE TURNED TO YOU FOR HELP, AND THIS IS NOT THE FIRST TIME WE HAVE RECEIVED IT. WE WANT TO SHARE GOOD NEWS – YESTERDAY, ON JANUARY 27, 2021, OUR CLIENT WAS REFUNDED 12 MILLION OF VAT ARREARS AND FINES COLLECTED FROM THE STATE BUDGET THROUGH THE REGIONAL TREASURY BASED ON A COURT DECISION. PRIOR TO THE BOC INTERFERENCE, WE WERE AT A DEAD END, EACH TIME RECEIVING UNGROUNDED AND ILLEGAL REFUSALS FROM THE TREASURY OFFICERS TO ENFORCE THE COURT DECISION. WE BELIEVE THAT WITHOUT YOUR HELP AND SUPPORT, THE PROCESS OF OBTAINING FUNDS WOULD TAKE A VERY LONG TIME. WE WISH SUCCESS TO THE ENTIRE BOC TEAM!

**OLENA ZHUKOVA**  
MANAGING PARTNER AT SAIVENA GROUP

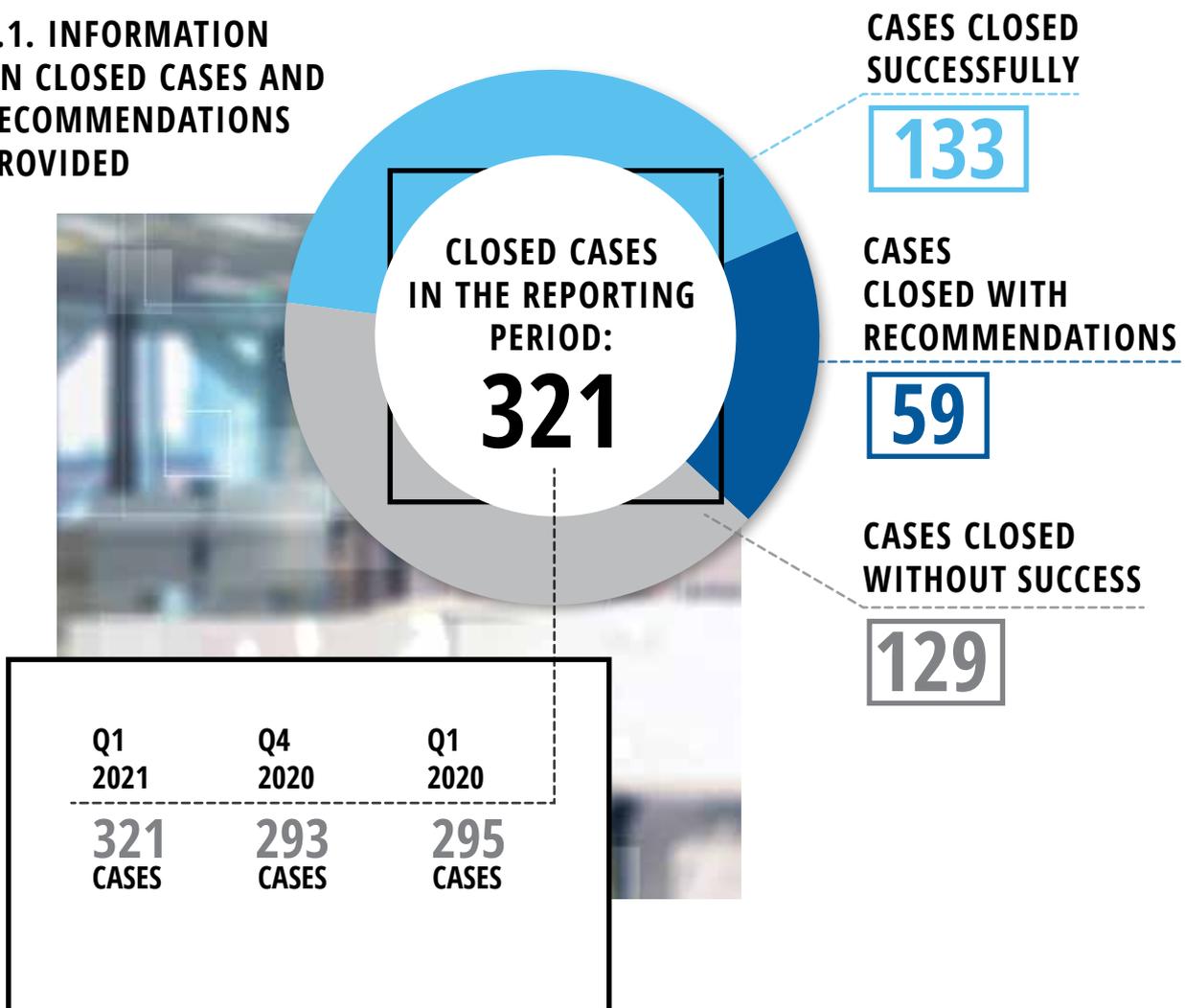
**TETIANA KOZLOVA**  
DIRECTOR OF LEGAL DEPARTMENT  
OF SAIVENA GROUP

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

The Business Ombudsman is entitled to examine entrepreneurs' issues in their relations with state bodies on case-by-case basis, provide respective recommendations to state bodies in case business rights were violated, and to draw attention to pressing business issues that became systemic by suggesting their possible solutions.

Hence, in this section we will report on closed investigations and their results, 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



TOTAL NUMBER OF  
CLOSED CASES SINCE  
LAUNCH OF OPERATIONS:

**5817**

In the reporting quarter, we closed 321 cases, which is 10% more than in Q4 2020 and 9% more than in Q1 2020. Three out of four closed cases (73%) were tax-related.

Actions of state regulators were in the focus of 23 closed cases.

With respect to law enforcement bodies – we closed 17 cases related to actions of the National Police, 7 cases – to the Prosecutor's Office and 4 – to the State Security Service. In total, these amounted to 28 cases, which is +40% QOQ.

Customs issues composed 5% of all closed cases, while episodes concerning malpractice of local government authorities – only 2%.

## TOP-10

SUBJECTS OF  
CLOSED CASES:

| SUBJECT                                 | Q1<br>2021 | Q4<br>2020 | Q1<br>2020 |
|---|------------|------------|------------|
| Tax issues                              | 233        | 211        | 201        |
| Actions of state regulators             | 23         | 11         | 28         |
| Actions of National Police              | 17         | 15         | 17         |
| Customs issues                          | 15         | 19         | 10         |
| Actions of local government authorities | 8          | 11         | 6          |
| Actions of Ministry of Justice          | 7          | 10         | 4          |
| Actions of Prosecutor's Office          | 7          | 3          | 12         |
| Actions of State Security Service       | 4          | 2          | 2          |
| Actions of state-owned companies        | 4          | 1          | 3          |
| Other                                   | 3          | 7          | 6          |
| <b>TOTAL</b>                            | <b>321</b> | <b>293</b> | <b>295</b> |

**FINANCIAL IMPACT  
IN Q1 2021:**

**UAH  
126  
MN**

**TOTAL FINANCIAL IMPACT  
OF BOC'S OPERATIONS  
MAY 20, 2015 –  
MARCH 31, 2021:  
EXCEEDS**

**UAH  
18.9<sub>BN</sub>**

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 18.9 billion.



|                                   | Q1 2021, UAH       |
|-----------------------------------|--------------------|
| Tax inspections                   | 52 678 167         |
| Tax VAT invoice suspension        | 26 601 896         |
| Tax VAT electronic administration | 23 295 870         |
| Tax VAT refund                    | 11 723 539         |
| Tax other                         | 11 408 290         |
| Department of Enforcement Service | 23479              |
| Other state regulators            | 7421               |
| Overpaid customs duties refund    | 5934               |
| Customs clearance delay/refusal   | 100                |
| <b>TOTAL</b>                      | <b>125 844 596</b> |

In many quarters till Q1 2020, a major part of the financial effect for business was achieved through cancellation of ungrounded tax audit results. With the current moratorium on most tax inspections introduced in March 2020, the financial impact for business from the BOC operations in Q1 2021 was also smaller than usual. Still, the institution helped businesses to save and refund UAH 126 mn.

In particular, in the reporting period, UAH 52 mn of the financial impact resulted from revision of tax audit results of activities, that do not fall under the moratorium, or inspections conducted before March 2020.

Apart from that, UAH 23 mn was related to registration of VAT invoices and UAH 23 mn – to VAT electronic administration. A successful consideration of cases related to VAT refund helped companies to seek redress of UAH 11 mn.

## NON-FINANCIAL IMPACT OF BOC'S OPERATIONS:

In Q1 2021, we ceased 47 episodes of state bodies malpractice, helped companies to close 18 ungrounded criminal cases, submit 7 tax reports, improve 6 legislative acts, obtain 5 licenses and permits.

|  | Q1 2021 | Q4 2020 | Q1 2020 | TOTAL |
|--|---------|---------|---------|-------|
| Malpractice ceased by complainee   | 47      | 66      | 44      | 780   |
| Criminal case against the Complainant closed; property/accounts released from under arrest | 18      | 9       | 3       | 150   |
| Tax records reconciled, tax reporting accepted   | 7       | 16      | 5       | 210   |
| Legislation amended/enacted; procedure improved  | 6       | 3       | 3       | 86    |
| Permit/license/conclusion/registration obtained  | 5       | 3       | 5       | 115   |
| Criminal case initiated against state official/3rd party                                   | 1       | 1       | 2       | 27    |
| Contract with state body signed/executed   | 1       | 0       | 1       | 53    |
| Claims and penalties against the Complainant revoked   Sanction lifted                     | 0       | 0       | 0       | 25    |
| State official fired/penalized   | 0       | 0       | 1       | 36    |
| Other issues   | 40      | 46      | 26      | 586   |

## RECOMMENDATIONS PROVIDED



RECOMMENDATIONS  
ISSUED  
IN Q1, 2021:  
**192**

NUMBER OF  
RECOMMENDATIONS  
IMPLEMENTED:

**3343**

NUMBER OF  
RECOMMENDATIONS  
NOT IMPLEMENTED:

**215**

NUMBER OF  
RECOMMENDATIONS  
SUBJECT TO MONITORING:

**181**

TOTAL NUMBER  
OF RECOMMENDATIONS  
ISSUED SINCE LAUNCH  
OF OPERATIONS:

**37888**

## GOVERNMENT AGENCIES WHOM THE BOC ISSUED RECOMMENDATIONS IN 2015-2021 (CASE-BY-CASE BASIS) AND RATIO OF IMPLEMENTATION

|   | ISSUED<br>RECOMMENDATIONS | IMPLEMENTED<br>RECOMMENDATIONS | Q1<br>2021 |
|---|---------------------------|--------------------------------|------------|
| State Tax Service, State Customs Service, State Fiscal Service          | 2633                      | 2403                           | 91%        |
| National Police of Ukraine  | 219                       | 168                            | 77%        |
| Prosecutor's Office of Ukraine  | 152                       | 120                            | 79%        |
| Local government authorities  | 150                       | 103                            | 69%        |
| Ministry of Justice   | 123                       | 112                            | 91%        |
| Ministry for Development of Economy, Trade and Agriculture              | 104                       | 91                             | 88%        |
| State Security Service  | 59                        | 57                             | 97%        |
| Ministry of Ecology and Natural Resources                               | 62                        | 56                             | 90%        |
| State Enterprises   | 39                        | 33                             | 85%        |
| Ministry of Territories and Communities Development                     | 32                        | 30                             | 94%        |
| Ministry of Social Policy   | 34                        | 29                             | 85%        |
| Parliament, the Cabinet of Ministers, the President of Ukraine          | 33                        | 28                             | 85%        |
| Ministry of Finance   | 24                        | 18                             | 75%        |
| Ministry of Infrastructure  | 23                        | 16                             | 70%        |
| Ministry of Health  | 16                        | 14                             | 88%        |
| Ministry of Internal Affairs  | 14                        | 11                             | 79%        |
| National Commission for State Regulation of Energy and Public Utilities | 11                        | 10                             | 91%        |
| Antimonopoly Committee  | 12                        | 8                              | 67%        |
| Commercial and other courts   | 7                         | 7                              | 100%       |
| NABU  | 6                         | 4                              | 67%        |
| State Funds   | 6                         | 3                              | 50%        |

|  | <b>ISSUED<br/>RECOMMENDATIONS</b> | <b>IMPLEMENTED<br/>RECOMMENDATIONS</b> | <b>Q1<br/>2021</b> |
|--|-----------------------------------|--|--------------------|
| National Bureau of Investigation of Ukraine                      | 4                                 | 3                                      | 75%                |
| National Bank of Ukraine   | 5                                 | 2                                      | 40%                |
| National Council of Ukraine on Television and Radio Broadcasting | 1                                 | 1                                      | 100%               |
| Ministry of Education and Science                                | 1                                 | 1                                      | 100%               |
| Ministry of Defence  | 2                                 | 1                                      | 50%                |
| State Regulatory Service   | 1                                 | 0                                      | 0%                 |
| State Border Guard Service                                       | 1                                 | 1                                      | 100%               |
| Ministry of Digital Transformation                               | 1                                 | 1                                      | 100%               |
| State Emergency Service of Ukraine                               | 1                                 | 1                                      | 100%               |
| Communal Services of Ukraine                                     | 1                                 | 1                                      | 100%               |
| Other  | 11                                | 10                                     | 91%                |
| <b>TOTAL</b>   | <b>3788</b>                       | <b>3343</b>                            | <b>88%</b>         |

In Q1 2021, the BOC issued 192 new recommendations, while state bodies implemented 142 individual recommendations from those issued since the launch of operations. In such a way, the cumulative ratio of implemented cases-by-case recommendations by state bodies reached 88% as of the end of Q1 2021. This reflects state bodies' willingness to improve their performance and cooperate in solving disputed issues of business.

Out of 2633 of the Council's individual recommendations that traditionally addressed to the block of the State Tax Service, the State Customs Service and the State Fiscal Service, 91% were fulfilled.

In the reporting quarter, state bodies to whom we issued 30+ recommendations demonstrated a ration higher than average: Ministry of Justice (91%), the State Security Service (97%), the Ministry of Ecology and Natural Resources of Ukraine (90%), the Ministry of Territories and Communities Development (94%).

The following state bodies were less successful in implementation of recommendations provided by the BOC:

the National Police (77%), the Prosecutor's Office (79%), local government authorities (69%), state-owned-enterprises (85%), the Ministry of Social Policy (85%), the Parliament, the Cabinet of Ministers, the President of Ukraine (85%).

## 2.2 SYSTEMIC ISSUES IDENTIFIED AND SOLVED

The Business Ombudsman Council provides recommendations to state bodies on the basis of individual cases and in accordance with published systemic reports. Over 6 years of operations, we have prepared 16 systemic reports on selected business problems and issued over 400 recommendations to state bodies. In particular, in Q1 2021 we acknowledged that the following of our recommendations were implemented:

### Systemic Report

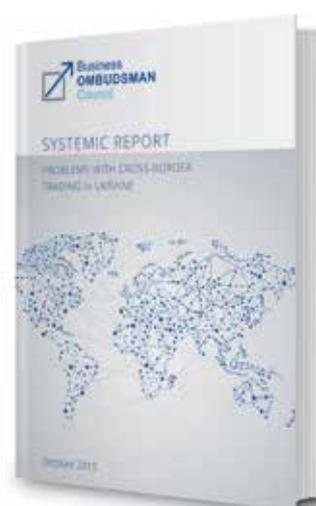
#### PROBLEMS WITH CROSS-BORDER TRADING IN UKRAINE

October 2015

#### Issue

---

Ensuring openness and transparency during the submission procedure related to foreign trade operations.



#### BOC's recommendation

---

To reduce direct contact with applicants and the number of documents that must be submitted to obtain permission for export-import. Streamline the application process in favour of using e-information in state databases instead of hard copy documents.

#### Actions taken by government agencies

---

The Cabinet of Ministers of Ukraine submitted to the Verkhovna Rada a Draft Law of Ukraine "On Amendments to Certain Legislative Acts Concerning the Liberalization of Administrative Services in the Sphere of Foreign Economic Activity" No.5167 of February 26, 2021.

The draft legislation provides for improving the regulation of foreign economic activity by liberalizing administrative services in the field of foreign economic activity, in particular to minimize documents for obtaining a license, determining an exclusive list of grounds for refusal, providing the ability to

submit documents electronically, as well as mandatory entry of information on issued licenses in the information system of the customs "Single Window".

## Systemic Report

# BIG CHALLENGES FOR SMALL BUSINESSES

February 2020

### Issue

---

Updating the SME Development Strategy under pandemic measures.



### BOC's recommendation

---

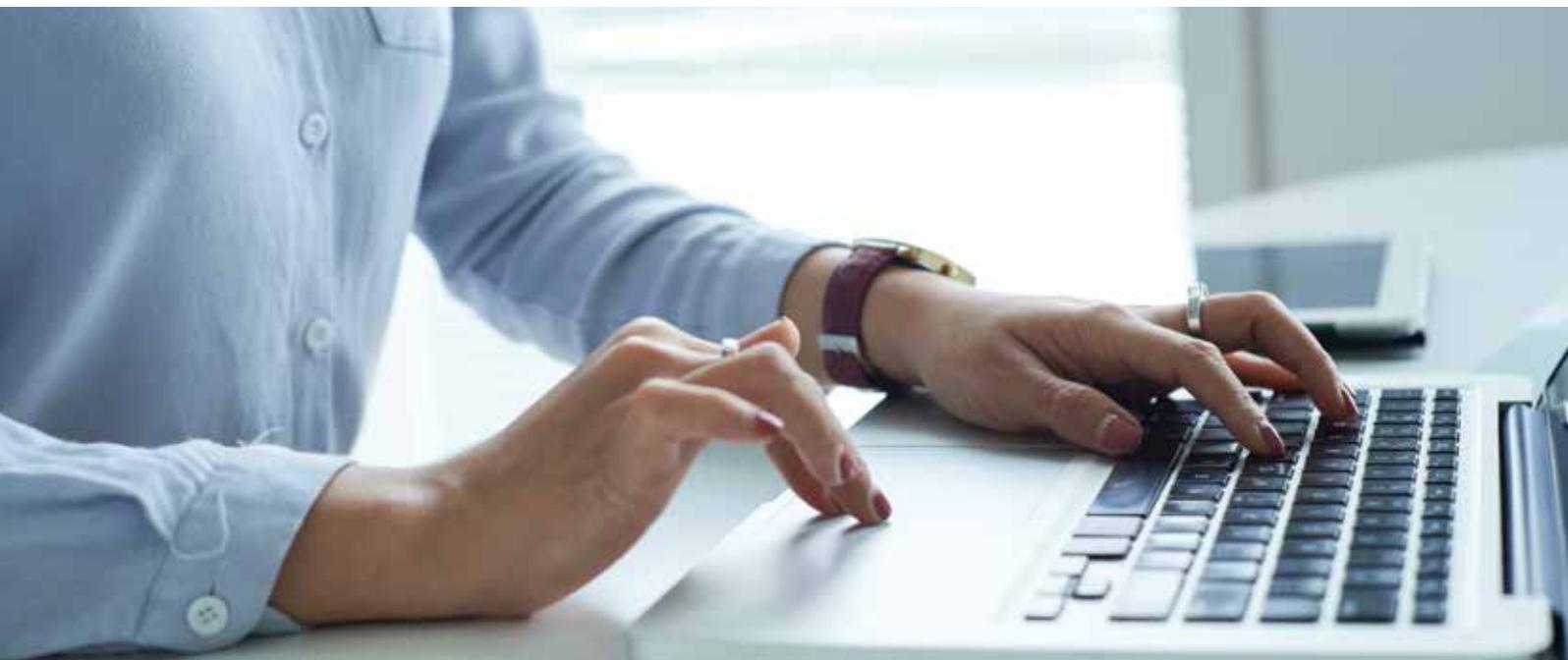
To review the Action Plan to the SME Strategy and determine its relevance, priority and expediency.

### Actions taken by government agencies

---

Currently, the Government has approved the Resolution of the Cabinet of Ministers as of March 3, 2021 No.179, which adopted the National Economic Strategy until 2030.

In turn, the National Economic Strategy until 2030 provides for measures that have not lost their relevance and expediency in connection with the completion of the SME Development Strategy until 2020.



## Issue

---

Facilitating SMEs' access to financing package

## BOC's recommendation

---

To provide quality information and training materials on access to finance and general financial literacy, including preparing SMEs for obtaining bank financing and preparing loan applications. Make this resource widely known to the target audience.

## Actions taken by government agencies

---

Under the Program 5-7-9, a potential loan applicant is given the opportunity to be tested for compliance with the terms of the program, to participate in training activities if necessary to improve business planning skills. These opportunities are provided on a separate page of the Portal for Entrepreneurs at: <https://sme.gov.ua/579start/>.

Also, in order to reduce the number of loan failures and improve business planning skills, a video course on preparing a business plan for the YouTube channel in the format of tips and hints was prepared and launched.

An additional video course on access to bank lending is being prepared for those entrepreneurs who are not required to submit a business plan to the bank under the terms of the 5-7-9 program.

## Issue

---

Improving the credit worthiness of SMEs.

## BOC's recommendation

---

To initiate training programs for SMEs aimed at improving access to finance through technical assistance programs. Consider regular conducting of such programs on an ongoing basis with budget and/or donor funding, for example, through regional business support centres. To avoid a formalized approach to implementing such programs (for

example, when performance is assessed based on the fact of the training itself), introduce measurable and focused key performance indicators, such as quantitative indicators of the SMEs' participation, the number of SMEs that have tried to or received funding after participation in training programs, and others.

## Actions taken by government agencies

---

Information about events and activities is published on the Portal for Entrepreneurs (<https://sme.gov.ua/events/>).

## Systemic Report

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

July 2016

### Issue

---

Elimination of gaps and improvement of certain norms of land legislation, which regulate the transfer of land use rights.

### BOC's recommendation

---

To propose amendments to Ukrainian land legislation to directly obligate local government authorities to re-sign leasing agreements for land plots with new owners of the properties following a simplified, transparent procedure.

### Actions taken by government agencies

---

On 02.02.2021 the Law No.0805 "On Amendments to Certain Legislative Acts of Ukraine (concerning the single legal share of the land and the real estate located on it)" as of 29.08.2019 was generally adopted in the second reading.

The draft law is designed to eliminate gaps and improve certain provisions of land legislation governing the transfer of land use rights.



## Systemic Report

# BUSINESS FOCUS ON LABOR-RELATED ISSUES

January 2019

### Issue

---

Reducing bureaucracy in the field of labor relations.

### BOC's recommendation

---

To take appropriate steps to simplify the labour-related document flow and transform it into electronic format.

### Actions taken by government agencies

---

On February 5, 2021, the Verkhovna Rada of Ukraine adopted the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning

the Employment of Employees in Electronic Form", which abolishes the mandatory maintenance of paper employment records.



## 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:** Non-enforcement of court decision on VAT invoice registration

**Half a million hryvnias  
court decision enforced**

**Complainee:**  
State Tax Service (STS)

#### COMPLAINT IN BRIEF:

A Kyiv-based advertising agency sought the Business Ombudsman Council assistance. The company complained that the tax authority neither enforced the court's decision, nor did it renew the complainant's registration limit in SEA VAT for over a year. In particular, the complainant had to go to court because at the end of September 2017 it became clear the tax authority erroneously reduced the company's registration limit amount by UAH 519k. The advertising agency tried to urge the STS to comply with the decision on its own, but, unfortunately, to no avail. Referring to tax authority's inactivity, the company asked the Council to launch a case investigation.

#### ACTIONS TAKEN:

After examining complaint materials, the investigator found the complaint substantiated. The Council recommended that the STS restore the advertising agency's registration limit amount and return funds to the complainant's electronic account in the SEA VAT. In her numerous letters to the STS, the investigator stressed that court decisions that had entered into force were subject to mandatory enforcement. In addition, the complainant's case was discussed in an expert group meeting with the participation of the STS management under the Memorandum of Partnership and Cooperation between the BOC and the STS.

#### RESULT ACHIEVED:

The STS followed the Council's recommendations and increased the advertising agency's registration limit amount by over UAH 500k in SEA VAT the complainant can register tax invoices for. The fact of the decision enforcement was confirmed by the complainant's representative. The case was successfully closed.

**Subject:** Tax inspections

**The Council helps tomato paste producer save over UAH 2 mn by proving to tax authorities purchase of gas relates to its production activity**

**Complainee:**

Large Taxpayers Office of the State Tax Service (LTO)

**COMPLAINT IN BRIEF:**

A production enterprise with two tomato paste production plants in the south of Ukraine turned to the Council. The company complained that tax audit resulted in unexpected conclusions from LTO auditors, who stated that all the gas purchased by the company during the period under review was not related to the complainant's production activities. Thus, according to the tax authority, the complainant had to accrue itself the so-called "compensatory" VAT liabilities for the whole amount of VAT included in the price of purchased gas – it was over UAH 2 mn. The conclusion surprised the complainant very much. After all, the company bought gas for the sole purpose – to use it as fuel for steam boilers, with the help of which fresh tomatoes are steamed, turning into a paste. Seemingly, connection with production activities is obvious here. The complainant's activities do not provide for any other ways of using gas (e.g., for facilities heating or reselling to other consumers).

However, the LTO did not accept these complainant's arguments while considering the objections to the tax audit report. Tax officers did not like the way in which the complainant accounted for the gas (there was a dispute over the accounting nuances – whether the gas should be considered a stock subsequently written off into production, or whether its value could be immediately attributed to costs). In addition, the LTO concluded the complainant should have set gas consumption rates (how many cubic meters were used to produce a certain amount of product) in its internal documents, and absence of such standards was an argument in favor of considering gas as "not used in production".

The complainant had to appeal tax audit results to the highest level tax authority – the State Tax Service of Ukraine (STS). In an effort to ensure an objective and impartial consideration of the appeal, the tomato paste producer requested the Council to join its appeal consideration process.

**ACTIONS TAKEN:**

The Council's investigator examined the case file and concluded the complaint was substantiated.

Firstly, according to the investigator, the legislation currently does not imperatively oblige industrial enterprises to set standards for gas consumption in production. The corresponding norm rooted in the days of planned economy, has recently expired. And even

if it remained in force, it was in any case unrelated to the taxation sphere, and was intended only to control the energy efficiency of production.

Secondly, the investigator concluded that the way in which the complainant accounted for the purchase of gas was in line with the company's accounting policies and did not contradict International Financial Reporting Standards (IFRS), based on which the company maintains its records. Considering that the gas purchased by the company was not stored and technically could not be stored in any gas storage facility, and after entering the territory of the enterprise it was consumed immediately and without alternative in steam boilers, the complainant's chief accountant's judgement that gas was not a stock (an asset – a resource controlled as a result of past events), and, accordingly, does not have to be accounted as a material, but should be immediately included in the costs, seemed quite reasonable from the Council's point of view. If we assume that boilers used by the company to produce steam would not be gas but electric, the company would also be unlikely to account electricity as a stock and then write it off. Of course, purchasing electricity would be perceived solely as a cost and not as an acquisition of an asset that could later be used in one way or another at the discretion of the enterprise. Exactly the same approach, from the Council's standpoint, was true for gas as well. In addition to the above, the Council's investigator agreed with the complainant's representatives, who emphasized that all these accounting nuances were not directly related to VAT taxation.

For the above reasons, the Council proposed that the State Tax Service of Ukraine satisfy the Complainant's appeal and cancel tax notifications-decisions issued by the LTO issued based on the audit findings.

### **RESULT ACHIEVED:**

The State Tax Service of Ukraine followed the Council's recommendations and canceled the contested tax notifications-decisions. The case was successfully closed.

**Subject: Non-enforcement of court decision on VAT invoice registration**

**Tax invoices worth  
UAH 5 mn. registered**

**Complainee:**  
The State Tax Service (STS)

**COMPLAINT IN BRIEF:**

The BOC received a complaint from a Kyiv-based agricultural company. The company complained that the STS did not enforce the court decision on VAT tax invoices registration for 2018. The company challenged the STS inaction in court, which ordered the tax authority to register the complainant's invoices on their submission dates. However, the tax authority did not enforce the court decision, which had come into force. That is why the agricultural company turned 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 the STS immediately register the company's tax invoices. At first the tax authority assured that court decisions were already in progress of enforcement. However, when the complainant checked information in the taxpayer's e-office, it turned out that invoices had not been registered. The BOC several times addressed the STS in writing, emphasizing the need to adhere to the rule of law, according to which a court decision that had entered into force was binding. It later cleared up that the tax authority did not register invoices due to the lack of a registration limit on the complainant's electronic SEA VAT account. Due to invoices suspension, the company's registration limit amount did decrease, but the indicator of "SExcess" in SEA VAT increased and amounted to UAH 5 mn. This amount was sufficient to register all tax invoices in accordance with court decisions. In communication with the STS, the BOC investigator noted that in such a situation, the tax legislation allows to register invoices at the expense of this indicator. At the same time, the STS representatives insisted that the registration of tax invoices at the expense of "SExcess" indicator value was impossible due to suspension of such registration by SEA VAT. In further communication with the STS, the BOC stressed that the defendant in the court decisions was not SEA VAT as an information system, but the STS of Ukraine as a public authority in charge of VAT administration. In addition, the STS of Ukraine, as the SEA VAT administrator, is able to check system algorithms and find out why SEA VAT prevents registration of tax invoices as determined by court decisions and ensure their proper implementation.

**RESULT ACHIEVED:**

Finally, after ten months of complaint consideration, thanks to the effective interaction of the BOC and the STS, the latter enforced the court decision and registered the company's tax invoices worth UAH 5 mn. The case was successfully closed.

**Subject: VAT invoice suspension**

**Victory for solar panels manufacturer – tax invoices for UAH 14.5 mn registered**

**Complainee:**

The State Tax Service (STS)

**COMPLAINT IN BRIEF:**

The Council received a complaint from an enterprise engaged in electricity projects development and implementation. For a long time, the tax authority failed to enforce the court decision on the company's tax invoices registration. It turned out that in the spring of 2019, the regional office included the company in the VAT risky taxpayers list and it was the starting point of a chain of further events that eventually ended up successfully only in early 2021.

Firstly, the tax authority suspended the complainant's VAT tax invoices with worth almost UAH 15 mn. The company then managed to prove it was risk-free. However, within the administrative appeal procedure, the STS refused to register suspended tax invoices in the Unified Register of Tax Invoices. Then the company sought protection in court. The court upheld the complainant's claim and, inter alia, obliged the STS to register the respective tax invoices. Despite the fact that the court decision came into force in early July 2020, the tax authority did not enforce it for several months. Therefore, in October and November 2020, a public enforcer issued two resolutions imposing a fine on the STS amounting to UAH 5.1k and 10.2k respectively for non-enforcement of the court decision without due reasons. However, these fines also failed to stop the inaction of the state body. At the same time, the lack of the company's tax invoices registration meant that the buyer of the goods still did not have the right to a tax credit totaling almost UAH 15 mn. This fact not only complicated further business relations prospects, but also negatively affected the tax planning of such a counterparty. Hoping to resolve the disputed situation with the STS, the complainant turned to the Council for assistance.

**ACTIONS TAKEN:**

The investigator supported the company's position and found the complaint substantiated. The Council asked the STS to eliminate the alleged malpractice and immediately enforce the court decision in question by registering the relevant tax invoices. In particular, in a letter to the tax authority, the Council reminded that a court decision is binding and current legislation sets rather short deadlines for execution of this category of court decisions. Having sent three formal appeals to the STS just within the first month of investigation, the Council brought up the subject matter of the complaint for discussion at the permanent expert group meeting between the STS and the Council under the Memorandum of Partnership and Cooperation. Following the expert group meeting, the STS assured the Council that the court decision would be strictly enforced in the nearest future.

It is also important to point out that at the end of December 2020, the complainant managed to establish a judicial control over enforcement of this decision. In particular, the STS was obliged to submit a report to the court on the decision's enforcement within 30 days upon the relevant ruling receipt.

### **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 criminal cases**

#### **Investigators return legally purchased hard drinks to the company**

##### **Complainee:**

The State Fiscal Service (SFS),  
Large Taxpayers Office (LTO)

### **COMPLAINT IN BRIEF:**

The Council received a complaint from a food and beverage distributor in Kharkiv Oblast. The company complained of pressure from law enforcers, who seized and did not return the company's property. Within criminal proceedings, investigators searched the company's warehouses to check its working documents because of the company's alleged involvement in the sale of illegally produced alcohol. However, despite the court's injunction, law enforcement officers seized imported alcoholic beverages from the company. The complainant appealed to the LTO investigator and asked for the seized property to be returned. He argued that the alcohol seized by the police had been purchased legally, as evidenced by the company's contract with the supplier and the respective tax invoices. However, the complainant failed to return his property on his own. The company then asked the Business Ombudsman Council for assistance.

### **ACTIONS TAKEN:**

The investigator examined the case file and found the complaint substantiated. The Council recommended that the LTO return the seized property to the complainant, whose request for arrest of which was not satisfied by the court. In a letter to law enforcers, the BOC investigator stressed that the court's refusal to arrest property entails the return to the person of all or part of temporarily seized property in accordance with Part 3 of Art. 173 of the CPC of Ukraine.

### **RESULT ACHIEVED:**

The LTO followed the Council's recommendations and returned strong drinks seized during the search. The complainant's lawyer informed the BOC of the return of property. The case was successfully closed.

**Subject:** Tax criminal cases**The company gets temporarily seized property returned****Complainee:**

The State Fiscal Service of Ukraine (SFS), Prosecutor General's Office (PGO)

**COMPLAINT IN BRIEF:**

The Business Ombudsman Council received a complaint from a company being one of Ukraine's construction market leaders. The company complained that law enforcement officers failed to return the property seized from it as a result of the search. Particularly, within the criminal proceedings in the tax evasion case, the SFS investigators seized hard drives and a large number of company documents, but later the investigating judge refused to arrest such property. Therefore, the complainant's lawyer filed the relevant motions to the investigator in charge of the criminal proceedings and demanded the return of the company's temporarily seized property. However, timely replies had not been received. The company then asked the Council to facilitate a dialogue with law enforcement agencies aimed at quick return of the temporarily seized property to its legitimate owner.

**ACTIONS TAKEN:**

The team of investigators examined the case files and found the complaint to be substantiated. The Council requested the SFS, jointly with the PGO, to ensure a timely, comprehensive and impartial consideration of the complainant's motions and to immediately return the temporarily seized property kept by the pre-trial investigation authority without due legal basis. The Council's investigator also discussed the complaint's subject matter with persons conducting the pre-trial investigation and procedural management of the respective criminal proceedings, and also submitted it for consideration by an expert group set up at the PGO under the Memorandum of Partnership and Cooperation between the Council and the PGO. By referring to the provisions of the Criminal Procedure Code of Ukraine, the Council emphasized that law enforcement officers were obliged to consider the complainant's motions within no more than three days upon their receipt and satisfy them provided the appropriate grounds were in place; if the supervisory authority decides to refuse the motions, it must provide the complainant with the reasoned responses in this regard. At the same time, refusal to satisfy the request for return of temporarily seized property is the due basis for its return to the owner.

**RESULT ACHIEVED:**

With the Council's assistance, the complainant was able to return the temporarily seized property. The law enforcers implemented the Council's recommendations. The company thanked the Council for facilitation: *"We are grateful for your work helping to restore violated rights of business entities and generally contributing to improving conditions for doing business in Ukraine"*. The case was successfully closed.

**Subject: VAT refund****Company returned  
UAH 3 mn of VAT****Complainee:**

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

**COMPLAINT IN BRIEF:**

A wood products supplier approached the Council. The company disagreed with the tax audit results. The enterprise submitted a declaration for May 2020 in which it declared almost UAH 3 mn of a VAT refund. For explanation the complainant presented additional calculations to the tax authority. However, as a result of the search, according to tax officials, the company overstated VAT refund amounts that are accounted for in the next reporting period. The company tried to appeal the tax audit conclusions having provided objections. The complainant justified his position by the fact that following the legislation, he has the right to specify the sequence of negative VAT value and the amount of budget refund on his own. Since the amount of its tax credit reached UAH 6.7 mn, the company decided to pertain UAH 3 mn to the budget refund, and 1.5 mn to the tax credit of next reporting periods. The tax authority did not reply to the company's objections. Thus, the Council received a complaint from the enterprise.

**ACTIONS TAKEN:**

After thoroughly examining the case file, the Council acknowledged the complaint was substantiated and supported the complainant's position. Therefore, the Council recommended that the State Tax Service ensure a full, comprehensive and impartial consideration of the company's complaint. The Council noted that violation of tax discipline that did not affect calculations procedure with the budget was not the reason for additional accrual for a taxpayer.

**RESULT ACHIEVED:**

The tax authority upheld the Council's recommendations and satisfied the complaint of the wood products supplier. The MD STS cancelled the decision on tax audit results. The case was successfully closed.

**Subject:** Tax issues – other

**Individual entrepreneur  
without debts**

**Complainee:**

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

**COMPLAINT IN BRIEF:**

The Council received a complaint from a private entrepreneur from Kharkiv region. The tax charged the entrepreneur fines for possible non-payment of the single social contribution in 2013. According to tax statements, the complainant had no debts. The matter was that in 2013 taxpayers submitted reports in a hard copy form, and tax officials entered data in the electronic database manually. It turned out that one of the tax officials made a mistake during the data transfer. He accidentally increased the SSC amount for February 2013 and specified UAH 11,472 instead of UAH 1,147. The entrepreneur challenged the SSC claim in court three times. The court concluded that tax officials made a mistake in transferring information to the electronic database. During the period from 2013 to 2019, the amount of her debt reached UAH 13,000. Being concerned about the demand of the MD STS to pay the non-existent debt, the private entrepreneur turned 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 the STS ensure a full, comprehensive and impartial consideration of the entrepreneur's complaint. In the BOC's view, the tax authority did not take the fact of the mistake into account by mistake. In a letter to the tax authority, the investigator stressed the importance of the "good governance" principle, according to which public authorities must act in a timely and consistent manner. The Council asked the STS to correct the mistake made by the state body.

**RESULT ACHIEVED:**

The tax authority followed the Council's recommendations and cancelled the decision on accruing debt to the individual entrepreneur. The complaint was successfully closed

**Subject:** Tax issues – other**Legal support for individual entrepreneurs****Complainee:**

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

**COMPLAINT IN BRIEF:**

The Council received a complaint from an individual entrepreneur from Kyiv. The entrepreneur disagreed with the tax audit findings. According to the tax authority, the private entrepreneur did not pay a single tax to the budget on time and fined the complainant for UAH 54k. The entrepreneur sent a complaint to the STS and simultaneously turned to the Business Ombudsman Council for help.

**ACTIONS TAKEN:**

After examining complaint materials, the investigator acknowledged the complaint was substantiated. The investigator found out the complainant had not violated single tax payment terms. However, it turned out that the entrepreneur had made a technical error in payment purpose and specified an incorrect taxpayer code. Thus, payments were not linked to the complainant's account, although tax amounts had been credited to the treasury account in full. Besides, it turned out that the private entrepreneur made a mistake in the single taxpayer's tax return, where he had specified the amount of taxes for the last quarter on his own, although at that time he was on the general taxation system and was not a single taxpayer any longer.

In view of the fact that Complainant timely and fully made payments, referring to the relevant court practice, the Council supported the private entrepreneur's position.

The Council recommended that the STS ensure a full, comprehensive and impartial consideration of the entrepreneur's complaint and cancel the disputed tax decision. In particular, the BOC asked to consider the complaint of the STS remotely with the participation of the Council and the complainant due to COVID-19 pandemic.

**RESULT ACHIEVED:**

The STS followed the Council's recommendations and satisfied the private entrepreneur's complaint. The fine was canceled. The investigator successfully closed the case.

## ACTIONS OF NATIONAL POLICE

**Subject:** National Police – procedural abuse

### **Investigators return property in three years'**

#### **Complainee:**

Darnytsya Police Department of the Main Department of the National Police in Kyiv City (Darnytsya National Police)

### **COMPLAINT IN BRIEF:**

The Council received a complaint from a meat producer from the capital city. The enterprise complained that investigators did not return property seized during a search earlier in 2017. The Council learned that the complainant's company director was a founder of the other enterprise some time ago. Due to a possible tax evasion of that enterprise's officials, a criminal proceeding was opened. However, it is interesting that the investigators conducted the search in the complainant's office and seized computer equipment, a mobile phone and documents. The investigators did not return the seized property for three years. The complainant and his lawyer could not return the property on their own. The last hope of the meat producer was to turn to the Business Ombudsman Council for help.

### **ACTIONS TAKEN:**

The investigator of the Council analysed the case file and acknowledged the complaint was substantiated. The Council recommended Darnytsya National Police to immediately return the property seized from the complainant's office. In the letter to law enforcers the investigator of the Council reminded of a reasonable timeframe for a criminal proceeding: even if at the time of the property seizure there were allegations about the complainant's officials' involvement in commission of a crime, these grounds had clearly not been substantiated during the three years of the investigation. The Council raised the subject of complaint at the expert group meeting with the Prosecutor General's Office and the Main Investigation Department of the National Police of Ukraine. Nevertheless, the complainant did not receive the property back immediately. The Council conducted expert group meetings with law enforcement agencies two times. Only following these meetings, the case settlement was successful.

### **RESULT ACHIEVED:**

Due to persistent work of the investigators' team, the police upheld the BOC recommendations and returned the seized property to the complainant. The case was successfully closed.

## ACTIONS OF STATE REGULATORS

**Subject:** State regulators – other

**Construction permit through DIIA portal obtained**

**Complainee:**

Ministry of Digital Transformation of Ukraine

### COMPLAINT IN BRIEF:

The Council commenced investigation in the case of an olympic training and sports center from Kyiv region. The complainant could not obtain a construction permit for one of the objects. The sports center representatives submitted documents through DIIA portal. It should be noted that according to the legislation novelties, application for obtaining such a permit had to be submitted exceptionally in electronic form since December 1, 2020. After several attempts the director managed to sign and send the application, however information about the document's status did not display. A technical support manager informed about a technical error in DIIA system. If the portal operates correctly, after application submission, it obtains a number and a "pending" status. The complainant did not get any information about the deadline of fixing a technical error. The administration of the olympic training and sports center lodged a complaint to the Business Ombudsman Council.

### ACTIONS TAKEN:

Having examined a case file, the investigator acknowledged the complaint was substantiated. The Council asked the Ministry of Digital Transformation to fix a technical error at DIIA portal and allow submission of documents for obtaining construction permits without any issues. The Council emphasized that the issue can become systemic, since apart from the complainant, other enterprises may have problems with documents submission. As long as applications can be submitted only in an electronic form, technical error at DIIA portal can lead to construction delays, violation of contractual commitments and applying penalties in relation to enterprises.

### RESULT ACHIEVED:

After the Council's interference, the Ministry of Digital Transformation improved operation of DIIA portal. The complainant successfully obtained a construction permit. The case was closed.

**Subject:** State regulators – other

**The Council helps eliminate collision in legislation, which did not allow self-employed pensioners to apply for unemployment benefits during quarantine**

**Complainee:**

Dnipro City Employment Center

## **COMPLAINT IN BRIEF:**

In June 2020, a private entrepreneur, a disabled person, approached to the Council. Due to introduction of quarantine to prevent the spread of coronavirus disease (COVID-19), she had to suspend her business activities. Left without a source of income, she applied to a local employment center for unemployment benefits. However, the employment center neither decided on providing her with assistance, nor paid it. The complainant got outraged by this situation. After all, in the corresponding procedure adopted by the Cabinet of Ministers (Procedure No.306), her right to receive assistance was clearly provided.

## **ACTIONS TAKEN:**

After reviewing case materials, the Council's investigator found that it was not only and not so much about the complainant's individual case, but rather a systemic problem affecting interests of all Ukrainian retired or disabled private entrepreneurs, who had to terminate their business activities in the background of quarantine. Despite the fact that such persons are exempted from the obligation to pay a monthly unified social contribution (USC), the Cabinet of Ministers clearly stipulated their right to receive assistance in the amount of two thirds of minimum wages per month in the relevant Procedure No.306. However, the provisions of Procedure No.306 turned out to be inconsistent with the provisions of the Law of Ukraine "On Employment of the Population". The latter established that persons receiving a pension (by age or disability) were not entitled to receive benefits. Due to this collision, employment centers massively denied such applicants assistance.

The problem seemed difficult, as it required legislative amendments to address it. To facilitate it, the Council communicated with a number of state bodies, including the dedicated committee of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Ministry for Development of Economy, Trade and Agriculture of Ukraine, and the State Employment Center of Ukraine (SECU).

## **RESULT ACHIEVED:**

Amendments to the Law of Ukraine "On Employment of the Population" came into force on December 21, 2020, while to the Procedure No. 306 – on March 13, 2021. In addition, at the Council's request the SECU provided a clarification confirming the right of private entrepreneurs who were pensioners or disabled persons, and did not pay USC, to receive unemployment benefits if they had to stop doing business during quarantine period. Thus, the conflict in the legislation was eliminated and now this category of entrepreneurs has the right to apply for assistance like others. The practical possibility of entrepreneurs receiving assistance depends on their own activity (it is necessary to collect and submit the respective package of documents for that) and on budget funds allocated for this purpose. The case was closed.

**Subject:** State regulators – other

**Ukrtransbezpeka responds to public information request**

**Complainee:**

The State Service of Ukraine for Transport Safety (Ukrtransbezpeka), the Department of Ukrtransbezpeka in Zhytomyr region

**COMPLAINT IN BRIEF:**

The Council received a complaint from a producer of reinforced concrete products from Zhytomyr region. The company complained that the Department of Ukrtransbezpeka in Zhytomyr region did not provide it with access to public information regarding the company's debts. The controlling authority did not inform the complainant about fines of the company's drivers that transported oversized loads with the enterprise's products. Therefore, the company could pay fines with delay. For that reason, it was threatened with its bank account arrest under the enforcement proceeding and, as a result, suspension of business activity. The complainant tried to build a transparent working dialogue with the controlling authority, however faced counteraction on the part of Ukrtransbezpeka. Each time when submitting a request for public information the complainant received a formal refusal from the Department of Ukrtransbezpeka in the Zhytomyr region. Violation of the enterprise's right for public information made it approach the Business Ombudsman Council.

**ACTIONS TAKEN:**

The investigator analysed the case materials and acknowledged the complaint was substantiated. The Council supported the complainant's position and recommended Ukrtransbezpeka and the Department of Ukrtransbezpeka in Zhytomyr region to provide the company with full, authentic and precise information on fines payment. The Council emphasized that according to legislation, entities that requested public information have a right for full and authentic information.

**RESULT ACHIEVED:**

The Council's interference helped the producer of reinforced concrete products receive the requested information. The Department of Ukrtransbezpeka in Zhytomyr region informed the enterprise about debts from January 1, 2016 till August 1, 2020. The complainant thanked the Council for a successful case settlement: *"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"*. The case was closed successfully.

## CUSTOMS ISSUES

**Subject:** Customs other

**Cargo with Ukrainian supermarket goods crosses the border**

**Complainee:**

The State Customs Service (State Customs Service), Chornomorsk Customs

### COMPLAINT IN BRIEF:

The Business Ombudsman Council received a complaint from a Ukrainian supermarkets chain. The company exported goods through Mykolaiv commercial port. In order to allow transportation of goods abroad, the customs must draw up and issue an order to load the goods on board the vessel based on a customs declaration in a short time. However, the customs officers refused issuing such an order to the complainant with a significant delay without giving proper explanations. The company filed a complaint to the State Customs Service against inaction of Chornomorsk customs officers. Since, as it turned out, the customs officers were systematically delaying issuance of orders to load goods on the vessel, the company turned to the Council for help.

### ACTIONS TAKEN:

After examining the circumstances of the case, the investigators team found the complaint substantiated. The Council recommended that the State Customs Service issue the necessary orders for loading the goods on board the chartered vessel as soon as possible or provide a reasoned refusal without delay. In particular, the BOC reminded that according to the EU-Ukraine Association Agreement public authorities must adhere to a good governance principle and act in a timely and proper manner and as consistently as possible.

The Council's team pointed out that the problem that arose in the situation with the supermarkets chain was systemic. It is not the first time that the company has encountered difficulties in issuing orders, with which they complained to the Council.

In order to speed up resolution of the company's case, the Council brought the subject of the complaint for consideration at expert groups meeting with the State Customs Service constantly monitoring the subject of the complaint resolution process.

### RESULT ACHIEVED:

Thanks to mediation of the BOC, the State Customs Service issued an order to transport the complainant's goods abroad. The case was successfully closed.

## ACTIONS OF MINISTRY OF JUSTICE

**Subject:** MinJust actions – Department of State Registration and Notary

**State registrars “playing along” with raiders**

**Complainee:**  
Ministry of Justice of Ukraine  
(MinJust)

### COMPLAINT IN BRIEF:

The Business Ombudsman Council received a complaint from a transportation company from Odesa. The company complained of having been raided by a financial company, which tried to seize the company's real estate by engaging “black” state registrars. According to the complainant, both state registrars from Zaporizhia and Donetsk regions violated the territoriality principle by registering property the location of which did not coincide with their place of work. The company tried to challenge illegal actions of state registrars on its own through the Collegium of the Ministry of Justice for considering complaints against decisions, actions or inaction of the state registrar (the MinJust Collegium). However, the MinJust Collegium was in no hurry to draw conclusions. Following the hearing, the complainant neither received a copy of the Collegium's opinion, nor official information to be posted on the Ministry of Justice's official website. The company called the MinJust hotline, however, received no support other than promises. It turned out later that the MinJust Collegium had postponed consideration of the transportation company's complaint to other dates. The inaction of the Ministry of Justice was a trigger for the complainant to ask the BOC to take up his case immediately.

### ACTIONS TAKEN:

After reviewing the case file, the investigator found it substantiated. The Council recommended that the MinJust Collegium review the transportation company's case with the participation of the complainant and the Council's representative and estimate controversial registration actions of the registrars.

### RESULT ACHIEVED:

Following facilitation of the Council, the case was resolved quickly during the second meeting of the MinJust Collegium on the complainant's issue. The MinJust partially satisfied the transportation company's complaint and cancelled illegal decisions made by the state registrar from Zaporizhia region. The case was successfully closed.

**Subject: MinJust actions – Department of State Enforcement Service****Enforcement proceedings  
get underway****Complainee:**

Ministry of Justice of Ukraine  
(MinJust), State Enforcement  
Service in Poltava (SES)

**COMPLAINT IN BRIEF:**

The Council received a complaint from an enterprise providing engineering, geology, and geodesy services. The company complained about inaction of the State Enforcement Service. Last year, the court declared the complainant bankrupt and initiated liquidation procedure. As part of the bankruptcy case, the insolvency officer (liquidator) of the company appealed to the court and asked to declare car sale and purchase agreement concluded with the counterparty invalid. The court declared the agreement invalid and ordered the contracting company to return the property received under the agreement before liquidation of the enterprise to the complainant. However, three months after initiating enforcement proceedings, the SES neither performed any actions, nor announced the search for vehicles in accordance with the liquidator's motion. The Council started investigating the complainant's case.

**ACTIONS TAKEN:**

After analyzing the circumstances of the complaint, the investigator found malpractice signs in the SES inaction. The Council recommended that the MinJust and the SES immediately consider the insolvency officer's motion and issue an order to search for the car. The investigator noted that according to Art. 36 of the Law of Ukraine "On Enforcement Proceedings", in case of necessity of search of the debtor's vehicle, the executor issues an order on such search being mandatory for enforcement by police. In particular, the Council's investigator stressed the importance of meeting reasonable time frames for enforcement proceedings, publicity and openness as required by law.

**RESULT ACHIEVED:**

The MinJust and the SES accepted the Council's recommendations and announced a search for the complainant's property under the invalid sale. The case was closed.

## ACTIONS OF LOCAL GOVERNMENT AUTHORITIES

**Subject:** Local government authority's other

**Company's reputation on Kyiv City State Administration website restored**

**Complainee:**  
Kyiv City State Administration

### COMPLAINT IN BRIEF:

A food supplier to Kyiv and Kyiv region educational institutions approached the Council. The company complained that the Kyiv City State Administration had included it in the list of companies cooperation with which led to ineffective use of budget funds. This situation also negatively influenced the complainant's reputation.

In 2016, the company won the procurement for supply of sugar to the Department of Education of Holiivskyi District in Kyiv City State Administration (Department of Education). However, as a result of the audit of the Department of Education activities on compliance with the law when making procurement, Kyiv City State Administration detected violations and shortcomings in the tender procedure. Thus, the local authority concluded that the enterprise of the Department of Education did not ensure maximum savings and effective use of funds during procurement. This led to excess costs in the amount of UAH 215k. It should be noted that the complainant was not the subject of audit, so auditors did not provide their opinion on the company's compliance with the law.

However, the company was "lucky" to be included in the list of companies with a negative experience of cooperation with contractors on Kyivaudit official internet portal and Kyiv City State Administration website. Being on such a list harmed the company's interests and could limit its right to participate in public procurement procedures. To restore fair competition, the Business Ombudsman Council got down to reviewing the company's complaint.

### ACTIONS TAKEN:

After examining the case file, the investigator found the complaint substantiated. The Council recommended that Kyiv City State Administration check the grounds for including the company in the list with a negative cooperation attribute and exclude the company from the list in accordance with the law on protection of economic competition. The Council arranged a discussion of the complaint with the participation of the complainant and the leadership team of Kyiv City State Administration by video conference within the expert group under the Memorandum between the BOC and Kyiv City State Administration. The participants agreed that the company could not provide information on tenders as it was not allowed to participate due to being on the list. For its part, Kyiv City State Administration informed that the "Experience of Cooperation with Contractors" section was constantly updating and the entry of the complainant would be deleted in the nearest future.

### RESULT ACHIEVED:

Thanks to a successful mediation of the Council, Kyiv City State Administration excluded the food supplier from the list of companies with a negative experience of cooperation and updated the information on its web portal. The case was closed.

**Subject:** Local government authorities rules and permits

**Mariupol City Council approves advertisement plate installation**

**Complainee:**  
Mariupol City Council

### **COMPLAINT IN BRIEF:**

A law firm from Mariupol approached the Council. The company reported failure of the Mariupol City Council to approve advertisement plate installation above the complainant's office. The company submitted an application with documents through the Center of Administrative Services of the City Council, however the Main Department of Architecture and Construction of Mariupol City Council refused to approve a passport for advertisement plate installation. The law firm corrected mistakes pointed out by the local authorities and submitted a new package of documents to the City Council. The company expected to receive a permit for advertisement plate installation within 12 working days as it is foreseen by the law. Nevertheless, the City Council did not allow to install an advertisement plate by indicating in the reply that "Discrepancies between given sketch drawings of the advertisement plate and its actual installation were detected". Given the fact that the company still had not installed the advertisement plate, they fully disagreed with the position of the local government authorities. Due to possible violation of legal entrepreneurial interests of the law firm, the Business Ombudsman Council commended its own investigation.

### **ACTIONS TAKEN:**

The investigator examined the case file and acknowledged the complaint was substantiated. The Council recommended Mariupol City Council to ensure impartial consideration of the complainant's documents filed in order to receive a plate installation permit. In particular, the Council supported the position of the law firm and recognised the local authorities' refusal unmotivated. The investigator underlined that the supposed discrepancies between the advertisement plate's size and its installation were incorrect. The Council detected malpractice on the part of the city council contradicting a good governance principle. In communication with Mariupol City Council, reasons for its refusal were found out. In the city council's opinion, an advertisement plate could cover the windows of the first floor as the law firm office was located in the basement. The complainant sent to Mariupol City Council additional explanations regarding the plan of the advertisement plate installation and reassured that it would not create any inconveniences for neighbours.

### **RESULT ACHIEVED:**

The MinJust and the SES accepted the Council's recommendations and announced a search for the complainant's property under the invalid sale. The case was closed.

# 3. COOPERATION WITH STAKEHOLDERS

One of the Business Ombudsman Council's key goals is to provide effective 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. FINALIZING THE DRAFT LAW "ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE"

In June 2020, the Draft Law "On the Business Ombudsman Institution in Ukraine" was registered in the Verkhovna Rada of Ukraine (VRU). It was supported by 4 VRU Committees: the Committee on Economic Development, the Committee on Anti-Corruption Policy, the Committee on Integration of Ukraine into the European Union and the Committee on Budget.

However, due to comments from the Committees and in particular from the VRU Main Scientific and Expert Department, the plenary session in February 2021 decided to return the document to the VRU Committee on Economic Development for further development, before it goes to the first reading. The new version of the draft law taking into account comments from the Committees was prepared.

**IN COMPARISON  
WITH THE  
ORIGINAL DRAFT,  
THE UPDATED  
VERSION PROVIDES  
THE FOLLOWING:**

**1**

Excluding norms on administrative liability for improper cooperation with the Business Ombudsman Institution (BOI) and, accordingly, no power of the Business Ombudsman and his/her Deputies to draw up any protocols on administrative offences;

**2**

Excluding norms on criminal liability for interference in the Business Ombudsman, his/her Deputies' activities (illegal influence (pressure) on them);

**3**

Solely voluntary provision of confidential information by complainants necessary for consideration of their complaints and obtaining their consent for collection, storage, use and dissemination of such information by the Institution; recognizing confidentiality as one of the core principles of the Institution's activity;

**4**

Restricting the right of the Institution to access only the scope of official information directly related to the circumstances of the complaint considered by the Institution;

**5**

Enshrining by the Supervisory Board the procedure for holding a competition for the position of the Business Ombudsman at the legislative level;

**6**

Providing a norm in the transitional provisions of the Law that upon its entry into force, a decision is made to announce a competition for the Business Ombudsman and/or his/her Deputies, or the current Business Ombudsman and/or his/her Deputies' mandate is extended for another term (in this case, this term will be considered the second one, i.e. the last, after which a competition must be held);

**7**

Establishing a rule according to which receipt of financial or non-financial contributions by the Institution does not create any obligations on the part of the Institution towards persons who have made such contributions;

**8**

Improving the internal structure of the Law and simplifying its terminology.

**THE NEW DRAFT LAW WAS ADOPTED  
BY THE VRU COMMITTEE  
ON ECONOMIC DEVELOPMENT  
ON APRIL 28, 2021.**

## 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 Q1 2021:

|                                | Number of meetings and/or online discussions | Number of cases considered during these meetings |
|--------------------------------|--|--|
| State Tax Service              | 21   | 145  |
| National Police                | 1  | 16   |
| Prosecutor's Office            | 1  | 17   |
| Ministry of Justice            | 1  | 3  |
| Kyiv City State Administration | 1  | 0  |
| State Customs Service          | 0  | 7  |
| <b>Total</b>                   | <b>25</b>                                    | <b>188</b>                                       |

### 3.3. ONLINE EVENTS WITH PARTNERS

In the reporting quarter the Business Ombudsman Council continued interacting with its target audience by organizing joint online events with its partners. The webinars conducted earlier by the BOC demonstrated a high demand among entrepreneurs, lawyers, advocates and representatives of central and local government authorities. It has become a useful tool for the Council to share practical insights about its activities in ceasing state bodies' malpractice against businesses, discussing entrepreneurs' systemic issues and became a special platform for exchanging practical expertise in business protection with business associations, law firms and other stakeholders. Online events appeared valued-added since despite the COVID-19 pandemic and the respective restrictions introduced webinars made it possible to engage even more participants than before and thus reach out to a wider audience.



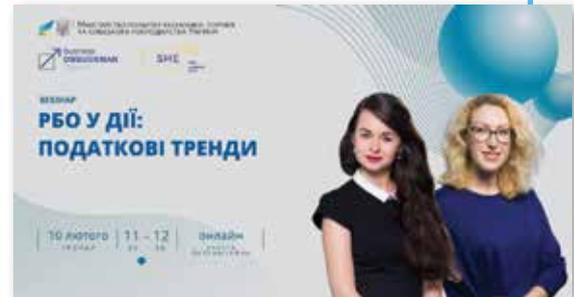
The BOC partners maintain their interest in conducting joint thematic events. The series of webinars started in Q1 2021, will be continued in the next quarters. We encourage our partners to join the BOC in spreading the word about all possible means of protecting interests of businesses operating in Ukraine.



**LEARN MORE ABOUT THE WEBINARS SCHEDULED FOR THE Q2 2021 AT THE COUNCIL'S FACEBOOK PAGE.**

## WEBINARS WITH THE MINISTRY FOR DEVELOPMENT OF ECONOMY, TRADE AND AGRICULTURE AND SMEs DEVELOPMENT OFFICE SME.DO

In Q1 2021 the Business Ombudsman Council intensified cooperation with the Ministry for Development of Economy, Trade and Agriculture and the SMEs Development Office in terms of joint webinars organization targeting business representatives, lawyers and local government authorities. During the webinars, the BOC investigators raised the most pressing issues of entrepreneurs and showcased stories about investigations successfully completed.



10.02.2021

**“BOC IN ACTION:  
TAX TRENDS”**



24.02.2021

**“BOC IN ACTION:  
INTERACTION WITH LAW  
ENFORCERS”**



10.03.2021

**“BOC IN ACTION: EFFECTIVE  
COOPERATION WITH STATE  
REGULATORS”**

31.03.2021

**“BOC IN ACTION:  
SPECIAL ASPECTS OF  
INTERACTION WITH  
LOCAL GOVERNMENT  
AUTHORITIES”**



## WEBINARS WITH THE UKRAINIAN NATIONAL BAR ASSOCIATION

Since quite often the BOC complainants are represented by lawyers and advocates, it is important that they are aware of the issues we are working with and the set of tools the Council can offer to increase the chances to successfully resolve cases in favor of their clients. In this way, in the reporting quarter the BOC came up with some more online discussions held in partnership with the Ukrainian National Bar Association.



**16.02.2021**  
**“DOES ALWAYS COOPERATION WITH UNSCRUPULOUS CONTRACTORS MEAN ISSUES RELATED TO INTERACTION WITH STATE BODIES? EXPERIENCE OF THE BUSINESS OMBUDSMAN COUNCIL”**



**15.02.2021**  
**“PUBLIC OVERSIGHT ISSUE IN THE FIELD OF ECONOMIC ACTIVITY DURING QUARANTINE”**



**12.03.2021**  
**“BUSINESS ISSUES RELATED TO QUARANTINE RESTRICTIONS: BOC'S EXPERIENCE”**

## WEBINARS WITH THE AMERICAN CHAMBER OF COMMERCE IN UKRAINE

In March 2021 the Business Ombudsman Council conducted webinars with its long-standing partner the American Chamber of Commerce in Ukraine. The BOC-ACC joint events have become a good tradition for our followers that allows to reach out to a large number of Ukrainian and foreign companies doing business in the country. The Council's speakers not only always keep stakeholders informed about the institution's activities, but also share expert views on diverse topical issues entrepreneurs face when interacting with state bodies.



## WEBINARS WITH THE UKRAINIAN LEAGUE OF INDUSTRIALISTS AND ENTREPRENEURS

In the reporting quarter the online webinars' initiative was joined by one more Business Ombudsman Council's partner – the Ukrainian League of Industrialists and Entrepreneurs. The ULIE expressed a special interest for holding joint events and engaged a large number of their members to learn about the Council's activities and exchange opinions on existing business issues.

The first webinar took place in Q1 and was positively welcomed by all the participants pertaining to different industries such as pharmacy, wholesale and distribution, telecommunications and agriculture. We are looking forward to more online discussions in the project framework that are planned for the upcoming quarter.



04.03.2021

### "BLOCKING OF TAX INVOICES: WHAT TO DO AND HOW TO PREVENT IT?"

American Chamber of Commerce in Ukraine and GOLAW firm

31.03.2021

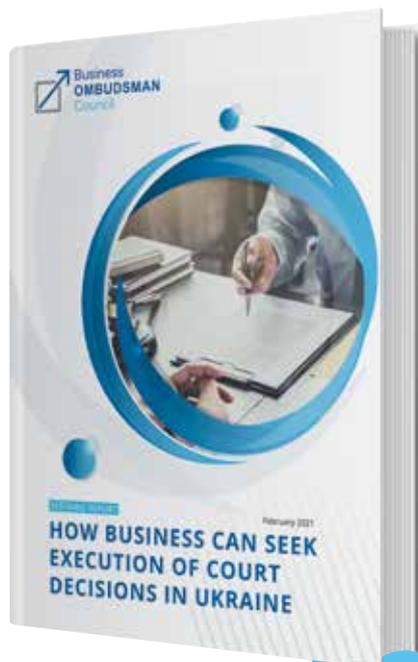
### "TAX AUDITS IN 2021"

American Chamber of Commerce in Ukraine and Martyniv Law Firm



03.03.2021

### "BUSINESS ISSUES IN TAX SPHERE: BOC EXPERTISE"



## PRESENTATION OF SYSTEMIC REPORT "HOW BUSINESS CAN SEEK EXECUTION OF COURT DECISIONS IN UKRAINE"

Given that over the past few years the Business Ombudsman Council observed and repeatedly faced the issue of non-enforcement of court decisions that have entered into force in entrepreneurs' complaints, it was decided to thoroughly study the problem and suggest possible ways to solve it in the new systemic report. Hence, in February 2021, the BOC issued the systemic report "How Business Can Seek Execution of Court Decisions in Ukraine".

### THE SYSTEMIC REPORT WAS PREPARED BY

**The Deputy Business Ombudsman**

Tetyana Korotka

**the investigators' team consisting of**

Andriy Bodnarchuk  
Volodymyr Kutsenko  
Vasyl Sukhovyj  
Kirill Nominas  
Kyryl Slastunov  
Oleh Mykhaliuk

**under the supervision of the Business Ombudsman**

Marcin Swiecicki

The report offers an in-depth analysis of the issue from the BOC perspective, and provided a range of recommendations to the Cabinet of Ministers, the Ministry of Justice and the Ministry of Internal Affairs aiming to increase efficiency of court decisions' implementation by state bodies and improve dialogue between business and the state following the rule of law principles.



### 3.4. 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.

Estimated value of publications in Q1 2021, based on the assessment of the ECOSAP media monitoring agency, was

UAH  
**1.3**  
MILLION

#### PUBLICATIONS

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

**27500+**  
TIMES

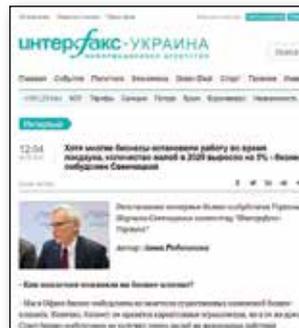
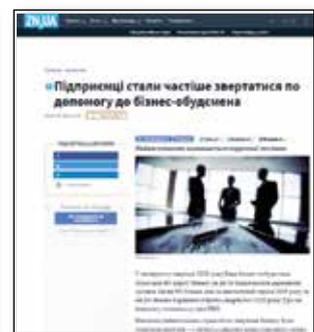
with

**99.9%**  
MENTIONS

being positive and neutral.

# IN Q1 2021, INTERVIEWS, COMMENTS AND OP-EDS BY THE BUSINESS OMBUDSMAN AND HIS TEAM APPEARED IN THE FOLLOWING MEDIA:

## BUSINESS MEDIA:



### SPECIALIZED LEGAL MEDIA:

**Юридична Газета**

**ЮРИСТ**

**DICTUM**



### TV AND RADIO:



**UA: УКРАЇНСЬКЕ РАДІО**



## EVENTS

**27.01.2021**

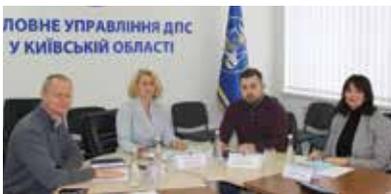


Expert Group Meeting with the Ministry of Justice of Ukraine  
**Organized by**  
Ministry of Justice of Ukraine

**27.01.2021**

Webinar “UKRAINE IN 2021 – Analysis & Commentary: Outlook, Forecast, Predictions”  
**Organized by**  
U.S.-Ukraine Business Council

**08.02.2021**



Meeting with the Administration of the Main Department of the STS in Kyiv region  
**Organized by**  
the MD STS in Kyiv region

**10.02.2021**



VII Legal Banking Forum  
**Organized by**  
Yuridicheskaya Praktika Publishing Office

**16.02.2021**

Meeting of the Committee of the Verkhovna Rada of Ukraine on Anti-Corruption Policy  
**Organized by**  
the Verkhovna Rada of Ukraine

**17.02.2021**



Business & Legal Agri Forum  
**Organized by**  
Yuridicheskaya Praktika Publishing House

**18.02.2021**



Online Forum “Business Risks 2021”  
**Organized by**  
Sayenko Kharenko Law Firm and American Chamber of Commerce in Ukraine

**19.02.2021**

Expert Group Meeting with the State Tax Service of Ukraine  
**Organized by**  
the State Tax Service of Ukraine

**02.03.2021**



Meeting of the Committee of the Verkhovna Rada of Ukraine on Anti-Corruption Policy  
**Organized by**  
the Verkhovna Rada of Ukraine

**03.03.2021**



Meeting of the Committee of the Verkhovna Rada of Ukraine on Anti-Corruption Policy  
**Organized by**  
the Verkhovna Rada of Ukraine

**10.03.2021**

Meeting with the Deputy Head of the Office of the President of Ukraine Yuliya Svyrydenko  
**Organized by**  
Office of the President of Ukraine

**17-19.03.2021**



Ukrainian Forum "Ukraine30"  
**Organized by**  
Cabinet of Ministers of Ukraine  
and Office of the President  
Ukraine

**18.03.2021**



III Forum of Customs Law and  
International Trade  
**Organized by**  
Ukrainian Bar Association

**18-19.03.2021**



CEE GR Forum  
**Organized by**  
CFC Big Ideas

**19.03.2021**



National Reform Council Meeting  
chaired by the President of  
Ukraine Volodymyr Zelenskyy  
**Organized by**  
National Reform Council of  
Ukraine

**19.03.2021**



III International Criminal and Legal  
Forum  
**Organized by**  
Yuridicheskaya Praktika Publishing  
Office

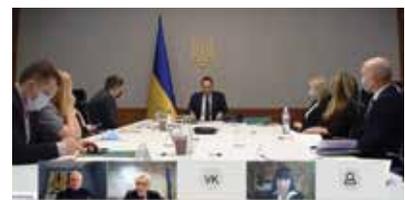
**23-25.03.2021**

Global Anti-Corruption & Integrity  
Forum  
**Organized by**  
OECD

**23.03.2021**

Fourth Meeting of the  
International Trade Council  
**Organized by**  
Ministry for Development of  
Economy, Trade and Agriculture of  
Ukraine

**24.03.2021**



Meeting with business  
associations  
**Organized by**  
Office of the President of Ukraine

**26.03.2021**

Expert discussion on improving  
National Strategy on solving  
issue of courts' decision non-  
enforcement  
**Organized by**  
Council of Europe

**29.03.2021**



Meeting with the Business  
Ombudsman Institute of Kyrgyz  
Republic  
**Organized by**  
the Business Ombudsman  
Institute of Kyrgyz Republic

**30.03.2021**

Meeting of the Thematic Subgroup  
on Better Regulation and Business  
Climate of the Sectoral Working  
Group on SMEs  
**Organized by**  
Cabinet of Ministers of Ukraine

## SOCIAL MEDIA



### THE BUSINESS OMBUDSMAN COUNCIL IS ALL OVER SOCIAL MEDIA. WE REGULARLY SHARE OUR UPDATES WITH SUBSCRIBERS, IN PARTICULAR WE:

- Tell stories about successfully closed cases and complex cases of entrepreneurs
- Highlight systemic issues of business and suggest ways to solve them
- Inform about actual events with participation of the BOC employees. Stream them live
- Share own publications about important issues for entrepreneurs
- Report about results of operations
- Publish feedbacks of complainants
- Create own video content. Share videos with the BOC employees' appearance on TV and at public events
- Communicate with followers

### THE BOC IS ALL OVER SOCIAL MEDIA:

 **Facebook** (@BusinessOmbudsmanUkraine)

 **YouTube** (@Рада бізнес-омбудсмена)

 **LinkedIn** (@Business Ombudsman Council)

 **Twitter** (@bus\_ombudsman)

In Q1 2021,  
the BOC was cited

# 267

times in Facebook,  
Twitter and Youtube.

**11%** of mentions  
were positive

**89%** neutral

No negative mentions  
was observed



If you wish to be the first to receive 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.



**BOC WEBSITE:**

[www.boi.org.ua](http://www.boi.org.ua)





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

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