



Business
OMBUDSMAN
Council

Report focus:
analysis of complaints
by regions

Q4

**Quarterly
report**

01 October – 31 December 2021



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



Roman Waschuk
Business Ombudsman

A handwritten signature in dark ink, appearing to read 'Roman Waschuk'. The signature is fluid and cursive, written in a professional style.

Foreword

of the Business Ombudsman

Dear friends, colleagues and partners,

I am pleased to present to you the first report in my new role as Business Ombudsman in Ukraine. As of January 1, 2022, I succeeded Marcin Swiecicki, who was in charge of the institution from October 2019 till December 2021. Staff and stakeholders appreciate Mr Swiecicki's dedication during his term, and wish him well in his next chapter.

I would not have come back to Ukraine if I didn't believe in the potential of its smart, entrepreneurial and resilient people. Our Ombudsman office's ability to take on over two thousand cases a year and, as an independent body, successfully resolve over a thousand of them is evidence that people in government are willing to listen and fix problems. There is in this country a scope for change, and an openness to course corrections. (That applies as well to our own Business Ombudsman Council operations, of which more next quarter.)

To release Ukraine's full potential, government agencies and the business community need to work together harder on streamlining both national and local systems, and on getting the incentives right. The Business Ombudsman team has been part of that effort for seven years, and has much more to contribute.

In Q4 2021, the BOC received 588 complaints from business and closed 510 cases. Successful resolution of appeals helped companies to save and refund UAH 1.577 billion. State bodies implemented 89% of BOC case-by-case recommendations. The overwhelming majority of complainants (97%) who provided their feedback were satisfied about working with us.

With respect to trends of complaints in Q4 2021, we have seen an increase in tax cases as compared to Q4 2020, which relates mostly to the reluctance of tax offices to issue rebates to business, including where ordered by the courts.

The most common subject of appeals in the reporting quarter was non-enforcement of court decisions – we received 184 complaints on this subject, which is a worrying 4 times more than in Q4 2020 and 12% more than in Q3 2021. So let's unpack that: a company – large or small – thinks it has been unfairly assessed, goes to court, and wins the case – either in first instance or on appeal. In this case, the judicial system has worked. But then the money doesn't come back to the company, possibly because the tax office does not want to reduce its fund levels, and thus miss its own performance indicators. That is where we generally come in – pointing out this malpractice at both regional and national levels. If we do not get a positive response within 15 days, we take the case to a joint working group we have with Tax Service HQ in Kyiv. In the vast majority of cases, the refund is activated and received by our business client.

It should be noted that Ukraine has one of Europe's most advanced automated VAT refund systems, which has taken care of big ticket multi-million dollar problems encountered by companies back in 2014. This is more around the edges of disputed taxes, where manual procedures still prevail, and where there are structural disincentives for tax offices to forfeit revenue.

As far as law enforcement goes, we have not seen any upward trend there. In Q4 2022, we received 58 appeals challenging malpractice of law enforcers, which is 4% more as compared to Q4 2020. Our most recent report on this sector "Abuses and Pressure of Law Enforcers Inflicted on Business" shows a shift in complaints about the police and prosecutors: from complaining about their unlawful actions (seizing IT or other equipment and paralyzing a company's work) to inaction (not investigating alleged criminal or unfair practices by competitors or government bodies).

We'll be doing more thinking about what our detailed data means, and talking to our five business association stakeholders, as well as entrepreneurs in the broader community about making our systemic recommendations easier to grasp and more actionable. We'll also be asking government to up its game. I am glad to have already met with PM Denys Shmyhal in the very first days of 2022 to discuss how we can work together to implement changes that the government plans, including legislatively anchoring our institution. As we succeed, and confidence in the business environment grows, the sky's the limit.

Q4 2021 at a glance

588 cases received

-8%
as compared
to Q3 2021

+30%
as compared
to Q4 2020

510 closed cases

+37%
as compared
to Q3 2021

+74%
as compared
to Q4 2020

UAH

Direct
financial
impact:

1.577bn

97%

of complainants who
provided feedback
were satisfied with
working with the BOC

89%

of case-by-case
recommendations
were implemented by
state bodies

cumulatively, from
Q2 2015 till Q4 2021

TOP-5 blocks of complaints

68%

Tax issues

10%

Actions of law enforcement bodies

5%

Actions of state regulators

4%

Actions of local government authorities

3%

Customs issues

TOP-5 most active regions

34%

Kyiv

9%

Dnipropetrovsk Oblast

9%

Kharkiv Oblast

6%

Odesa Oblast

6%

Zaporizhzhia Oblast

TOP-5 industries

23%

Agriculture and Mining

21%

Wholesale and Distribution

11%

Manufacturing

9%

Real Estate and Construction

7%

Individual Entrepreneurs

Size of business

26%

Large companies

74%

Small and medium-sized enterprises

Origin of investment

85%

Ukrainian companies

15%

Foreign companies

1. Complaints trends

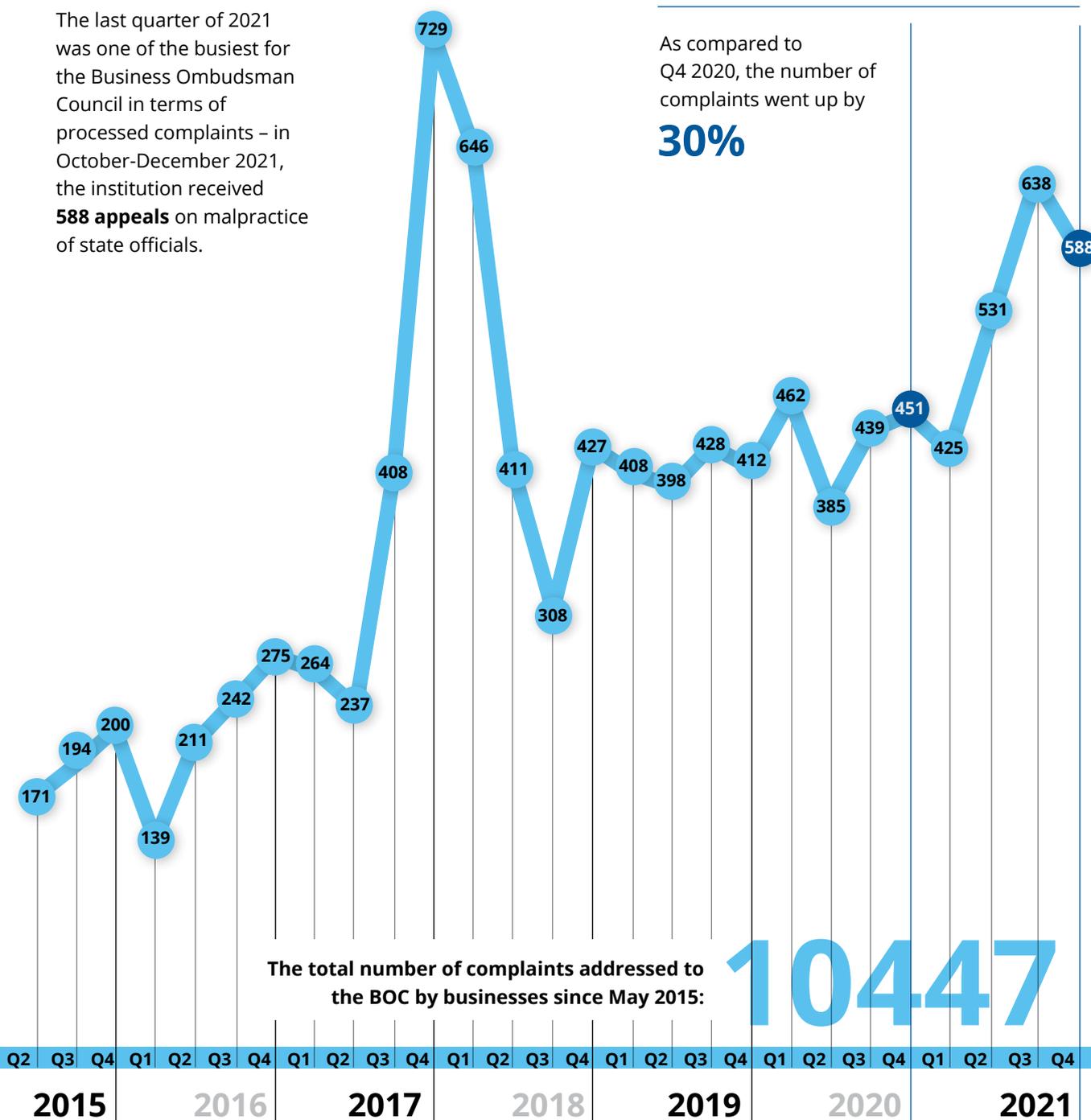
1.1. Volume and nature of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

The last quarter of 2021 was one of the busiest for the Business Ombudsman Council in terms of processed complaints – in October-December 2021, the institution received **588 appeals** on malpractice of state officials.

As compared to Q4 2020, the number of complaints went up by

30%



TOP-10 9

Subjects of complaints in Q4 2021

	Number of complaints received in		
	Q4 2021	Q3 2021	Q4 2020
Tax issues	402	414	289
VAT invoice court decision	184	164	49
VAT invoice suspension	80	75	99
Tax inspections	50	56	44
VAT risky taxpayer	47	36	29
VAT electronic administration	5	5	10
Tax criminal cases	5	21	15
VAT refund	4	3	4
Tax termination/renewal/refusal of VAT payers registration	1	1	5
Termination of agreement on recognition of electronic reporting and Tax status 09	0	0	0
Tax other	26	53	34
Actions of the National Police	38	42	35
National Police procedural abuse	19	17	20
National Police inactivity	18	15	12
National Police criminal case initiated	1	5	1
National Police corruption allegations	0	0	0
National Police other	0	5	2
Actions of state regulators	32	39	31
Antimonopoly Committee of Ukraine (AMCU)	6	3	2
National regulatory agencies NERCUS other	3	2	0
State Architectural and Construction Inspectorate (DABI)	1	2	2
National regulatory agencies NBU other	0	0	0
StateGeoCadastre	0	2	3
National regulatory agencies NBU licensing	0	0	0
Other state regulators	22	30	24
Actions of local self-government authorities	23	24	13
Local councils/municipalities rules and permits	4	3	3
Local councils/municipalities land plots	3	5	3
Local councils/municipalities investment disputes	0	1	0
Local councils/municipalities other	16	15	7

	Number of complaints received in		
	Q4 2021	Q3 2021	Q4 2020
Customs issues	16	19	18
Customs valuation	6	6	11
Customs clearance delay/refusal	5	1	2
Customs administrative proceedings	1	1	1
Customs criminal proceedings	0	0	1
Overpaid customs duties refund	0	2	0
Customs other	4	9	3
Actions of the Prosecutor's Office	13	25	12
Prosecutor's Office procedural abuse	7	14	5
Prosecutor's Office inactivity	2	7	6
Prosecutor's Office criminal case initiated	1	0	0
Prosecutor's Office corruption allegations	0	1	1
Prosecutor's Office other	3	3	0
Legislation drafts/amendments	10	17	6
Deficiencies in regulatory framework state regulators	4	10	1
Deficiencies in regulatory framework tax	1	0	0
Deficiencies in regulatory framework customs	1	0	0
Legislation drafts/amendments	0	0	1
Deficiencies in regulatory framework other	4	7	4
Actions of state companies	8	6	8
State companies abuse of authority	6	0	2
State companies investment/commercial disputes	0	1	0
State companies other	2	5	6
Actions of the State Security Service	7	9	9
State Security Service procedural abuse	5	8	6
State Security Service inactivity	0	0	0
State Security Service criminal case initiated	0	1	1
State Security Service corruption allegations	0	0	0
State Security Service other	2	0	2
Actions of the Ministry of Justice	6	17	12
MinJustice Registration Department	3	9	6
MinJustice Enforcement Service	3	8	6



Tax issues

The lion's share of business appeals – 68% or 402 complaints – concerned tax issues. Thus, the proportion of the tax block increased by 3 percentage points (p.p.) in comparison with Q3 2021.

The most common tax issue faced by entrepreneurs was non-enforcement of court decisions on registration of tax invoices. In the reporting quarter, we received 184 such appeals, which is almost 4 times more than in Q4 2020 (YOY) and 12% more than in Q3 2021 (QOQ).

As compared to Q3 2021, the number of complaints about suspension of tax invoices

registration and inclusion of taxpayers in risky lists also increased, by 7% and 31%, respectively.

The BOC received 50 complaints with regard to tax inspections, which is 14% more YOY, but 11% less QOQ.

We observe a significant decrease in the number of complaints on tax criminal cases as a result of winding down the Tax Police functions in November 2021. In the reporting quarter, entrepreneurs lodged with us only 5 appeals in this respect, while in Q2 2020 there were 15 appeals, and in Q3 2020 – 21.



Actions of law enforcement bodies

Entrepreneurs submitted 58 appeals challenging decisions, actions and inactivity of law enforcement bodies, which is 4% more YOY.

Two of the three complaints against law enforcement concerned the National Police. Compared to the previous quarter, entrepreneurs complained more about procedural abuses (+12%) and inactivity (+20%) of the National Police, but less about ungrounded criminal proceedings (-80%).

With respect to the Prosecutor's Office, the number of complaints increased by 8% YOY due to a greater number of reported episodes of procedural abuse. On the other hand, QOQ entrepreneurs filed 48% less appeals, in particular, on procedural violations and inactivity of the Prosecutor's Office.

Entrepreneurs lodged 7 complaints with the BOC featuring the State Security Service, which is 22% less both YOY and QOQ.



Actions of state regulators

Businesses submitted 32 complaints concerning state regulators, which is 3% more YOY. Compared to both Q4 2020 and Q3 2021, the number of complaints against the AMCU and the National Commission for State Registration of Energy and Public Utilities went up. The Architectural and Construction Service, the reform of which is in progress, was the focus of only one complaint.



Actions of local government authorities

In comparison with Q4 2020, the number of business complaints increased by 77%. Both last year and in the previous quarter, entrepreneurs complained more about issuance of permits and licenses and other actions of local government authorities.



Customs issues

The total number of complaints on customs issues went down YOY and QOQ. However, a significant increase in the number of complaints about delays and denials of customs clearance is observed YOY (from 2 to 5 complaints) and QOQ (from 1 to 5 complaints).



Other issues

Entrepreneurs submitted 67% more appeals with suggestions regarding changes in legislation as compared to Q4 2020 – in particular in the sphere of state regulators. The number of complaints against state-owned companies remained unchanged YOY, but increased by one third QOQ – primarily due to reported episodes of abuse of power by employees of state-owned enterprises. The number of appeals concerning the Ministry of Justice, both the Enforcement Service and the State Registration Department, halved in comparison with Q4 2020.

1.2. Timelines of the preliminary review of complaints

(Clause 5.3.1 (b) of Rules of Procedure)



In Q4 2021, the average time for preliminary review of a complaint was

7 working days,

which means that the BOC perfectly hits the 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 Q4 2021, out of 588 complaints received, the BOC undertook 364 investigations, which amounts to 62% of complaints received. The rest of appeals remained at the stage of preliminary assessment (9%) or was dismissed as not fitting the Council's eligibility criteria (29%) as of December 31, 2021.

364	51	173
Investigations	Complaints in preliminary assessment	Dismissed complaints
Number of initiated investigations:		Ratio of dismissed complaints:
364 Q4 2021		29% Q4 2021
402 Q3 2021		28% Q3 2021
277 Q4 2020		26% Q4 2020

Main reasons for complaints dismissal in Q4 2021

	Q4 2021
Complaints outside Business Ombudsman's competence	94
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	25
An investigation by the Business Ombudsman in a similar case is pending or otherwise on-going	12
A complaint filed repeatedly after the decision by the Business Ombudsman to not consider that same complaint	9
Complaint relates to an issue that has already been addressed	8
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	8
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	5
Other circumstances where the Business Ombudsman, in his sole and absolute discretion, determines that an investigation of the complaint is not necessary	4
The complaint had no substance, or other agencies or institutions were already investigating such matter	4
If the complainant requests to withdraw the complaint, the Business Ombudsman shall cease pursuing the investigation	3
All other	5

The most widespread reason (54%) for complaints dismissal – they were outside the Business Ombudsman's competence. Active court proceedings (14%) and similar pending complaints (7%) were also common in Q4 2021.



We would like to express our gratitude and deep appreciation to the Business Ombudsman Council for a prompt response to the complaint filed against the State Tax Service for non-enforcement of court decision, which had entered into force. Your coordinated, high-quality and timely work allowed us to take immediate measures to implement the above decision by registering a tax invoice in the URTI.

Nemchenko Olga
Director of RUDI-BUD DNIPRO LLC

1.4. Timelines of conducting investigations

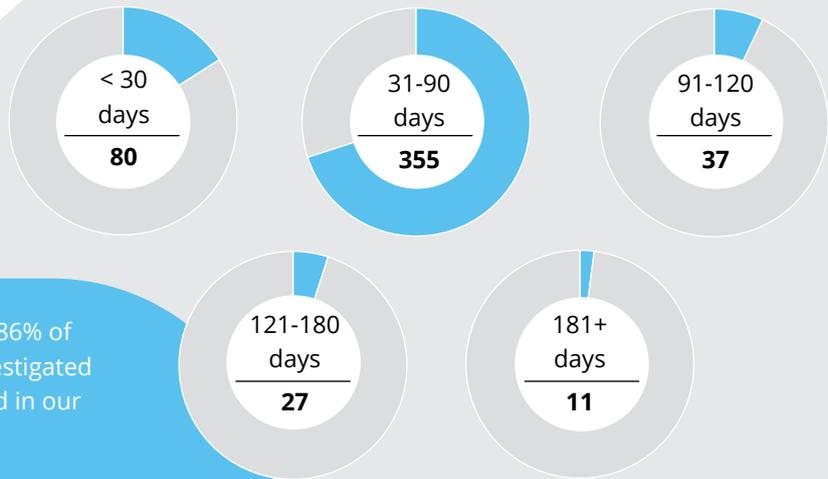
(Clause 5.3.1 (d) of Rules of Procedure)

In the reporting quarter, the BOC closed 510 cases, which is 74% more YOY and 37% more QOQ. The average duration of the investigation was 66 days, which is 24 days less than a standard envisaged in our Rules of Procedure.

Average time for conducting investigations:

- Q4 2021** **66** days
- Q3 2021** **77** days
- Q4 2020** **77** days

Ratio of closed cases by days:



The majority of cases – 435, which is 86% of all closed cases in Q4 2021, were investigated within 90 days – a standard envisaged in our Rules of Procedure.

1.5. Government agencies subject to the most complaints

TOP-11 Complainees

	Number of complaints received in		
	Q4 2021	Q3 2021	Q4 2020
State Tax Service	397	393	275
State Customs Service	16	19	18
Tax Police	5	21	15
National Police of Ukraine	38	42	35
Local government authorities	23	24	13
Prosecutor's Office of Ukraine	13	25	12
Ministry of Economy	11	26	7
Ministry of Justice	8	17	12
State Enterprises	7	6	8
State Security Service	7	9	9
Other	24	14	5

Other complainees include:

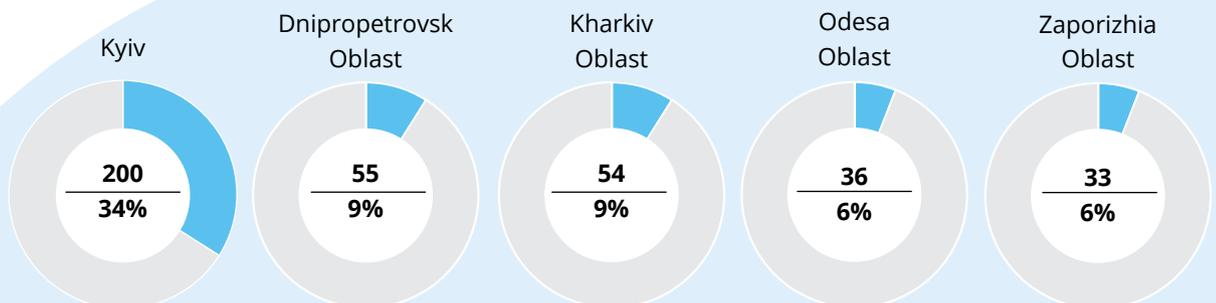
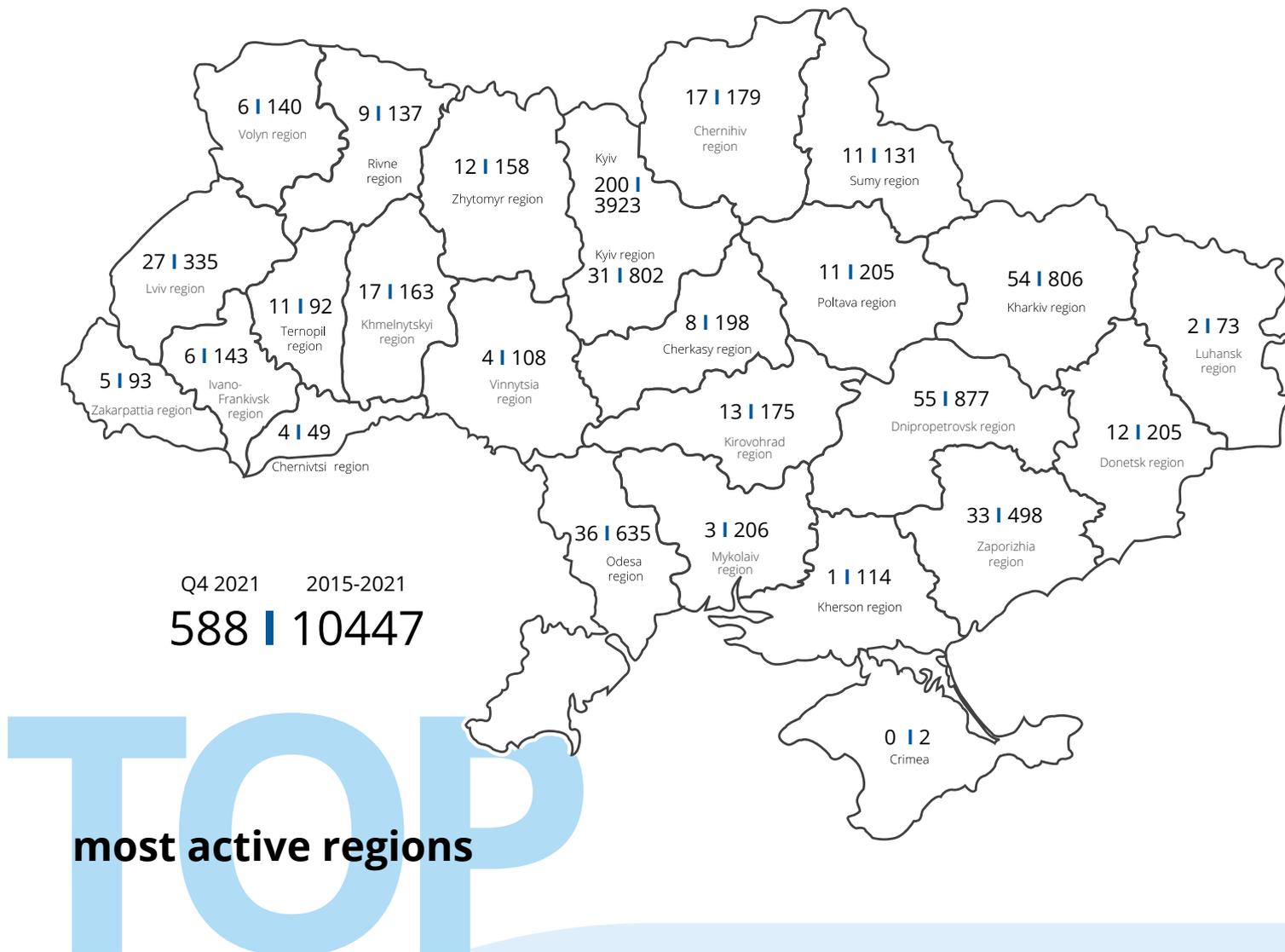
	Q4 2021	Q3 2021	Q4 2020
Parliament, the Cabinet of Ministers, the President of Ukraine	6	10	5
Antimonopoly Committee of Ukraine	6	3	2
National Bureau of Investigation of Ukraine	5	1	2
Ministry of Agrarian Policy and Food of Ukraine	4	2	4
National Commission for State Regulation of Energy and Public Utilities	3	2	0
Ministry of Ecology and Natural Resources of Ukraine	3	0	1
Commercial and other courts	3	1	5
Ministry of Social Policy of Ukraine	0	3	7
Communal Services of Ukraine	2	0	1
Ministry of Energy and Coal Industry of Ukraine	2	0	3
Ministry of Digital Transformation	1	0	1
Ministry of Infrastructure of Ukraine	1	5	1
Ministry of Communities and Territories Development of Ukraine	1	5	2
National Bank of Ukraine	1	0	0
Ministry of Internal Affairs	1	1	2
National Council of Ukraine on Television and Radio Broadcasting	0	0	0
State Funds	0	1	1
Ministry of Health of Ukraine	0	0	0
State Emergency Service of Ukraine	0	3	0
Ministry of Defense of Ukraine	0	1	2
Ministry of Education and Science of Ukraine	0	0	0
State Regulatory Service of Ukraine	0	0	1
State Forest Resources Agency of Ukraine	0	0	0
Ministry of Finance of Ukraine	0	3	2
State Border Guard Service of Ukraine	0	1	
NABU	0	0	0
Ministry of Strategic Industries of Ukraine	0	0	0

In Q4 2021, entrepreneurs submitted 397 complaints on malpractice by the State Tax Service, which is +44% YOY and +1% QOQ. At the same time, the number of appeals regarding the State Customs Service and the Tax Police went down: by 11% and 67% respectively.

With respect to law enforcement bodies, in comparison with Q4 2020, the BOC received 9% more complaints against the National Police and 8% more against the Prosecutor's Office, in contrast to the State Security Office, concerning which the number of appeals declined by 22%.

The number of appeals concerning local government authorities and the Ministry of Economy was on the rise YOY: + 77% and +57% respectively. At the same time, companies lodged fewer complaints with respect to the Ministry of Justice (-33%) and state-owned enterprises (-13%).

1.6. Geographical distribution of complaints received



As for the geographical distribution of complaints, in Q4 2021, TOP-5 regions generated 64% of total appeals. About one third of appeals came from Kyiv; shares of Dnipropetrovsk and Kharkiv Oblasts were 9% each, Odesa and Zaporizhia Oblasts – 6% each.

We want to express our gratitude to all the Business Ombudsman Council staff for their active and professional support in implementing the court decision.

Slobodenyuk Oleksandr
SOFZAR farming

1.7. Complainants' portrait

Local vs Foreign Complainants

Number of complaints received



In the reporting quarter we received 501 appeals from local business, which is 24% YOY. Thus 85% of the BOC complainants were Ukrainian companies.

Foreign business, which amounts to 15% share of total appeals, lodged 87 complaints with the Council, which is 81% more YOY.

Size of Business

Number of complaints received



Traditionally, small and medium-sized businesses (SMEs) prevail among the Council's complainants. In Q4 2021, the share of SMEs amounted to 74%.

The number of appeals from large companies grew by 37% YOY and resulted in a 26% share by the end of the reporting period.

TOP-5 Complainants' Industries

	Number of complaints received in Q4 2021	Number of complaints received in Q3 2021	Number of complaints received in Q4 2020	Q3 2021, % change	Q4 2020, % change
	207	179	122		
Agriculture and Mining	134	114	71	18%	89%
Wholesale and Distribution	124	136	116	-9%	7%
Manufacturing	67	72	43	-7%	56%
Real Estate and Construction	53	46	38	15%	39%
Individual Entrepreneur	42	56	53	-25%	-21%

For the first time since the BOC launch of operations, appeals from agribusiness and mining became prevalent – the number of complaints increased by 89% YOY and by 18% QOQ. At the same time, a few less appeals came from wholesalers and distributors (-9%) compared to the previous quarter, although it remained the second largest group of the BOC applicants.

It is noticeable that manufacturers lodged half more complaints with the BOC compared to Q4 2020. An increase was recorded in the number of complaints from representatives of real estate and construction as compared to Q4 2020 (+39%) and Q3 2021 (+15%). Only 42 complaints were submitted by individual entrepreneurs (-25% versus Q3 2021), so this group is in the bottom of the TOP-5.



I'm extremely thankful for your professionalism and active facilitation in enforcing the court decision to ensure the rights of a party to criminal proceedings.
Kutsenko A.
Private entrepreneur

Other industries include:

	Q4 2021
Physical Person	25
Retail	19
Auto transport	16
Energy and Utilities	11
Advertising	8
Public Organizations	7
Hire, rental and leasing	6
Activity of holding companies	6
Electric installation works	6
Farming	6
Repair and Maintenance Services	5
Consulting	4
Information and Telecommunications	4
Warehousing	3
Supply of electricity, gas, hot water, steam and air conditioning	3
Banks	3
Financial Services	3
Health, Pharmaceuticals, and Biotech	3
Oil and Gas	3
Activity in the field of law	2
Restaurant business	2

	Q4 2021
Ground and pipeline transport	2
Engineering, geology and geodesy areas activity	2
Printing and reproduction activity	2
Private security firms activity	2
Other	2
Education	1
Funds management	1
Scientific research and development	1
Activities in the field of culture and sports, recreation and entertainment	1
Activities in the field of administrative and support services	1
Air Transport	1
Computer and Electronics	1
Maintenance of buildings and territories	1
State Enterprise	1
Economic and commercial activity	1
Wastewater treatment, sewage	1
Processing industry	1
Other types of lending	1



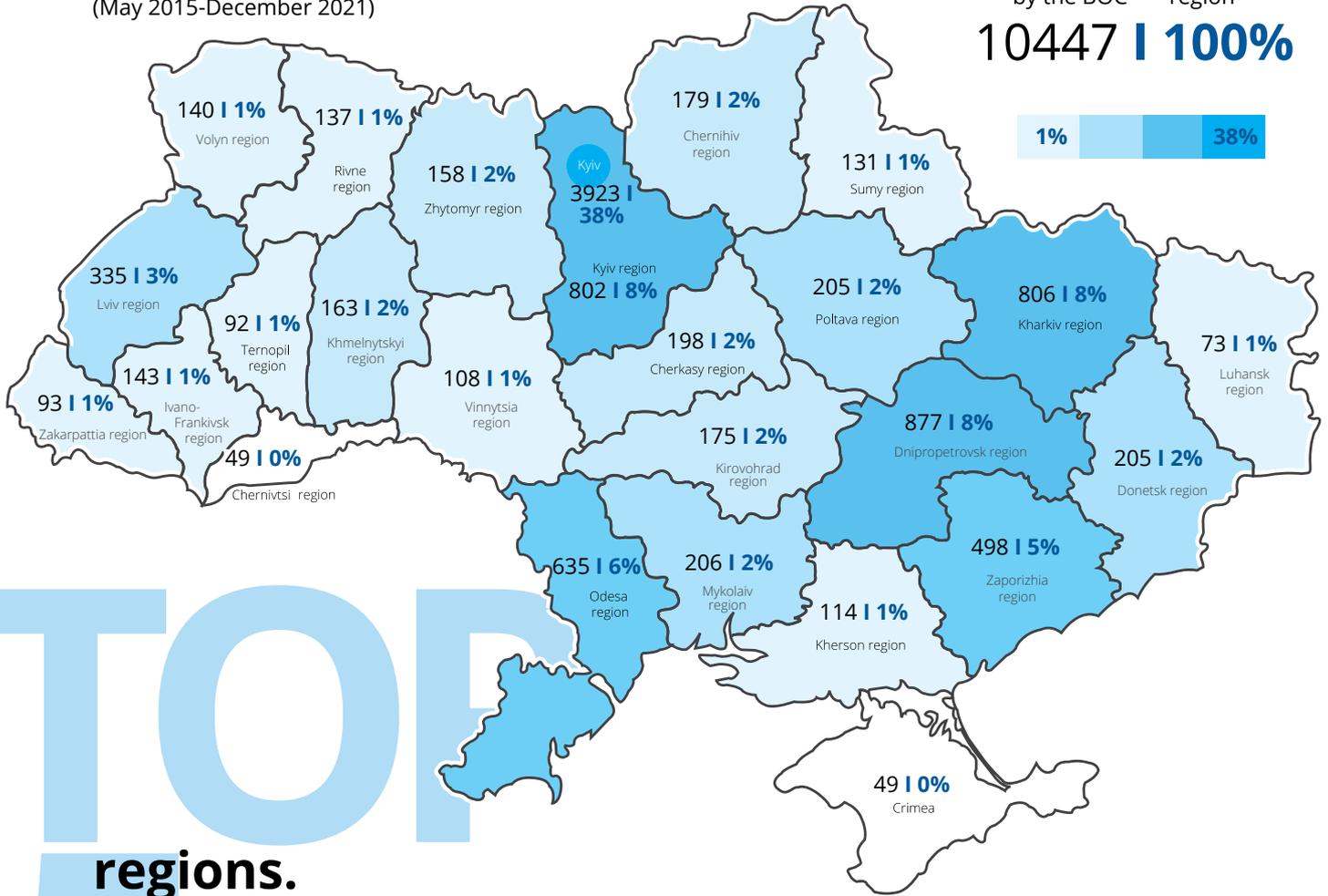
Thanks to joint efforts, it was possible to cease illegal inaction of the MD SFS officials' actions in Kyiv and return the company's property.

Serhii Darchuk, lawyer

1.8. Report focus: analysis of complaints by regions

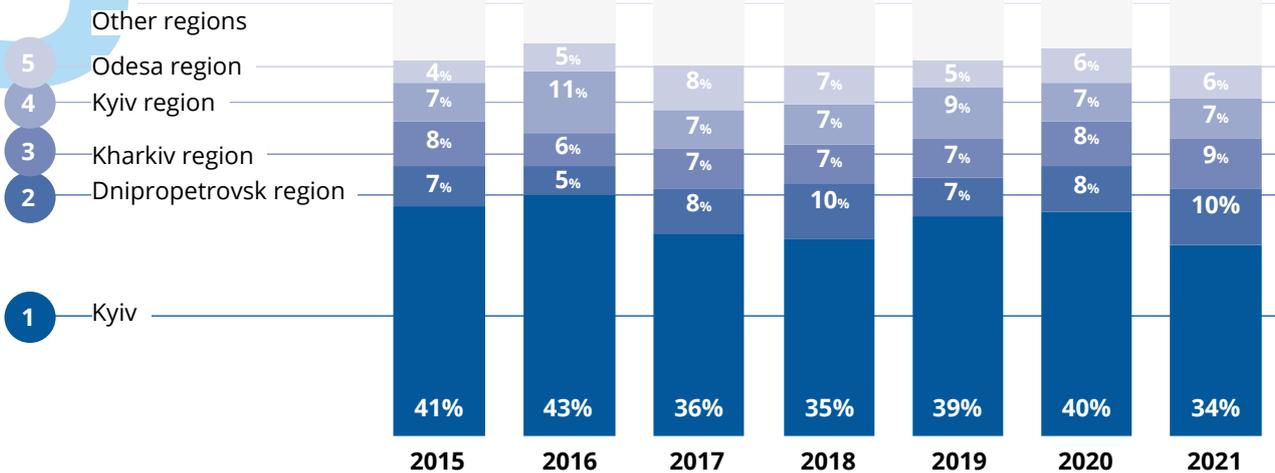
Number of complaints received by regions
(May 2015-December 2021)

Number of complaints received by the BOC
10447 | Share of the respective region
100%



TOP 5 regions.

Annual dynamics of the structure of complaints
(May 2015 – December 2021)



Executive Summary

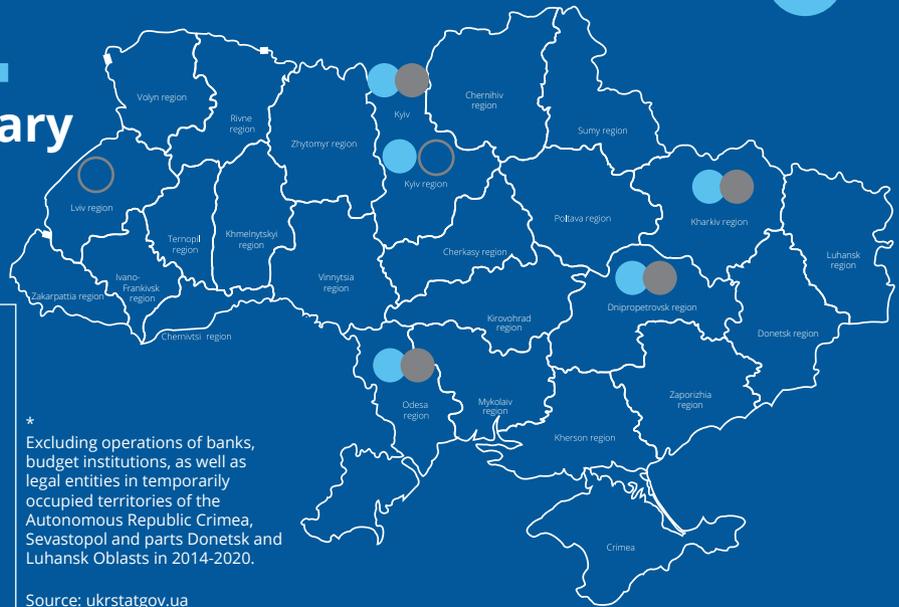
In 2020, the State Statistics Service counted **373,822** legal entities and **1.6 million** of private entrepreneurs in Ukraine*.

During six and a half years of its operations, the BOC received

10,447

business complaints

about illegal actions of state bodies.



Appeals came from all over Ukraine, but the largest number of complaints originated from **5 regions:**



This structure of appeals reflects the general regional distribution of enterprises in Ukraine – we receive more complaints from oblasts with the larger number of registered enterprises:

Exception 1
We received proportionally fewer complaints from entrepreneurs of Lviv Oblast (**3%**) as compared to the share of the oblast in the regional structure of enterprises (**6%**).

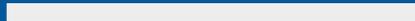
Exception 2
The share of complaints from the city of Kyiv (**38%**) is higher than the share of Kyiv in the total distribution of legal entities in Ukraine (**27%**).

In 2021, the BOC received **735 complaints** from Kyiv entrepreneurs, which is twice more than in the first full year of the institution's operation. However, due to the gradual growth of appeals from other oblasts the share of the capital has declined – from **41%** in 2015 to **34%** in 2021.

The average percentage of cases successfully closed by the BOC is **62%**

The largest part of successfully closed cases is among cases from Kharkiv and Odesa Oblasts (66%), the smallest one – from Kyiv (59%).

Closing cases in favor of business helped return and save **UAH 9147 mn** for entrepreneurs in the city of Kyiv, **UAH 1817 mn** in Dnipropetrovsk, **UAH 696 mn** in Kharkiv, **UAH 544 mn** in Odesa and **UAH 322 mn** in Kyiv Oblasts.



The tax issues group occupies the largest share of complaints among all TOP-5 regions.

However, the largest share (**68%**) of tax issues is observed in the structure of complaints from Kharkiv Oblast (**68%**), while the smallest – in the structure of complaints from the city of Kyiv (**53%**).

Complaints against law enforcement bodies rank second in all TOP-5 regions, ranging from 18% in Kyiv to 13% in Kharkiv Oblast.	The largest share of customs issues is among entrepreneurs in Odesa region (8%). This group even became the third most common in Odesa Oblast.	In other oblasts, state regulators take the third place with a share of 5% (Dnipropetrovsk Oblast) to 9% (Kyiv Oblast).	The largest share of complaints against local authorities is also observed in complaints from entrepreneurs in Odesa Oblast (8%).
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Amendments to legislation hit the TOP-5 blocks of complaints only in Kharkiv Oblast with a share of 2% .	Complaints against the Ministry of Justice are among the most common subjects of complaints in Kyiv (4%) and Kharkiv Oblasts.
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Tax audits were the most common subject of appeals among entrepreneurs in Kyiv and Kyiv Oblast: **16%** and **17%** of all complaints respectively. Meanwhile, as for the other regions tax invoice suspension takes the lead in the TOP-5 subjects of complaints for Kharkiv (**21%**), Dnipropetrovsk (**28%**) and Odesa (**16%**) Oblasts. The most widespread subject of complaints from key regions also included non-enforcement of court decisions on tax invoices registration, inclusion of taxpayers in risky lists, other tax issues and other actions of state regulators.

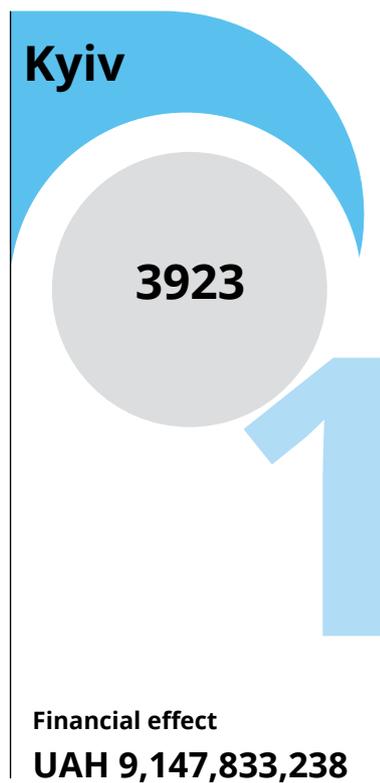


As for the complainants' portrait,

The largest share of small and medium-sized businesses is observed among entrepreneurs from Odesa and Kharkiv Oblasts (83% each), the largest share of large business was from Kyiv (34%), that is 7 p.p. more than among all the complainants.	The largest proportion of Ukrainian companies is among complainants from Kharkiv Oblast (95%), while foreign companies – from Kyiv city (24%).
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Wholesalers hit the first place among complainants of all TOP-5 regions: with a proportion of **22%** in Kyiv region to **32%** in Kharkiv region. Producers rank second in all regions (with the largest share in Kharkiv, **20%**), except for the capital. The second place in Kyiv is taken by real estate and construction – **12%**.

(May 2015 – December 2021)



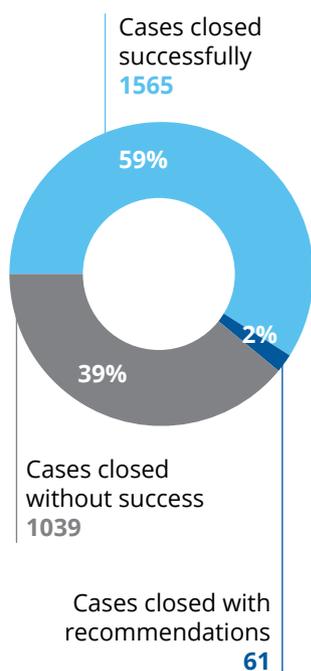
TOP-5 blocks of appeals

Tax issues	2092	53%
Actions of law enforcement bodies	700	18%
Actions of state regulators	279	7%
Actions of the Ministry of Justice	147	4%
Customs issues	142	4%

TOP-5 subjects of appeals

Tax audits	632	16%
Tax invoices suspension	520	13%
Tax issues other	292	7%
State regulators other	213	5%
Inclusion in risky taxpayers lists	204	5%

Statuses of closed cases



TOP-5 industries

Wholesale and distribution	1089	28%
Real estate and construction	453	12%
All types of production	367	9%
Retail	217	6%
Agriculture and mining	216	6%

Complainants' portrait:

Size of business



Origin of capital





Case 1

AMCU drops UAH 1.1 bn fine for Philip Morris group of companies

Back in 2016 the Business Ombudsman Council received a complaint from Philip Morris group of companies regarding challenged excessive tax audit charges and the subsequent failure of the State of Ukraine to respect an amicable agreement with the American, Swiss and Ukrainian Philip Morris offices to cancel the additional charges of UAH 635 million. In early 2020, the company had to again complain to the BOC but with another issue. This time the complaint related to a case launched by the AMCU concerning the alleged receipt of state aid by the company as a result of cancellation of additional tax charges under the mentioned amicable agreement. The company faced a fine of UAH 1.18 bn. The BOC recommended that the AMCU discontinue the consideration of the state aid case given the absence of the fact that Philip Morris received state aid. The AMCU followed the Council's recommendation and closed the state aid case. A fine of UAH 1.18 bn. was dropped.



Case 2

Tax invoices worth UAH 5 mn registered

A Kyiv-based agricultural 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. The Council recommended that the STS immediately register the company's tax invoices. It turned out 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. 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.

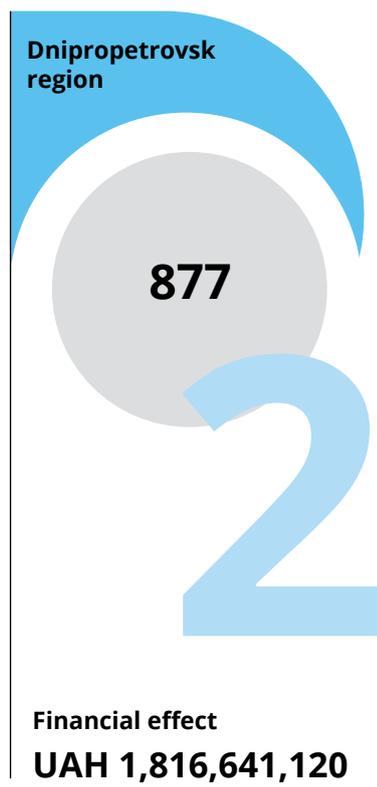


Case 3

Gas station network "AMIC" avoids ungrounded financial sanctions worth over UAH 22 mn

AMIC, a large gas stations network, disagreed with the tax audit findings. The company was exposed to financial sanctions of over UAH 22 mn, so at the stage of consideration of objections to the audit report, it turned to the BOC for help. According to tax officers, the company allegedly sold liquefied gas without taking proper account of liquefied gas revenues, in particular, due to absence of a log book according to 2-ГC form during the audit. The complainant submitted to the tax office all primary documents refuting existence of allegedly unaccounted goods at the point of sale. The BOC recommended that the CID STS ensure a comprehensive and impartial consideration of the complainant's objections and cancel auditors' conclusions. The CID STS followed the Council's recommendations and cancelled conclusions of the audit report, which could be the ground for application of financial sanctions worth UAH 22 mn as provided in Art. 20 of the Law "On the Use of Cash Register in Trade, Catering and Services".

(May 2015 – December 2021)



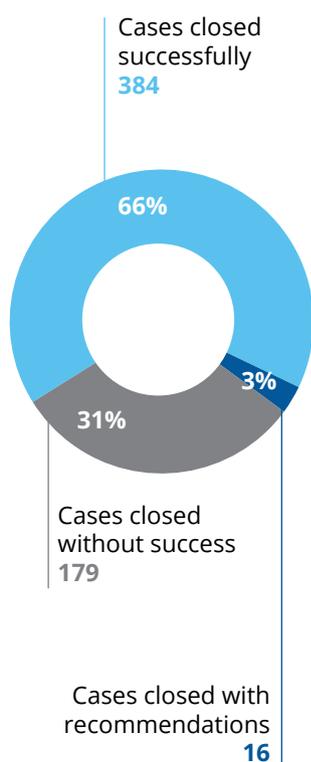
TOP-5 blocks of appeals

Tax issues	557	64%
Actions of law enforcement bodies	123	14%
Actions of state regulators	42	5%
Customs issues	41	5%
Actions of local government authorities	36	4%

TOP-5 subjects of appeals

Tax invoices suspension	247	28%
Non-enforcement of court decisions on tax invoices registration	106	12%
Other tax issues	68	8%
Tax audits	48	5%
Inclusion in risky taxpayers lists	43	5%

Statuses of closed cases



TOP-5 industries

Wholesale and distribution	265	30%
All types of production	120	14%
Agriculture and mining	96	11%
Private entrepreneurs	88	10%
Real estate and construction	69	8%

Complainants' portrait:

Size of business



Origin of capital





Case 1

Qualifying period for steel plant employees recognized

A steel plant disagreed with the tax decision about a simultaneous existence of the UAH 52 mn of overpayment and a debt for payment of the single social contribution (SSC) that reached UAH 37 mn. It turned out that the tax authority detected an arrear at the time of opening the bankruptcy proceeding against the complainant earlier in March 2017. Overpayment arose due to adjustment of the SSC amounts by the complainant following a right of the enterprise with manufacturing capacities in the ATO zone not to accrue and pay a SSC. Hence, the enterprise adjusted the previously accrued SSC amounts having reflected that in the tax reporting. Nevertheless, the tax authority refused to recognize the overpayment of the SSC amount. The Council appealed to the STS and asked to correct the data regarding existence of tax arrears and repay the enterprise's SSC debt for the disputed period. The STS upheld the Council's recommendations. A qualifying period of the plant's employees till June 2020 was recognized.



Case 2

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

A Ukrainian bank disagreed with the tax audit findings, according to which it had to additionally pay UAH 185 mn. It turned out that during the audit LTO concluded, inter alia, that the complainant had not withheld income tax from non-residents originating in Ukraine when paying interests to a non-resident on a loan obtained by placing foreign securities on a foreign stock exchange. At the same time, the complainant applied to the interest paid to the non-resident a tax rate of 0% on the basis of the tax exemption provided for in paragraph 46 of sub-section 4 of Section XX "Transitional Provisions" of the Tax Code of Ukraine. The Bank tried to challenge audit findings on its own and submitted substantive objections to LTO with explanations on each point. However, the tax authority did not change its conclusions. After receiving tax notifications-decisions, the bank appealed them in the STS, but with no result. The Council recommended that STS ensure a full, comprehensive and impartial consideration of the bank's complaint. The STS accepted the Council's arguments and cancelled additional payments for the bank amounting to over UAH 185 mn.

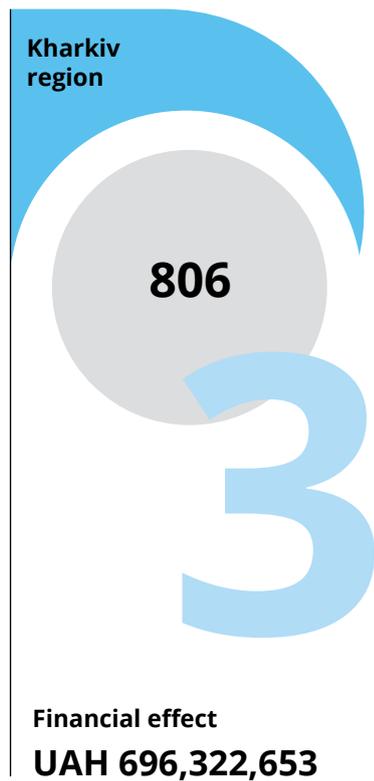


Case 3

"Green light" from the State Labor Service: company's activities are in line with the labor protection legislation

A company from Dnipropetrovsk region that renders technical audit services could not register the Declaration of compliance of material and technical facilities with the requirements of labor protection legislation (declaration of compliance). The registration of such a declaration would give the company a right to conduct evaluation and assessment of technical state of high-risk equipment. When the complainant first appealed to the department of the Center of Administrative Services (CAS) in Dnipro, he got rejected. Having appealed to the CAS for the second time, the complainant faced bad luck: the declaration was returned with a signature of rejection by an unknown person. In the letter to the State Labor Service the Council asked to ensure a comprehensive, impartial and timely consideration of the enterprise's complaint and explain the reasons for refusing registration of the previous documents. As a result, the State Labor Service satisfied the company's complaint and registered the Declaration of compliance of material and technical facilities with the requirements of the labor protection legislation.

(May 2015 – December 2021)



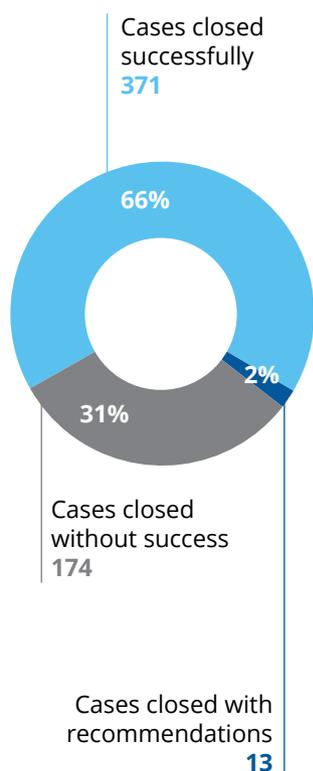
TOP-5 blocks of appeals

Tax issues	551	68%
Actions of law enforcement bodies	101	13%
Actions of state regulators	62	8%
Actions of the Ministry of Justice	19	2%
Amendments to legislation	13	2%

TOP-5 subjects of appeals

Tax invoices suspension	166	21%
Non-enforcement of court decisions on tax invoices registration	132	16%
Other tax issues	68	8%
Tax audits	61	8%
Inclusion in risky taxpayers lists	48	6%

Statuses of closed cases



TOP-5 industries

Wholesale and distribution	256	32%
All types of production	162	20%
Agriculture and mining	80	10%
Private entrepreneurs	67	8%
Real estate and construction	46	6%

Complainants' portrait:

Size of business



Origin of capital





Case 1

UAH 1.7 mn seized funds returned to pet stores network

A pet store network complained that law enforcers conducted 12 searches of its stores in Kharkiv and Kyiv and seized computers, documents and funds worth UAH 1.7 mn. According to the SFS, the pet store network evaded tax. Tax authorities found out that during 2018-2020 the company allegedly did not pay UAH 78k. Disagreeing with property seizure, the pet store chain challenged investigators' actions in court. As a result, the court ordered the police to return the company's seized property, but the complainant could not receive the seized items for over 3 months. The Council recommended that the Prosecutor General's Office of Ukraine and the SFS return temporarily seized property to the complainant in accordance with the court ruling. In a letter to the regional Prosecutor's Office Head, the Council stressed that the seized property should be returned to the owner as soon as possible, as the court did not satisfy the investigator's motion on property arrest. However, investigators returned only computers and documents to the complainant. The Council again appealed to the Prosecutor General's Office and the SFS with a request to return seized UAH 1.7 mn to the company. The investigators followed the Council's recommendations and returned the company's property in full.

Case 2

Nova Poshta in the spotlight of State Service of Ukraine on Food Safety and Consumer Protection

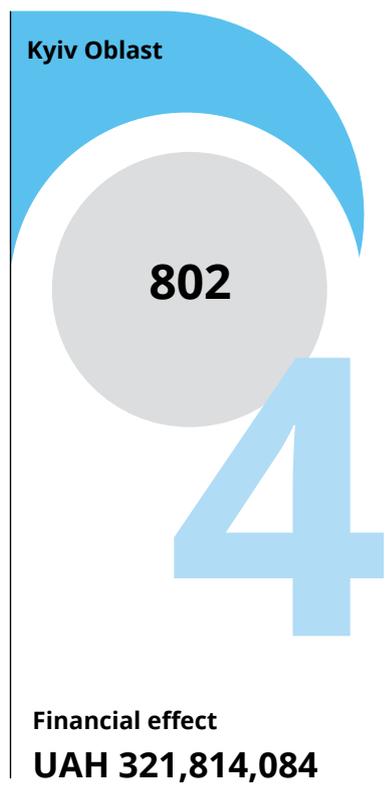
The Business Ombudsman Council received a complaint from Nova Poshta, a Ukrainian company providing express shipment services. The State Food and Consumer Service in Kharkiv Oblast came to the company's branches in Kharkiv and Chuhuiv with inspections due to a complaint from two customers. For example, one of the customers had his glass aquarium damaged during transportation. In accordance with the position of the State Food and Consumer Service in Kharkiv Oblast, the complainant neither provided the necessary documents, nor ensured conducting of an unscheduled inspection, thus allegedly creating obstacles for State Food and Consumer Service officials. In this regard, the State Food and Consumer Service in Kharkiv Oblast accrued Nova Poshta the maximum possible fine in the amount of UAH 325 mn calculated from the whole company turnover, not one branch. At the same time, according to the complainant, the inspectors carried out inspections with a number of procedural violations. Considering the decision of the State Food and Consumer Service in Kharkiv Oblast illegal, Nova Poshta turned to the BOC for help. Having received a complaint, the Deputy Business Ombudsman represented the BOC during a tripartite meeting with the head of the State Food and Consumer Service and the Head of Nova Poshta, where they discussed possible violations of the company's legal rights. The BOC sent a letter to the State Food and Consumer Service, requesting the state body to ensure a comprehensive, objective and impartial consideration of the company's complaint and lift sanctions totaling UAH 325 mn on two episodes of inspections. The State Food and Consumer Service followed the Council's recommendations and dropped the fine for Nova Poshta.

Case 3

Decision on "riskiness" of mini-markets from Kharkiv region cancelled

A chain of mini-markets complained about systemic suspension of tax invoices by the MD STS in connection with the established taxpayer's risk criteria. During the preliminary analysis, the Council found that in autumn 2019, within a criminal proceeding, an investigative judge arrested the registration limit in the SEA VAT of companies that allegedly fictitiously purchased goods from one supplier. Among such companies was the Council's complainant, who had to appeal against this arrest. Having confirmed his belonging to the real sector of economy, the complainant succeeded in lifting the arrest, but almost at the same time the MD STS began blocking his tax invoices. Following submission of additional documents, the complainant's tax invoices were eventually registered, but this process objectively created issues for the company and damaged business relations with contractors due to the delay in registration. The complainant was submitting explanations and documents to the tax office to refute his riskiness, but it did not bring any result. Thus, the company decided to seek the Council's help. The Council asked the tax authority to give a comprehensive explanation on the reasons why the complainant was included in the risky taxpayers' list. It turned out later that the complainant appeared in the "risky" list due to transactions with its supplier, which had actually been involved in the criminal proceeding and because of which the registration limit in the SEA VAT was arrested last year. The Council's investigators together with the company examined the issue of materials and explanations that were necessary to submit to prove the complainant's non-compliance with the risky taxpayers' criteria. After the complainant submitted a new package of documents, the MD STS excluded the company from the risky taxpayers' list.

(May 2015 – December 2021)



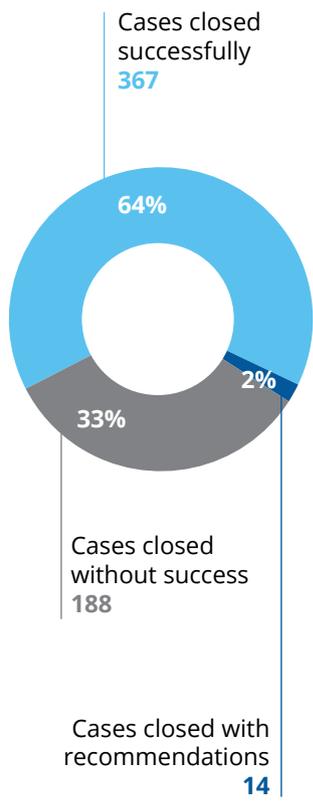
TOP-5 blocks of appeals

Tax issues	476	59%
Actions of law enforcement bodies	131	16%
Actions of state regulators	71	9%
Actions of local government authorities	36	4%
Customs issues	24	3%

TOP-5 subjects of appeals

Tax audits	138	17%
Tax invoices suspension	120	15%
Other tax issues	64	8%
Actions of state regulators other	40	5%
Inclusion in risky taxpayers lists	39	5%

Statuses of closed cases



TOP-5 industries

Wholesale and distribution	174	22%
All types of production	130	16%
Real estate and construction	93	12%
Agriculture and mining	88	11%
Private entrepreneurs	87	11%

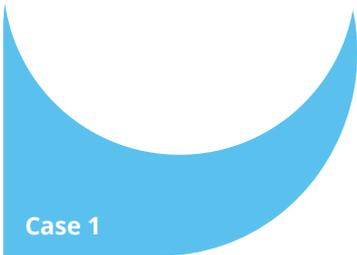
Complainants' portrait:

Size of business



Origin of capital

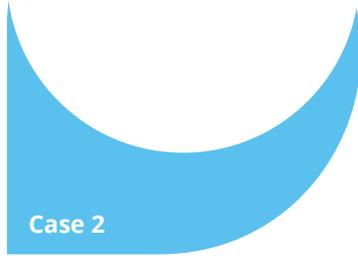




Case 1

Abuse of local Prosecutor's Office officials halted

A construction company complained about allegedly illegal actions of officials from Boryspil Local Prosecutor's Office. The complainant leased a land plot where he planned to build a complex of grocery and non-food stores. When the land owner changed, the parties amended the lease agreement by dividing the land into two separate plots with the corresponding cadastral numbers. The complainant started construction works on one of the plots and informed the State Architectural and Construction Inspectorate (DABI) in Kyiv Oblast thereof. DABI received a letter from the company, but replied that it neither specified the customer location, nor provided complete information on the main indicators of construction objects. Law enforcers arrived at the construction site and inspected the land to see if the company complied with land laws. The complainant later found out that the law enforcers had initiated the inspection because information on commencement of construction works provided by the company earlier was absent in the Unified Register of Documents. Given the fact that law enforcers conducted the inspection without the decision of the investigating judge and did not provide the complainant with a report on its results, the company turned to the Council for help. The BOC recommended that Kyiv Regional Prosecutor's Office check Boryspil Local Prosecutor's Office officials' actions in relation to the complainant. Following the Council's facilitation, Kyiv Regional Prosecutor's Office closed criminal proceedings in connection with the construction company case finding no signs of a crime in the complainant's actions.



Case 2

It is all gas meter's fault: a criminal proceeding finally terminated

Following the PJSC Kyivoblغاز's motion, the law enforcement agency had registered a criminal proceeding against the enterprises under which a pre-trial investigation was taking place. It turned out that when one company called the gas distribution network operator to install a new gas meter, the latter detected a malfunction in the old device and drew up a report concerning this violation. Then Kyivoblغاز decided to recalculate the consumed gas, and, as a result, it imposed a debt of more than UAH 47 mn on the complainant. After the examination, the company ascertained that the meter failed due to unqualified actions of the PJSC Kyivoblغاز employees that led to its breakdown. In turn, the gas distribution network accused the company of deliberately changing meter settings and thus underestimating gas consumption. At the same time, the position of PJSC Kyivoblغاز was refuted in court and debt existence was not confirmed either. Within the criminal proceeding, the pressure of law enforcement officers continued despite the court decision. The investigators conducted searches and seized the companies' property. The Council appealed to the MD NP and recommended to terminate the criminal proceeding in the case of the manufacturer of building structures due to absence of a crime. The Council raised the complaint at the meeting of relevant expert groups with participation of law enforcement agencies. The MD NP terminated the criminal proceeding in the complainants' case.

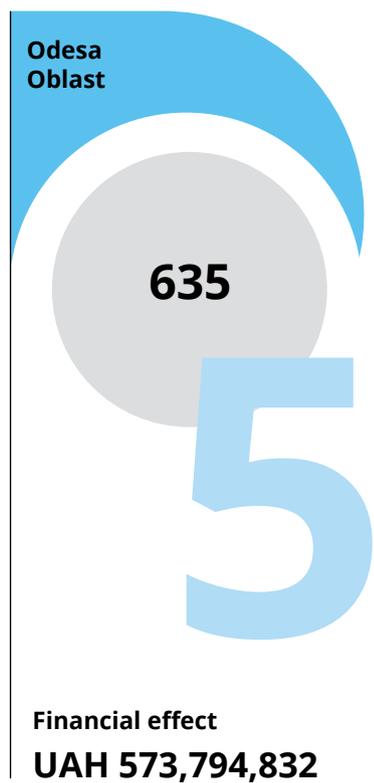


Case 3

SFS drops VAT demand against "Bravo" airlines worth UAH 8 million

Bravo Airlines turned to the BOC with a complaint concerning Kyiv Oblast SFS. The enterprise disagreed with results of a tax audit, according to which it had to additionally pay VAT worth UAH 8 million. According to the SFS, the airline was leasing aircraft on the territory of Ukraine and therefore had to pay VAT. Meanwhile, the complainant insisted that VAT should not be paid, since the craft were being leased on location from a leasing company registered in the Arab Emirates, Lebanon and Cyprus. The enterprise sent reasoned objections regarding conclusions of the tax audit to the SFS, but the tax agency ignored them. The BOC investigator sent an official letter to the SFS and took part in a hearing of the airline's case, where he argued in support of its position. The investigator noted that the SFS was incorrectly interpreting provisions of the Tax Code. Due to BOC facilitation the SFS accepted the airline's challenge and canceled the decision regarding additional payments.

(May 2015 – December 2021)



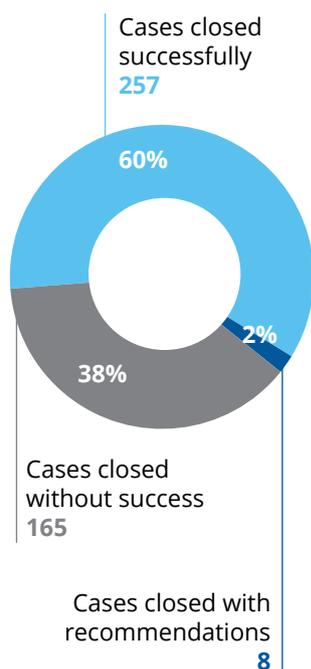
TOP-5 blocks of appeals

Податкові питання	350	55%
Дії правоохоронних органів	89	14%
Митні питання	51	8%
Дії органів місцевого самоврядування	49	8%
Дії державних регуляторів	39	6%

TOP-5 subjects of appeals

Блокування податкових накладних	103	16%
Податкові перевірки	80	13%
Інші податкові питання	39	6%
Включення у переліки ризикових платників податків	35	6%
Інші дії державних регуляторів	30	5%

Statuses of closed cases



TOP-5 industries

Оптова торгівля	158	25%
Всі види виробництва	78	12%
Сільське господарство та гірничодобувна промисловість	74	12%
Нерухомість та будівництво	60	9%
Приватні підприємці	46	7%

Complainants' portrait:

Size of business



Origin of capital



The Council helps a “dormant” individual entrepreneur from Odesa to write off single contribution arrears

The Business Ombudsman Council received a complaint from a private entrepreneur from Odesa. At the time of her appeal to the Council, the complainant had already ceased her business activities and in August 2020 tried to obtain a write-off of the accrued single contribution for periods when she had not received any income from her business activity. For this purpose, according to the procedure established by paragraph 9-15 of Section VIII of the Law of Ukraine “On Collection and Accounting of the Single Contribution for Compulsory State Social Insurance System” (the “Law”), the woman submitted a completed report on the single contribution and a respective application for writing off arrears. However, as a result of the audit, tax authorities refused to write off the debt due to the fact that she had allegedly received income in the specified period, having recorded this information in the single contribution reports. This position of the tax authority was justified by the fact that in the submitted reports the complainant had herself determined the basis for accrual of a single contribution at the minimum level, and did not put dashes in the relevant space.

Therefore, according to the MD STS, self-determined amounts of the single contribution are payable on a general basis. Thus, the total debt of the complainant amounted to UAH 24k. The Council upheld the entrepreneur’s position and recommended that MD STS reconsider the possibility of writing off the debt in her situation. Having considered the complainant’s repeated application for write-off of arrears on the single contribution, penalties and fines, the MD STS took the above arguments into account and wrote off the debt accrued to her since 2018.



Case 2

Shipping company’s data tables accepted

An enterprise complained that the tax authority disregarded tables of VAT taxpayer data and suspended registration of company’s invoices. The reason for the tax decision concerning the company was that types of activity indicated in the tables did not correspond to existing fixed assets of the payer. However, according to the complainant, the tax conclusions lacked concrete argumentation: it was unclear what sort of fixed assets were missing. Neither audits, nor expert examination was conducted in order to justify the company’s activity suspension. Trying to appeal against the unlawful decision on the disregard of the taxpayer’s data tables, the enterprise additionally submitted the explanation on existing technical equipment and other fixed assets to the MD STS. Nevertheless, it did not help to change the tax authority’s decision. The Council recommended that the MD STS reconsider its decision and approve the taxpayer’s data tables to unblock tax invoices taking into account provided documents and explanations. The BOC organised an expert group meeting with the MD STS. As a result of the meeting, the complainant re-submitted the VAT taxpayer’s data tables. The controlling authority accepted it having examined all the given documents.



Case 3

The first step made to solve Odesa seaport driveway problem

A subsidiary of a German logistics holding, approached the Business Ombudsman Council. For several years, the company’s trucks could not freely and easily enter the territory of Odesa Commercial Sea Port. This happened because one company remained a monopolist in this field and serviced a cargo for a fixed fee upon entering the port. It turned out that the problem was significant for the residents of the streets of Odesa city on which trucks moved to the terminal standing in traffic jams around the clock and creating an obstacle for passenger cars. The BOC recommended that the Ministry of Infrastructure develop a roadmap for the construction of an alternative road to Odesa port and hold a meeting involving the respective stakeholders. The Ministry of Infrastructure announced that the budget program for 2020 included the road construction with paths to Odesa Commercial Sea Port. Specialists began developing a road construction project. Thanks to the BOC interference, the Ministry of Infrastructure approved construction of a free road to access Odesa Commercial Sea Port.

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 the effectiveness of service rendered and define areas requiring improvement.

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

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

1

client care and attention to the matter

In the reporting quarter we received

159

completed feedback forms from complainants.

2

understanding the nature of the complaint

In

155

of them, applicants said they were satisfied with working with us –

3

quality of work product

in such a way the client satisfaction level reached

97%

completed feedback forms from complainants.

The Business Ombudsman Council is given feedback by its complainants both via email, on social media and by post.

Complainants always indicate the level of satisfaction with the BOC assistance in solving their cases.

In the reporting quarter we received the following feedback from complainants:



We are grateful for your support and assistance in the pre-trial appeal of the illegal decision of Kyiv Customs regarding bringing our declarant to responsibility for violating customs rules. Thank you for the effective, prompt and professional approach, constant communication and timely informing about steps taken to support appeal of Kyiv Customs decision. During cooperation, in addition to highly professional assistance, we gained confidence, a sense of support and protection during case consideration.

Dikunov Andrii
Director
of ERGOPACK LLC

We are grateful to the Business Ombudsman Council for its active role in protecting our company against illegal actions of law enforcement bodies. The authority of your organization in society and high professionalism of your investigators helped draw attention to our situation at the highest level – in the Prosecutor General's Office

Tilman Oleksandr

Director of PE Galpidshipnik

We truly thank you and your team for your efforts and professionalism in the work resulting in support and protection of business interests in state bodies. We are convinced that the Business Ombudsman institution is, indeed, an effective means of communication of business with state institutions, including supervisory authorities.

PJSC ABINBEV EFES UKRAINE

We are very grateful to the Council investigators actively participating in the case. We believe that the prompt BOC involvement to protect the company's interests in supervisory authorities will help improve business in our country and ensure transparent business in Ukraine.

Sukhanova
Khrystyna
Director
of MARAX LLC



We are grateful for a clearly shaped position of the Council and a prompt response to our appeal. We highly appreciate the authority of the organization and its efforts to clarify all the circumstances of the case. We are sincerely grateful for zero tolerance to corruption and active work in mediation between business and the state.
Ostrohrud Andrii
General Director of
KYIVGUMA LLC

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 a 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

Closed cases in the reporting period: 510

291		62	157
Cases closed successfully		Cases closed with recommendations	Cases closed without success
Q4 2021	510 cases		Total number of closed cases since launch of operations: 6989
Q3 2021	373 cases		
Q4 2020	293 cases		

TOP-10 subjects of closed cases:

	Q4 2021	Q3 2021	Q4 2020
Tax issues	405	282	211
Actions of state regulators	22	21	11
National Police	17	13	15
Customs issues	16	11	19
Actions of the Prosecutor’s Office	12	9	3
Actions of local government authorities	10	10	11
Actions of the Ministry of Justice	6	7	10
Actions of the State Security Service	6	3	2
Legislation drafts/amendments	6	1	2
Other	5	8	7
Total closed cases	510	373	293

In Q4 2021, the BOC completed the investigation of a record number of cases – 510, which is 74% more than in Q4 2020 and 37% more than in Q3 2021.

In October-December 2021, we completed the investigation of 405 tax cases – this is almost twice more (+92%) YOY and half more (+44%) QOQ.

The second most common subject of closed cases was actions of state regulators – we closed 22 cases, which is twice as many as in Q4 2020 and 5% more than in Q3 2021.

We have completed the investigation of 35 cases concerning law enforcement malpractice. At the same time, compared to Q4 2020, the number of closed cases against the National Police increased by 31%, the Prosecutor's Office – by 33%, the Security Service of Ukraine – by 200%.

Among other common subjects of closed investigations, were also customs issues (16 cases), actions of local government authorities (10 cases), the Ministry of Justice (6 cases) and amendments in legislation (6 cases).

Under financial effect of the BOC, we understand 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 an appropriate agreement with a complainant. We do not include in the financial result the monetary value of saved investment or the financial equivalent of returned property. Nevertheless, since May 2015, the financial effect of the BOC activities for businesses operating in Ukraine exceeds UAH 21 billion.

Financial impact in Q4 2021:

UAH

1.577 bn



In Q4 2021, the biggest part of the financial impact – UAH 1.180 mn – resulted from cancellation of claims by the AMCU in favor of business.

A successful resolution of cases involving state-owned enterprises brought additional UAH 210 mn.

Registration of tax invoices led to a saving of UAH 77 mn in favour of business, while revision of tax inspections – another UAH 63 mn.

Antimonopoly Committee of Ukraine – claims revoked	1,180,000,000
State companies other	209,748,376
Tax VAT invoice suspension	76,777,935
Tax inspections	62,697,195
State companies investment/commercial disputes	24,500,000
National Police inactivity – debt settlement	7,881,000
Tax criminal cases	5,723,713
Tax VAT refund	3,780,962
Tax VAT electronic administration	2,195,724
Tax other	1,620,064
National regulatory agencies NERCUS other (compensation)	590,745
Other state regulators	508,587
Customs administrative proceedings	501,072
Prosecutor's Office – budget compensations	385,180
Enforcement Service	237,725
Customs other	186,232



Total financial impact of BOC's operations May 20, 2015 – December 31, 2021: **UAH 21.051 bn**

Non-financial impact of BOC's operations:

	Q4 2021	Q3 2021	Q4 2020	TOTAL
Criminal case initiated against state official/3rd party	0	0	1	27
Claims and penalties against the Complainant revoked Sanction lifted	1	2	0	29
State official fired/penalized	2	1	0	40
Contract with state body signed/executed	1	0	0	55
Legislation amended/enacted; procedure improved	6	1	3	98
Permit/license/conclusion/registration obtained	7	11	3	136
Criminal case against the Complainant closed; property/accounts released from under arrest	15	3	9	174
Tax records reconciled, tax reporting accepted	4	8	16	223
Malpractice ceased by complaine	60	48	66	927
Other issues	64	71	46	754

In Q4 2021, the BOC

60

episodes of state bodies malpractice stopped

15

ungrounded criminal cases helped companies close

7

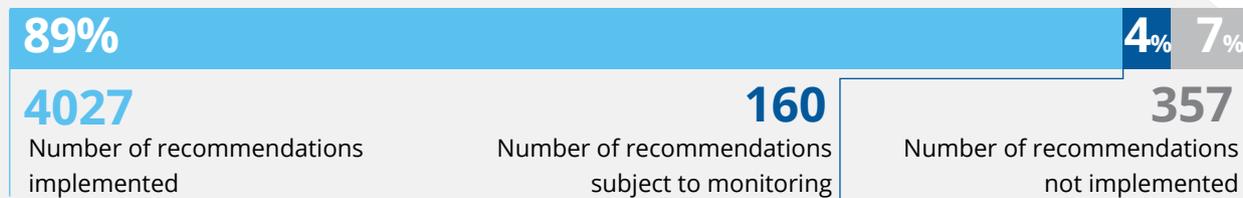
obtain licenses and permits

6

legislation amendments

Recommendations provided

Recommendations issued in Q4, 2021: 348



Total number of recommendations issued since launch of operations: **4544**

Government agencies to which the BOC issued recommendations in 2015-2021 (case-by-case basis) and ratio of implementation

	Issued recommendations	Implemented recommendations	Cumulative status of implemented recommendations as of Q4 2021
State Fiscal Service	3244	2962	91%
National Police	257	199	77%
Prosecutor's Office	175	136	78%
Ministry of Justice	140	127	91%
Local government authorities	155	108	70%
Ministry of Economy	95	85	90%
State Security Service	65	62	95%
Ministry of Ecology and Natural Resources	52	48	92%
Ministry of Agrarian Policy and Food of Ukraine	45	39	87%
Ministry for Communities and Territories Development	41	36	88%
State Enterprises	42	38	90%
Ministry of Social Policy	16	13	81%
Parliament, the Cabinet of Ministers, the President of Ukraine	35	30	86%
Ministry of Infrastructure of Ukraine	28	23	82%
Ministry of Finance of Ukraine	27	20	74%
Ministry of Health of Ukraine	17	14	82%

	Issued recommendations	Implemented recommendations	Cumulative status of implemented recommendations as of Q4 2021
National Commission for State Regulation of Energy and Public Utilities	13	12	92%
Ministry of Internal Affairs	14	11	79%
Ministry of Energy and Coal Industry of Ukraine	11	11	100%
Antimonopoly Committee of Ukraine	12	9	75%
Commercial and other courts	8	8	100%
State Bureau of Investigation of Ukraine	7	6	86%
NABU	7	4	57%
Ministry of Education and Science of Ukraine	3	3	100%
State Funds	6	3	50%
State Emergency Service of Ukraine	3	2	67%
Communal Services of Ukraine	2	2	100%
State Regulatory Service of Ukraine	2		0%
National Bank of Ukraine	5	2	40%
State Border Guard Service of Ukraine	1	1	100%
Ministry of Digital Transformation	1	1	100%
Ministry of Defense of Ukraine	2	1	50%
National Council of Ukraine on Television and Radio Broadcasting	1	1	100%
Other	12	10	83%
Grand Total	4544	4027	89%

In Q4 2021, state bodies implemented a record high number of individual recommendations – 343 – of those issued since launch of operations. At the same time, the BOC issued 348 new recommendations – thus the cumulative number of cases-by-case recommendations implemented by state bodies reached 4027, that is 89% of total issued recommendations as of the end of Q4 2021. This figure reflects state bodies’ willingness to improve their performance and cooperate in solving controversial business issues.

Among other state bodies to which we issued 30+ recommendations, the following performed better compared to Q3 2021: the National Police (+2 pp), the Ministry of Justice (+1 pp), the Ministry of Economy (+ 5 pp), the State Security Service (+1 pp), the Ministry of Ecology and Natural Resources (+2 pp), state-owned enterprises (+2 pp), the Parliament, the Cabinet of Ministers, the President of Ukraine (+1 pp). In contrast, the following state bodies were less successful in implementation of recommendations provided by the BOC: local government authorities (– 1pp), the Ministry for Communities and Territories Development (-2pp).

2.2. Systemic issues identified and solved

The Business Ombudsman Council provides systemic recommendations to state bodies on the basis of individual cases and in accordance with published systemic reports. Since 2015, we have prepared 18 systemic reports on selected business problems and issued over 400 recommendations to state bodies. In particular, in Q4 2021 we noted that the following of the BOC recommendations were implemented:

Systemic report
Administering taxes paid by business 2020

Issue

The issue used to arise in case of corporate reorganizations of legal entities-VAT payers (merger, acquisition, division, separation). In such cases there was no transfer of the registration limit in the SEA VAT to their successors, although such a transfer was foreseen by the law. Failure to ensure such a transfer was caused by a lack of technical possibility, caused by peculiarities of functioning of SEA VAT software.

As a result, successors were unable to use predecessors' registration limit to submit their VAT invoices and adjustment calculations for registration. Hence, registration limit recorded by predecessors was actually lost and successors often had to replenish their e-accounts in the SEA VAT with additional money to make up for the loss.



BOC's recommendation

The Council recommended that the Ministry of Finance and the State Tax Service of Ukraine undertake all required measures (including organizational and technical), to ensure transferring SEA VAT indicators from one VAT payer to another in case of corporate reorganization, without the need for taxpayers to go to court requesting transfer of such indicators.

If necessary to implement the foregoing recommendations, the Council suggested that the Ministry of Finance and the State Tax Service of Ukraine develop and submit to the Cabinet of Ministers of Ukraine and the Cabinet of Ministers of Ukraine – approve draft amendments to Procedure No.569 and/ or other secondary legislation.

Actions taken by government agencies

During an online meeting of the specialized expert group composed of representatives of the Council and the State Tax Service of Ukraine, which took place on December 23, 2021, representatives of the State Tax Service of Ukraine confirmed that the issue had been resolved. They explained that the technical possibility of transferring the registration limit in the SEA VAT, agreed upon in the tax audit, in case of reorganization of legal entities, had already become

operational, provided that the predecessor submits Annex 4 to the VAT tax return with completed Table 4, and the successor – with the completed Table 5.

The resolution to the matter was confirmed in the Council's practice of investigating two complainants, where amount of the transferred registration limit was equal to UAH 39.6 mn and UAH 4 mn respectively.

2.3. Summary of important investigations

In this section you can get familiar with the cases which the BOC has been investigating.

Subject: TAX ISSUES

Energy company excluded from risky taxpayers list

Complainee:

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

Complaint in brief:

The Business Ombudsman Council received a complaint from an energy company specializing in natural and liquefied gas trading. The company complained that the tax authority had included it in the risky taxpayers list and blocked tax invoices. According to the tax authority, the complainant formed a tax credit by cooperating with a risky counterparty.

The company submitted additional documents to the STS to confirm the reality of economic transactions with the counterparty. In particular, the company explained that due to low demand during the summer season it did not sell natural gas, but stored it in gas storage facilities instead. Disagreeing with the tax authority's decision, the energy company turned to the BOC for help.

Actions taken:

The investigator examined the case file and found the complaint substantiated. The Council recommended that the STS ensure an objective, comprehensive and thorough review of the information and copies of documents on the complainant's non-compliance with risk criteria. The BOC stressed that recognition of a counterparty as risky cannot itself be grounds for including an enterprise in the list of risky ones.

Result achieved:

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

Subject: TAX ISSUES

Private entrepreneur without debts

Complainee:

The State Tax Service of Ukraine (STS), Main Department of the STS in Kherson Oblast, Autonomous Republic of Crimea and Sevastopol

Complaint in brief:

A private entrepreneur from Kherson Oblast approached the Business Ombudsman Council. The entrepreneur complained that the tax authority accrued him a single social contribution tax debt amounting to almost UAH 13k. In particular, as part of the enforcement proceedings, the court ordered the arrest of the complainant's property and funds. It turned out that the debt for 2017-2018 had been repaid by the entrepreneur before termination of his business activities in 2019. The complainant sent

an application on single social contribution debt write-off to the tax authority, but did not receive a reply. The BOC started investigating the complainant's complaint.

Actions taken:

After examining the circumstances of the case, the investigator found the complaint substantiated. The BOC asked the tax authority to explain, based on what debt amount was formed and cancel the complainant's debt in case of its irrelevance.

Result achieved:

After the Council's involvement the STS found an error in the tax authority's information system and canceled the private entrepreneur's debt. The case was closed.

Subject: TAX ISSUES

UAH 708k returned to private entrepreneur

Complainee:

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

Complaint in brief:

The BOC received a complaint from a Kyiv-based private entrepreneur. The businessman complained that investigators did not return previously seized property. Within criminal proceedings, law enforcers conducted a search at the businessman's premises and seized over UAH 700k. Although the court lifted the complainant's property arrest, investigators did not return funds for over six months. The private entrepreneur repeatedly appealed to the Investigative Department of Financial Investigations of the SFS and demanded the return of temporarily seized property. As the businessman didn't manage to challenge law enforcers actions on his own, he asked the BOC for assistance.

Actions taken:

The Council examined the case file and found the complaint substantiated. The Council recommended that the LTO enforce the court decision that had entered into force and return seized funds to the complainant. The Council emphasized that non-enforcement of a court decision violated the rule of law. In particular, in accordance with Article 169 of the Criminal Procedure Code of Ukraine, temporarily seized property shall be returned to the owner in case the arrest is lifted.

Result achieved:

Owing to the Council's mediation, the LTO enforced the court decision and returned seized funds to the private entrepreneur. The case was closed.

Subject: TAX ISSUES**Tax service accepts private entrepreneur's data table****Complainee:**

The State Tax Service (STS), the Main Department of the STS in Rivne Oblast (MD STS)

Complaint in brief:

The Business Ombudsman Council received a complaint from a private entrepreneur from Rivne dealing with cargo operations. The entrepreneur complained that the tax service had not accepted the data table and suspended the VAT invoice. The MD STS referred to the fact that types of entrepreneurial activity indicated in the data table did not correspond to existing fixed assets of the taxpayer. Having taken remarks into account, the complainant once again submitted the data table. Nevertheless, the tax service again rejected the entrepreneur's document. Therefore, he approached the BOC asking for help.

Actions taken:

The investigator examined the case materials and acknowledged the complaint was substantiated. The Council asked the MD STS to explain what documents the complaint should provide, so that the data table could be accepted. The BOC emphasized that the private entrepreneur submitted extensive information regarding existing fixed assets and real abilities of his entrepreneurial activity. In particular, the Council highlighted that tax legislation did not define a certain amount of material and/or labour resources during entrepreneurial activity.

Result achieved:

The tax service upheld the Council's recommendations and accepted the complainant's data table. The case was successfully closed.

Subject: TAX ISSUES**Life after tax inspection — fine dropped****Complainee:**

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

Complaint in brief:

An international logistics company complained to the Business Ombudsman Council about tax audit results. According to the State Tax Service, the company violated tax legislation that resulted in understatement of the amount of VAT tax liabilities. Thus, the company reflected purchase of fuel in the amount of UAH 226k in the VAT tax credit. The tax authorities argued their position with the fuel consumption norms foreseen by the Resolution of the Ministry of Transport of Ukraine dated 10.02.1998 No.43 (Resolution No.43). Therefore, the company had to pay a fine of almost UAH 57k. The complainant lodged an objection with the MD STS, explaining that he had used fuel to provide business operations for international carriage. However, the tax service did not accept the company's arguments and provide comprehensive answers based on the results of the complaint consideration. At the same time, the company decided to turn to the BOC for help.

Actions taken:

The investigator examined the case file and found the complaint substantiated. The Council recommended that the STS ensure a comprehensive and impartial consideration of the company's complaint. During the case consideration the BOC drew attention of tax authorities to the fact that the complainant had correctly reflected fuel purchase transactions in the VAT tax credit. The Council stressed that the Tax Code and the Law of Ukraine "On Accounting and Financial Reporting" do not oblige to apply the provisions of the Resolution №43 for accounting or tax purposes, which was referred to by tax inspectors. The company has its own orders on the rules for writing off fuels and lubricants developed taking into account transportation peculiarities depending on the car brand, its specifications, season etc. Therefore, it remained unclear why the inspectors did not take these documents into account during the inspection and charged the company a fine.

Result achieved:

Thanks to BOC participation the tax service satisfied the complaint of the logistics company and canceled the inspection results. The case was successfully closed.

Subject: TAX ISSUES

UAH 1.7 mn in seized funds returned to pet store network

Complainee:

The State Fiscal Service (SFS), Main Investigation Department of Financial Investigations of the SFS

Complaint in brief:

The Business Ombudsman Council received a complaint from a pet store network. The company complained that law enforcers conducted 12 searches of its stores in Kharkiv and Kyiv and seized computers, documents and funds worth UAH 1.7 mn. According to the SFS, the pet store network evaded tax. Tax authorities found out that during 2018-2020 the company allegedly did not pay 78k UAH. Disagreeing with property seizure, the pet store chain challenged investigators' actions in court. As a result, the court ordered the police to return the company's seized property, but the complainant could not receive the seized items for over 3 months. In addition, the complainant was concerned that the restitution of property could be complicated or delayed due to the SFS of Ukraine reform process, which had just been launched. The company turned to the BOC for assistance.

Subject: TAX ISSUES

“All because of square brackets “: technical error due to which importer lost money during customs clearance was detected

Complainee:

The State Customs Service (SCS), Kyiv Customs of the State Customs Service (Kyiv Customs), State Tax Service of Ukraine (STS)

Actions taken:

The investigator examined the circumstances of the case and found the complaint substantiated. The Council recommended that the Prosecutor General's Office of Ukraine and the SFS return temporarily seized property to the complainant in accordance with the court ruling. In a letter to the regional Prosecutor's Office Head, the Council stressed that the seized property should be returned to the owner as soon as possible, as the court did not satisfy the investigator's motion on property arrest. However, investigators returned only computers and documents to the complainant. The Council again appealed to the Prosecutor General's Office and the SFS with a request to return seized UAH 1.7 mn to the company.

Result achieved:

The investigators followed the Council's recommendations and returned the company's property in full. The case was closed.

Complaint in brief:

The Business Ombudsman Council received a complaint from one of the largest retail chains in the country also importing food products to Ukraine.

When undertaking customs clearance of goods, the company paid significant VAT amounts at customs. These amounts, however, were not lost forever. After all, they increased the company's registration limit in the VAT electronic administration system (SEA VAT) at the expense of “ZCust” component. In future, the company could include these VAT amounts in its tax credit when selling goods to consumers.

Meanwhile, after analyzing SEA VAT data in its e-office, the company found that in some cases the VAT paid at customs was not pulled in to the registration limit. It was about situations when the customs authority adjusted (increased) the customs value of imported goods. In such situations, the company usually challenged the decision on adjusting the customs value to a higher level customs authority or court. At the same time, to release goods for free circulation as soon as possible, the company paid VAT amounts additionally accrued by customs as a financial guarantee. Upon expiration of a 90-day period established by law, if at that time the customs decision on adjusting the customs value of goods had not yet been cancelled, the paid financial guarantee amount was transferred to the budget. At the time of such transfer, the registration limit in the SEA VAT should be automatically increased by the transferred amount. However, judging by archival records found by the company in the taxpayer's e-office, it often did not happen. The total amount of funds lost for this reason, according to the company's estimates, could exceed UAH 2 mn.

The company asked the tax authority where it was registered to explain this problem, but did not receive a clear response. The company turned to the BOC for help.

Actions taken:

After examining the materials of the complaint, the Council's investigator found that the problem was at the intersection of STS and SCS powers. Therefore, a letter was sent to both bodies with a request to establish reasons for the error by joint efforts of authorities.

The STS immediately confidently replied that the problem was on the customs side. Thus, it was the customs turn to solve the issue. However, at first glance, they failed to establish the causes of the problem. A working meeting in the SCS office was arranged with the Council's facilitation to investigate the unusual situation in more detail. It was attended by employees of various departments of this body, as well as representatives of Kyiv Customs, the Complainant and the Council. Brainstorming paid off. It turned out that certain amounts were not pulled in to the complainant's SEA VAT registration limit due to technical errors in drawing up adjustment sheets to customs declarations. In particular, the reason was absence of square brackets as required by the methodology of filling out the appropriate forms for relevant amounts of VAT. Such a trifle thing, at first glance. Following the meeting, it was agreed that the Complainant, jointly with Kyiv Customs, would correct these errors. In addition, the SCS will draw attention of all customs offices to the need to take into account these nuances of adjustment sheets drawing up to prevent similar cases in the future.

Result achieved:

As a result of measures taken, the Complainant recovered about UAH 500k of registration limit in SEA VAT. The rest of the lost amount, unfortunately, was no longer recoverable due to statutory 1095-day period expiration. At the same time, from now on, the Complainant and the Customs have drawn attention to due filling out of the respective fields (columns) of adjustment sheets, which will help avoid similar cases in the future. The case was successfully closed.

Subject: ACTIONS OF LAW ENFORCEMENT BODIES**Kyiv National Police to take up canned fish producer case****Complainee:**

The National Police of Ukraine (National Police)

Complaint in brief:

The Business Ombudsman Council received a complaint from the Latvian canned fish producer Karavela Company and Astoria-fish LLC. The company has been operating since 1882 and delivers canned fish to Germany, Sweden, Denmark, Great Britain, Canada, Azerbaijan, Uzbekistan, Georgia and Ukraine. The producer's export share to the Ukrainian market makes up 5% of world deliveries. The company complained that law enforcers searched its office and seized personal belongings, money and 16 boxes of preserved fish. It turned out that the company's competitors disseminated information among contractors that the producer was misleading consumers by selling herring under the name of "sardines". Due to possible illegal circulation of canned food, law enforcers launched criminal proceedings in the company's case and conducted investigative actions. Although a part of the complainant's property was returned, canned food remained confiscated, which could quickly spoil in the heat.

At the company's request, an independent linguistic expert examination was conducted, which proved the falsity of the competitor's conclusions. According to EU Regulation No.2136/89, "preserved sardine-type products" means products marketed and presented in the same way as preserved sardines prepared from *Clupea harengus* (Atlantic herring)" fish species. In particular, preserved sardine-type products may be placed within the EU under a trade name containing the word "sardines" together with the scientific name of the species and the geographical area in which those sardines were produced. Therefore, all the complainant's products meet the requirements of the EU and Ukraine both in composition and labeling. To protect the company against unfair competition and abuse of law enforcers, the BOC launched its own investigation.

Actions taken:

The investigator found the complaint substantiated and upheld the preserved fish producer's position. In particular, after analyzing the legislation, the BOC confirmed compliance of the complainant's products with preserved sardines name standards. The Council recommended that the Prosecutor General's Office and the National Police verify the legality of searches within criminal proceedings and transfer the case file from Kharkiv National Police to Kyiv Police to ensure an objective and impartial investigation.

Result achieved:

Following the BOC involvement, the Prosecutor General's Office transferred the company's case to the Main Directorate of the National Police in Kyiv Oblast. As the Council's recommendation had been implemented and unreasonable pressure on the Complainant ceased, the Council completed the complaint investigation.

Subject: ACTIONS OF LAW ENFORCEMENT BODIES

State Bureau of Investigation returns seized property to a law firm

Complainee:
State Bureau of Investigations

Complaint in brief:

Within a criminal proceeding law enforcers conducted a search in an office building, including the premises of a law firm and seized its laptops. The computer equipment that belonged to the law company was not on the list of items that were subject to search and seizure. As the investigator and the prosecutor did not request the investigative judge to arrest the property within 48 hours after its seizure, it had to be returned immediately. For more than a month, the State Bureau of Investigations ignored the company's requests and continued to retain the property that made the company appeal to the investigative judge. The latter satisfied the company's appeal and obliged the State Bureau of Investigations to return the seized laptops. However, such inaction of the law enforcers continued, and the law firm lodged a complaint with the Business Ombudsman Council.

Actions taken:

The BOC investigator examined the case file, and acknowledging its substance, prepared an appeal to the State Bureau of Investigations and the Prosecutor General's Office asking for immediate return of the seized property to the complainant or to explain thoroughly why the return of the property was impossible. In response, the BOC was informed that the State Bureau of Investigations had not received a ruling of the investigative judge which satisfied the company's appeal, so it could not return the property. The BOC submitted the subject for consideration of the Permanent Working Group with the Prosecutor General's Office, and repeatedly appealed to the State Bureau of Investigations requesting to return the seized property, as the case circumstances implied such an obligation regardless of the investigating judge's ruling.

Result achieved:

The State Bureau of Investigations finally complied with the BOC recommendations and returned the computers to the law firm. The case was successfully closed.

Subject: ACTIONS OF LAW ENFORCEMENT BODIES**State Bureau of Investigation closes criminal proceedings against streaming platform****Complainee:**

The Main Investigation Department of the State Bureau of Investigation (MID SBI)

Complaint in brief:

The Business Ombudsman Council received a complaint from an American Online Streaming Platform representative office (office). As the result of an audit, the tax office decided to increase the VAT amount to be paid by the company to UAH 9 mn and accrued a fine of UAH 529 k.

Tax officers concluded that the company met the criteria of a “permanent office”, as its actual activities allegedly coincided with the main activities of the parent company, namely production and sales of specialized video broadcasting equipment. The company explained that the representative office in Ukraine provided only technical support: it neither had access to software development, nor generated revenue for the parent company. At the same time, according to the Tax Code, a “permanent office” is defined as “fully or partially conducting its economic activity of a non-resident”. Despite the fact that, after the company's appeal, the tax authority overturned the decision on audit, the State Bureau of Investigation (SBI) launched criminal proceedings against the company for non-compliance with the tax law for 2016-2018. According to SBI investigators, the company understated the VAT amount and did not submit a software development operations report in 2018. The SBI searched the streaming platform's office. Disagreeing with such law enforcement actions, the company ordered an examination of the tax findings from Kyiv Research Institute of Forensic Examinations of the Ministry of Justice of Ukraine. As a result, the arguments of the tax service were not documentally supported. Therefore, the company asked the BOC for help.

Actions taken:

The investigator examined the case file and found the complaint substantiated. The Council recommended that the Prosecutor General's Office and the SBI carefully examine the law enforcers' actions in the pre-trial investigation against the company and take into account the complainant's evidence as to the absence of a crime. In a letter to the PGO and the SBI, the Council emphasized that investigative actions that caused harm or had negative consequences for the business entity and that were not necessary to solve the crime violated the rule of law.

Result achieved:

After the Council's involvement, the SBI closed criminal proceedings in the case of the office. The case was successfully closed.

Subject: ACTIONS OF LAW ENFORCEMENT BODIES**Entrepreneur's seized property return****Complainee:**

Prosecutor's General Office,
the Main Investigation
Department of the National
Police of Ukraine (MID NP)

Complaint in brief:

The Business Ombudsman Council (BOC) received a complaint from a private entrepreneur from Kyiv. The businesswoman complained that law enforcers searched her office and seized computer equipment and documents. Since the investigator and the prosecutor had not approached the judge with a motion for the arrest within 48 hours of the seizure, they had to return the complainant's property. The entrepreneur asked the Prosecutor's General Office and the MID NP to return temporarily seized property, but she did not get any feedback. Therefore, the businesswoman complained to the investigative judge about inaction of law enforcers. The judge ordered the MID NP to return the complainant's property. However, worrying that she would still have to wait for a long time, the private entrepreneur turned to the BOC for help.

Actions taken:

After examining the circumstances of the case and finding the complaint substantiated, the BOC recommended that the Prosecutor's General Office and the MID NP arrange the return of the seized property to the entrepreneur as soon as possible. The BOC noted that according to the provisions of the Constitution of Ukraine and the Civil Code of Ukraine, no one can be unlawfully deprived of property. The right of private ownership is inviolable. In addition, the BOC stressed that the court decision, which had entered into force, was subject to immediate enforcement.

Result achieved:

With the BOC's facilitation, law enforcers established a working dialogue with the complainant and returned the seized property. The case was successfully closed.

Subject: ACTIONS OF STATE REGULATORS**Stategeonadra issues
subsoil use permit for
Donetsk enterprise****Complainee:**

The State Service of Geology
and Subsoil of Ukraine
(Stategeonadra)

Complaint in brief:

A Donetsk mining company sent a complaint to the Business Ombudsman Council. The company could not obtain a special subsoil use permit for extracting minerals from which it planned to produce mineral powders. Thus, since mid-2018, the company time and again turned to Stategeonadra to obtain a permit. However, each time the State Committee for Geodesy, when considering the complainant's applications, denied granting him the permit, stating various reasons and, as a result, the process was significantly delayed. Due to Stategeonadra officials' inaction, the company had to go to court. It managed to get a court decision, according to which Stategeonadra was obliged to reconsider the respective application dated back to November 2019. At the same time, the state body was in no hurry to comply with the court decision. In view of the above, the company asked the BOC for assistance.

Actions taken:

The investigator examined the case file and found the complaint substantiated. The Council recommended that Stategeonadra reconsider the complainant's application and issue him a special subsoil use permit.

Result achieved:

The company received a subsoil use permit with BOC facilitation. The company thanked the Council for help: *"Your competent intervention in this difficult case, which deprived the company of prospects for development and questioned the very fact of its existence for three years, allowed not only to achieve enforcement of the Court of Appeal decision regarding reconsideration of the application by Stategeonadra, but also issuance of an order for granting a special permit by this body. We are grateful to you for your understanding and constant support, even when we were already losing hope for a fair resolution of this issue in courts, in appeals to the Office of the President of Ukraine and the Cabinet of Ministers"*. The case was successfully closed.

Subject: ACTIONS OF STATE REGULATORS**DABI approves declaration
– businesswoman opens a
store****Complainee:**

The State Architectural and Construction Supervision Office in Ivano-Frankivsk Oblast (DABI Office in Ivano-Frankivsk Oblast)

Complaint in brief:

The Business Ombudsman Council received a complaint lodged by a private entrepreneur from Ivano-Frankivsk Oblast. The businesswoman reconstructed a building into a shop and was going to open a grocery store there. However, for this purpose she had to obtain an approval from the local DABI Office first, that is registration of a Declaration of the Construction Object Readiness for Operation Which Under the Consequences (Responsibility) Class Belongs to Minor Consequences Objects (CC1) (the Declaration).

During February-July 2021, the entrepreneur submitted the Declaration five times: three times through the Administrative Services Center and twice – via the Unified State Construction E-System Portal. However, each time the state regulator refused to register her Declaration due to certain technical errors, some of which were repeated, others were always new. Then, having submitted the Declaration for the sixth time, the businesswoman turned to the BOC for assistance.

Actions taken:

The team of investigators in charge examined the case files and found the complaint to be substantiated. The Council recommended the DABI Office in Ivano-Frankivsk Oblast ensure a full, comprehensive and impartial consideration of the complainant's newly submitted Declaration, where she corrected previously detected shortcomings (at least the ones, the essence of which had been clearly stated and, therefore, understandable). In a letter to the DABI Office, the BOC pointed out a number of circumstances that may indicate the alleged violations of the complainant's rights while considering her previous Declarations (in particular, the reasons for the refusal were mostly not clear enough and detailed for the entrepreneur to be able to duly correct them; no references to the legal norms violated by the complainant when filling out Declarations were provided, etc.). The BOC also reminded that the construction supervision authority had ten working days to check the completeness of information provided in the Declaration, and in case information was sufficient, it should register the document in question.

Result achieved:

DABI Office in Ivano-Frankivsk Oblast followed the BOC's recommendations and smoothly registered the Declaration within several days. The businesswoman thanked the Council's team for support: *"Let me express my gratitude to the Business Ombudsman Council for the extremely effective response and humane attitude towards my problem with the long-term illicit abuses of the architectural and construction supervision officials in Ivano-Frankivsk Oblast. [...] Thanks to your coordinated, high-quality and effective work, barriers for exercising my legal rights and interests as an entrepreneur have been removed"*. The case was successfully closed, and since September 15, 2021, instead of DABI a new body, – the State Inspectorate for Architecture and Urban Planning of Ukraine (DIAM) started to perform its functions in the field of state architectural and construction supervision in Ukraine.

Subject: ACTIONS OF STATE REGULATORS

AMCU drops UAH 1.1 bn fine for Philip Morris group of companies

Complainee:

The Antimonopoly Committee of Ukraine (AMCU)

Complaint in brief:

Back in 2016, the Business Ombudsman Council received a complaint from the Phillip Morris group of companies regarding challenged excessive tax audit charges and the subsequent failure of the State of Ukraine to respect an amicable agreement with the American, Swiss and Ukrainian Philip Morris offices to cancel additional charges of UAH 635 million.

In early 2020, the company had to again complain to the BOC but with another aspect of the case. This time the complaint related to a case launched by the AMCU concerning the alleged receipt of state aid by the company as a result of cancellation of additional tax charges under the mentioned amicable agreement. The company faced a fine of UAH 1.18 bn. The company asked the Ministry of Justice to start negotiations on settling the dispute and to establish an Interdepartmental Working Group (IWG). However, IWG meetings were only formal and did not resolve the investor's situation. The BOC then launched its own investigation.

Actions taken:

The Council concluded that the AMCU took an unsubstantiated decision to open a case in connection with the alleged receipt of state aid by the investor. Moreover, the state aid element was missing in the relevant relationship, namely there was no fact established that the company had in any way been supported by state resources under the amicable agreement. Therefore, the BOC recommended that the AMCU discontinue consideration of the state aid case, given the absence of the fact that Philip Morris had not received state aid.

The Council became engaged with the IWG chaired by the Deputy Minister of Justice, where it upheld the company's position. The BOC started monitoring the implementation of the recommendation issued to the AMCU in the complainant's case.

Result achieved:

Despite a long awaiting period, the AMCU followed the Council's recommendation and closed the state aid case. A fine of UAH 1.18 bn. was dropped.

Subject: ACTIONS OF STATE REGULATORS

AB InBev Efes registers declarations of conformity in the field of labor protection

Complainee:

The Main Department of the State Labor Service of Ukraine in Kyiv Oblast (MD SLS)

Complaint in brief:

A private joint stock company "AB InBev Efes", a part of an International Brewing Corporation "Abinbev Efes", operating in the Ukrainian market for over 20 years approached the Business Ombudsman Council. The company could not register the Declaration of Conformity of material and technical facilities with labor protection legislation requirements (Declaration of Conformity). Such declarations allow to perform hazardous works at the place of production. The company submitted Declarations of Conformity for three branches in Kharkiv, Mykolaiv and Chernihiv through an administrative services center to the MD SLS, but the MD SLS later returned them for revision. Having corrected the package of documents, the complainant tried to register Declarations of Conformity for the second and third time, but the supervisory authority delayed consideration of the complainant's declarations once again, and subsequently returned the documents without indicating any deficiencies in declarations. Realizing that the production process was under threat, the company asked the BOC for assistance.

Actions taken:

The investigator examined the case file and found the complaint substantiated. The BOC recommended that the MD SLS ensure a full, comprehensive and impartial consideration of the company's declarations. In the Council's view, the complainant had duly filled out all the documents and therefore there were no grounds for returning declarations without consideration. Despite this, the MD SLS continued to delay consideration of the complainant's declarations. For this reason, the Deputy Business Ombudsman initiated a personal meeting with the administration of the State Labor Service of Ukraine to discuss the subject matter of the complaint.

Result achieved:

Due to the Council's mediation, the company registered the Declaration of Conformity of material and technical facilities with labor protection legislation requirements. *"We truly thank you and your team for their efforts and professionalism, which resulted in support and protection of business interests in government bodies,"* said the complainant. The case was successfully closed.

Subject: CUSTOMS ISSUES

Cargo of frozen beef unblocked

Complainee:

The State Customs Service (SCS), Volyn Customs of the State Customs Service (Volyn Customs)

Complaint in brief:

The Business Ombudsman Council received a complaint from a Belarusian cargo carrier. The company complained that, during import of frozen beef from Poland to Ukraine, Volyn Customs detained cargo belonging to a Polish company. Customs officers drew up an inspection report on transported goods and found the complainant was transporting goods different from those stated in the documents. For almost 30 days, the cargo, as well as the complainant's vehicle and driver, were at the customs terminal. During this time customs officers did not make any claims or accusations against the carrier. The company turned to the BOC for help.

Actions taken:

The investigator examined the case file and found the complaint substantiated. During investigation of the complaint it was established that there were no refrigeration units for storage of goods at Volyn Customs. The Council asked Volyn Customs and the SCS to explain why the company's vehicle and driver had been detained at the border and, if there were no violations by the carrier, to let his vehicle and driver go through the customs control zone.

Result achieved:

The SCS followed the Council's recommendations and placed the cargo in special refrigeration units for safe storage, as well as cleared the complainant's vehicle and allowed it to enter the territory of Ukraine. The case was successfully closed.

3. Cooperation with stakeholders

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

3.1. 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

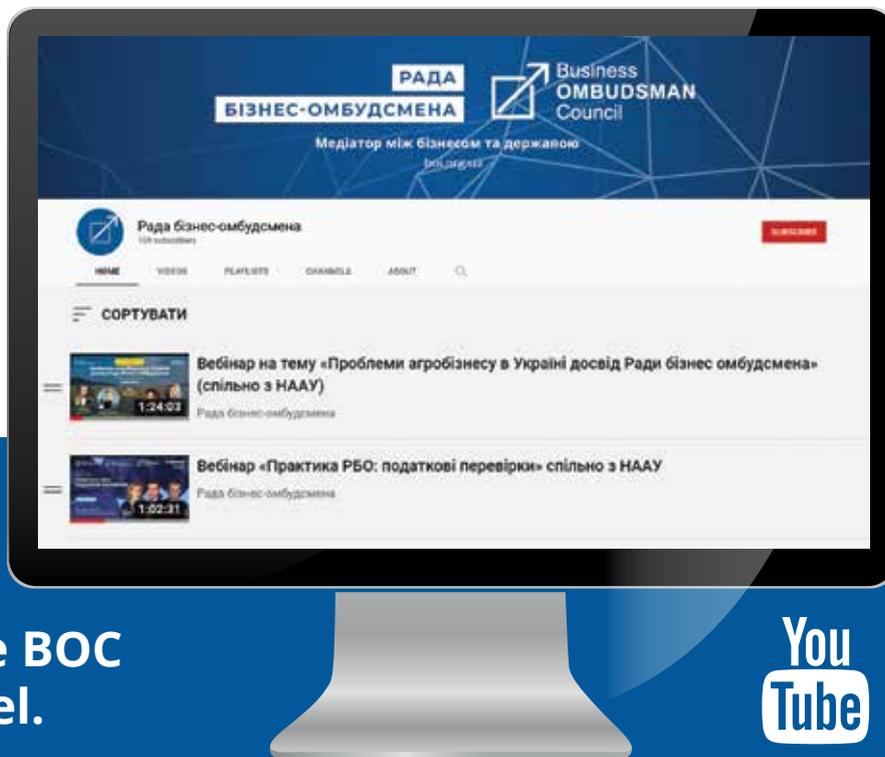
Expert groups are a platform for open and transparent consideration of specific complaints, as well as improvement of the legislation that regulates entrepreneurial activity and removal of obstacles to conducting business in Ukraine.

	Number of meetings (including online meetings)	Number of cases considered during these meetings
State Tax Service	9	397
State Customs Service	2	3
National Police	2	21
Prosecutor General’s Office	1	26
Ministry of Justice	1	4
Total	15	451

3.2. Online events with partners

In Q4 2021, the Business Ombudsman Council was actively involved in conducting webinars for lawyers and the business community. Supported by partners, the Council shared practical insights about how to protect the legal rights of business in Ukraine and prevent possible malpractice episodes of state bodies.

During the online events, we provide our participants with a unique opportunity to learn how to effectively settle business issues in interaction with state bodies.



All webinars recordings are available on the BOC Youtube channel.

@Рада бізнес-омбудсмена

Webinars with the American Chamber of Commerce in Ukraine

The Business Ombudsman Council continued a project of joint webinars with the American Chamber of Commerce in Ukraine. Online events on pressing business issues targeted ACC members as well as other large and small businesses. In Q4 2021, the following webinars were held:

More webinars on interaction of business with local government authorities and state regulators are planned for 2022.

[Register here](#)

12.10.2021



“How to Protect Business from Controversial Partners?”

16.11.2021



“Business Issues in Labor Sphere: Expertise of the Business Ombudsman Council”

Webinars with the Ukrainian Solar Energy Association

In addition, in November 2021, the Business Ombudsman Council held the webinar jointly with the Ukrainian Solar Energy Association and a “Sokolovskyi and Partners” law firm.

18.11.2021



“Business Ombudsman Council - Effective Protection of Green Energy Producers”

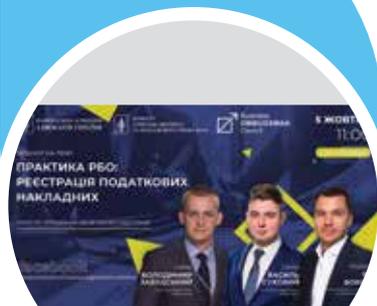


Webinars with the Ukrainian National Bar Association

In collaboration with the Ukrainian National Bar Association (UNBA), we conducted a few more webinars to raise awareness about the BOC services among lawyers and advocates. It is noteworthy that very often lawyers represent the Council's complainants. In this way, our expertise is useful to help them find solutions and additional tools for business protection in clients' cases.

The following online events took place in Q4, 2021:

05.10.2021



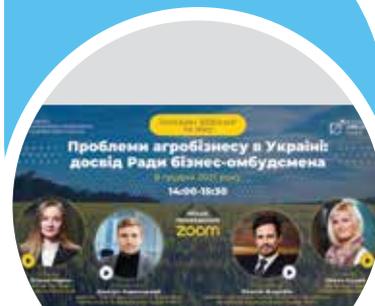
"BOC Expertise: VAT Invoices Registration"

10.11.2021



"BOC Expertise: Criminal Proceedings in the Tax Sphere"

08.12.2021



"Business Issues in the Sphere of Agriculture: BOC Expertise"

3.3. Public outreach and communications

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

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

The media

Given our mission to protect the legal rights of entrepreneurs and improve the business climate in Ukraine, we appreciate journalists' interest in communicating our results. A high level of legal expertise and the ability to consistently convey the important message through is also highly appreciated by media channels – our experts are frequent authors at major online platforms, speakers at forums and seminars, guests in TV and radio studios.



Publications

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

29000+

with

99.9%

mentions being positive or neutral.

Estimated value of publications in Q4 2021, based on the assessment of the ECOSAP media monitoring agency, was

1.5

million

Media appearances in Q4 2021

Special project with Dzerkalo Tyzhnya



Specialized legal media



Business media



TV and radio



Events



06/10/2021

Meeting with the First Deputy Minister of Internal Affairs Yevhen Yenin

Organised by

The Ministry of Internal Affairs



21/10/2021

Expert Group Meeting with the National Police of Ukraine

Organised by

Organized under the auspices of the Memorandum of Partnership and Cooperation



15/11/2021

Meeting of the Temporary Special Commission on Investors' Rights Protection

Organised by

The Temporary Special Commission on Investors' Rights Protection



06/10/2021

IX Annual Forum of Legal Advisers

Organised by

Yurydychna Praktyka Publishing House

22/10/2021

International conference "Administrative Appeal: a New Page in Relations of the State, Citizens and the Business"

Organised by

The EU-funded "Pravo-Justice" Project



17/11/2021

Panel discussion "Compliance as the Necessary Component of Investment Protection in Ukraine"

Organised by

UNIC



26/10/2021

Meeting with representatives of Polish and Ukrainian investors

Organised by

The Ministry of Economy of Ukraine



07/10/2021

International Symposium Forum

Organised by

Chartered Institute of Arbitrators



18/11/2021

Expert Group Meeting with the Prosecutor General's Office of Ukraine

Organised by

Organized under the auspices of the Memorandum of Partnership and Cooperation



08/10/2021

Meeting with the Director of the Bureau of Economic Security Vadym Melnyk

Organised by

The Bureau of Economic Security

10/11/2021

Online event "New Generation of Ukrainian Entrepreneurs: Discuss Their Vision of the Future of Ukraine"

Organised by

US-Ukraine Business Council (USUBC)

18/11/2021

Public Presentation "Evidence-based policymaking - impact assessment of potential FTAs with Ukraine"

Organised by

The Ministry of Economy of Ukraine, USAID Competitive Economy Programme and Institute of Economic Research and Policy Consulting



19/11/2021
A2B Forum "Tax & Business Talks"
Organised by
Ukrainian Advocates Association



26/11/2021
X Tax Forum
Organised by
Ukrainian Bar Association

01/12/2021
Baltic Business Forum
Organised by
Polish-Ukrainian Business Council



02/12/2021
International Anti-Corruption Forum "Kleptocracy and Illicit Financial Flows"
Organised by
Prosecutor General's Office of Ukraine

02/12/2021
Breakfast Discussion with Ambassador Erwin Bollinger, Delegate of the Federal Council for Trade Agreements, Co-Chair of the Intergovernmental Joint Economic Commission Switzerland-Ukraine
Organised by
Embassy of Switzerland in Ukraine



03/12/2021
II Arbitration Forum
Organised by
Yurydychna Praktyka Publishing House



07/12/2021
Meeting with Polish Business
Organised by
Polish Investment and Trade Agency



09/12/2021
Online discussion "Business & Banks & the State: How to Overcome the Covid-related Crisis"
Organised by
Vox Ukraine



10/12/2021
Criminal Law Forum
Organised by
Ukrainian Advocates Association

15/12/2021
Supporting Energy Sector Reform in Ukraine: Improving the Investment Climate and Promoting Responsible Business Conduct
Organised by
OECD

20/12/2021
Forum "Urban Development Reform - In the Middle of the Way"
Organised by
The Ministry for Communities and Territories Development



20/12/2021
Virtual meeting with business community "Anti-Corruption Review of the Energy Sector of Ukraine"
Organised by
OECD

09-10/12/2021
Meeting with the Business Ombudsman Institute and the Prosecutor General's Office of the Kyrgyz Republic under the auspices of the Rule of Law in Central Asia Program of the Council of Europe
Organised by
The Council of Europe/the European Union

21/12/2021
Online meeting of the Committee on Business Protection, Assets and Investors' Rights of the Ukrainian Advocates Association
Organised by
Ukrainian Advocates Association

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 BOC employees. Stream them live
- Share our own publications about important issues for entrepreneurs
- Report about results of operations
- Publish feedbacks of complainants
- Create our own video content. Share videos with the BOC employees' appearance on TV and at public events
- Communicate with followers

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

The BOC is all over social media:



LinkedIn
(@Business Ombudsman Council)



Twitter
(@bus_ombudsman)



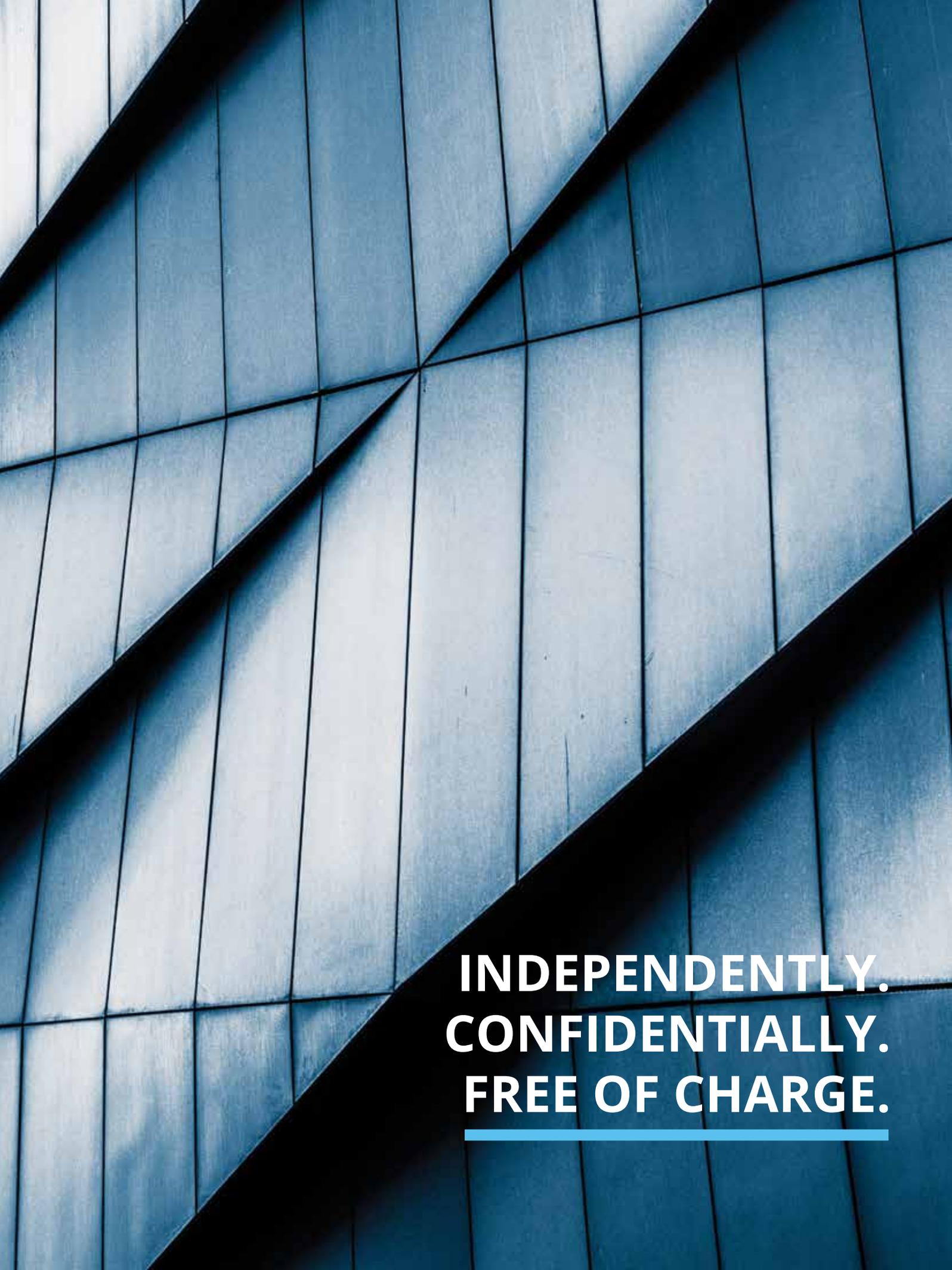
Facebook
(@BusinessOmbudsmanUkraine)



YouTube
(@Рада бізнес-омбудсмена)



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