



Business
OMBUDSMAN
Council

Q2 2023

Quarterly report

April 1 – June 30, 2023



8

Years on Guard
of Ukrainian
Business



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

In cases and feedbacks, published in the report, companies gave permission to disclose their names.



European Bank
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Roman Waschuk
Business
Ombudsman

It is already the sixth quarterly report I sign on behalf of our Business Ombudsman Council's team and I do that with a kind of déjà vu. The composition and proportions of complaints for this second quarter of 2023 are strikingly similar to the statistics of Q4 2021, i.e. last months before the full-scale war. Is it a sign of stabilization and Ukraine's economic resilience? Possibly so... However, it is also a reflection of the stability of problems of Ukrainian business market: unexpected "mowing" of taxes, formal hooks in criminal proceedings, customs value adjustment of goods despite a full valid documentation package.

In addition to successfully resolving of the traditional two-thirds of individual complaints from among those taken up, we also have systemic wins: implementation of an administrative appeal against the refusal to register tax data tables in SMKOR system; legalization of the list of regions recognized by the State Tax Service where benefits related to war losses can be applied; synchronization of tax and customs regulations for Ukrainian drone manufacturers.

Yet, the systemic problems we have been paying attention to for years remain sharply relevant. Most of the recommendations of our March report on the mass suspension of VAT invoices got stuck in working groups between the Ministry of Finance and the STS. Meanwhile, a survey of entrepreneurs already in June (conducted by Transparency International and Info Sapiens) is perceived by business to cause damage similar to that of the direct military action.

Law enforcers pressure on business was in focus of the President of Ukraine meeting with business leaders (and with me as Business Ombudsman) on June 29. Concentrating economic powers in one law enforcement body would be a step towards improving the business climate, but it is not a decisive factor. This task was supposed to be completed by the very creation of the Bureau of Economic Security. The mere fact of our talking about a restart in two years after its launch testifies to deeper and wider systemic problems.

As the work of the related Temporary Investigative Commission shows, the BES needs different management, personnel, expertise of the Ukrainian and world economy, as well as the exclusive right to economic investigative actions. This requires "capacity building", which international partners, particularly the EU, will agree to. Other law enforcement bodies' economic elements also need "capacity destruction", which their leadership teams have never gone for in practice yet. Here one should beware of the existing structures redecoration.

At the same time, you can think about rationalizing the number of law enforcement bodies themselves, which duplicate functions, compete for the investigative jurisdiction, and can alternately make life a nightmare for individual businesses. Ninety-five per cent of open criminal proceedings do not reach the court from the existing BES; this figure for other bodies (the National Police, Security Service of Ukraine) is about 90%. Mostly, the very fact and procedures of a launched criminal case are a means of pressure ("an invitation to talk") and a punishment in itself for the enterprise.

In Ukraine, there is still an excessive "criminalization" of cases that could be logically and less destructively solved in civil or economic cases and courts. The state further allows itself to be instrumentalized in private interests. Despite all legislative reforms in the past years, investigators and prosecutors are still soviet-minded: the state, everyone owes to for the former, and the shadow of "general oversight of legality" for the latter. As long as such approaches are rewarded hierarchically (both formally and informally), it is exactly they rather than Europeanized laws will determine a behavior pattern.

In light of these ongoing challenges – and moreover to create conditions for Recovery after Victory – a common language between business, fiscal authorities and law enforcers needs to be found both literally and figuratively. Simultaneously with the BES relaunch, one should find a common ground where it is possible to reach a mutual vision of such basic concepts as "profit" or "rent" between public and private sectors. Our Business Ombudsman Council, as a systemic institution where the state, international partners, and business associations are combined, is here to give a helping hand.



1

Q2 2023 in review

1.1 Key performance indicators

April 1 – June 30, 2023

361

complaints received

182

closed cases

153

consideration is ongoing

The financial effect

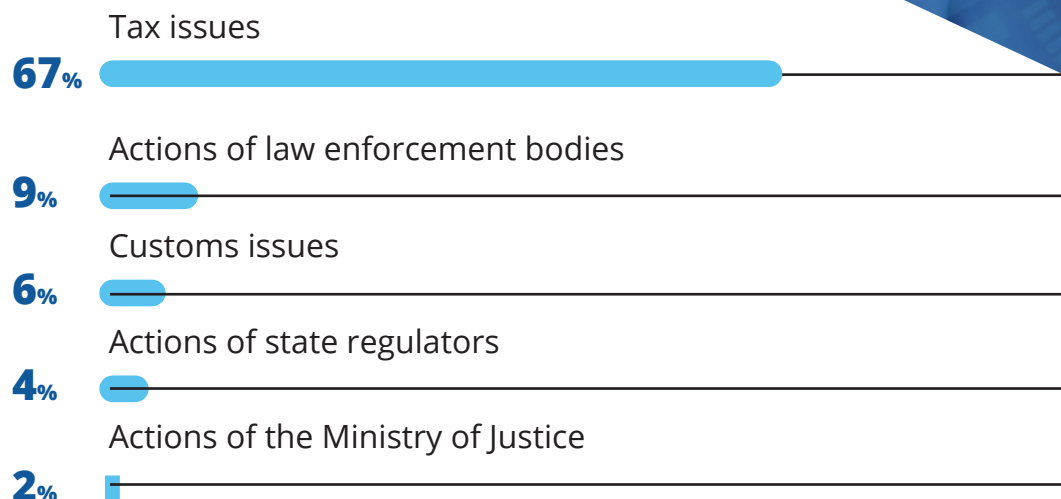
in the second quarter reached

UAH **105** mn

The total financial effect amounted to

UAH **24,7** bn

TOP-5 subjects of appeals

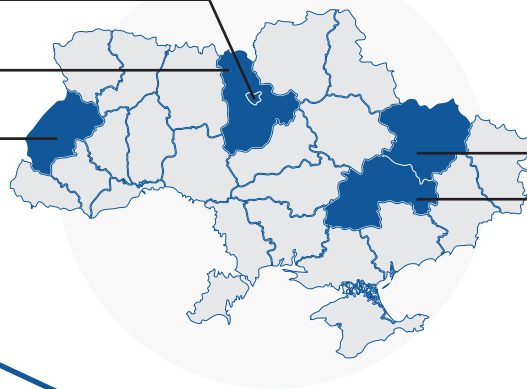


TOP-5 most active regions

39% Kyiv city

7% Kyiv Oblast

7% Lviv Oblast



7%
Kharkiv
Oblast

6%
Dnipropetrovsk
Oblast

TOP-5 industries

28%

Wholesale and
distribution

14%

All types of
production

13%

Agriculture and
mining

8%

Real estate and
construction

7%

Private
entrepreneurs

Origin of capital

67% Small and medium-sized business

33% Large
business

Origin of capital

88% Ukrainian companies

12% Foreign companies



1.2 Volume and complaints trends

In Q2 2023, the Business Ombudsman Council received 361 business complaints about malpractice of state authorities. It is more than in Q1, when during January-March 2023 we processed 328 appeals, and in Q4 2022 – 305. Therefore, a gradual increase in the number of appeals to the Business Ombudsman shows both revival of business activity and state bodies' attempts to impose their will.

Tax issues	241
Non-enforcement of court decisions on tax invoices registration	57
Systemic VAT invoice suspension	53
Tax audits	52
Inclusion in risky taxpayers' list	49
VAT electronic administration	2
VAT refund	2
Tax termination/renewal/refusal of VAT payers registration	1
Other	25
Actions of law enforcement bodies	32
National Police – procedural abuse	5
National Police – inactivity	3
National Police other	3
Prosecutor's Office – procedural abuse	8
Prosecutor's Office – criminal case initiated	1
Prosecutor's Office – inactivity	5
Prosecutor's Office – other	2
Security Service of Ukraine – procedural abuse	1
Security Service of Ukraine – criminal case initiated	1
Security Service of Ukraine – other	1
State Bureau of Investigation	2
Customs issues	21
Customs valuation	8
Customs clearance delay/refusal	7
Customs – other	6
Actions of state regulators	15
Actions of National Energy and Utilities Regulatory Commission (NEURC)	4
National Bank of Ukraine – inactivity	1
National Bank of Ukraine – other	1
Antimonopoly Committee of Ukraine (AMCU)	1
State regulators – other	8



Actions of the Ministry of Justice	9
Executive Service	6
State Registration Department	3
Actions of local government authorities	7
Allocation of land plots	3
Rules and permits	1
Local self-government authorities – other	3
Legislation drafts/amendments	5
Deficiencies in regulatory framework state regulators	3
Deficiencies in regulatory framework tax	1
Deficiencies in regulatory framework customs	1
Actions of state companies	4
State companies investment/commercial disputes	1
State companies abuse of authority	1
State companies other	2
Other court actions	3
Permits and licenses – export/import	1
Other issues	23
Verkhovna Rada, Cabinet of Ministers, President of Ukraine	6
Ministry of Defense of Ukraine	4
Ministry of Economy of Ukraine	2
Ministry of Communities and Territories Development of Ukraine	1
State Tax Service	1
State funds	1
Other	8

Tax issues

Tax issues make up the majority of business complaints to the Council – in the reporting quarter, their number once again amounted to almost 70% of all appeals to the institution (241 out of 368). For comparison, in the Q1 2023, we considered 230 out of 328 tax-related complaints.

Well-known issues related to SMKOR operation, such as systemic VAT invoice suspension, inclusion in “risky” taxpayers’ lists and non-enforcement of court decisions on tax invoices registration, have remained relevant for companies. We outlined problems in the VAT system in our [own initiative investigation](#), the results of which were presented by BOC in March 2023. Considering that the Council’s individual recommendations were partially taken into account, which we talk about on [p.18-19](#) of the quarterly report, one can see a gradual decrease in the number of complaints on VAT invoice suspension (from 34% in Q1 2023 to 21% in Q2 2023).

Despite the fact that, according to the Council’s statistics, non-enforcement of court decisions among all categories remains the main subject of most tax-related complaints, they show a

downward trend. Instead of hundreds of complaints every quarter on this subject before the full-scale war, now (in the first half of 2023) the number of appeals on non-compliance with court decisions on tax invoices registration fluctuates around 57 complaints per quarter.

A separate category of appeals has to do with business dissatisfaction with tax audits findings. Given a partial resumption of inspections since the end of summer, we can expect an increase in the number of appeals from companies on this issue.

Finally, we should mention business tax problems from occupied/de-occupied territories. Under the Council’s investigation during the reporting quarter, there were several cases related to the problem of possibility or impossibility of a taxpayer’s timely fulfillment of his/her tax obligations. In particular, we considered companies’ complaints regarding impossibility of taking advantage of tax benefits due to the lack of an approved list of territories where hostilities were (are) conducted. Since May 2023, a long-awaited law settling the list issue has entered into force.

Actions of law enforcement bodies

For the second quarter in a row, law enforcement bodies violations are gaining momentum for BOC complainants. The number of such appeals amounted to 9% in the reporting quarter, while 10% of complaints in this regard were received in Q1 2023. During April-June, entrepreneurs most often complained about procedural abuses and inactivity of the National Police and the Prosecutor’s Office.

Business approached the Council as regards non-return by law enforcement bodies of temporarily seized property or funds as a result of searches. Alongside this, there were also complaints regarding unreasonably launched criminal proceedings used by law enforcement officers as a tool of pressure on businesses, as well as law enforcement bodies’ actions ineffectiveness in cases where business is the injured party.

Customs issues

Customs issues addressed by companies to the Council during April-June reached 6% (21 complaints) in the general structure of appeals. Although last quarter the number of complaints about abuses at the customs made up 8% (25 complaints), it can be stated that customs issues retain their importance for business and confidently occupy the third place in the rating of TOP subjects of complaints to BOC. For comparison, in pre-war time, the complaints' share about the customs authority fluctuated at the level of 3-4%.

The most pressing issues for businesses in this area are related to customs valuation,

as well as delay or refusal during customs clearance. It is noteworthy that, on the whole, the number of decisions on customs value adjustment, according to the State Customs Service data, which it shared with the Council in Q1 2023, increased by 5566, almost reaching the pre-war level (5683 decisions in the first quarter of 2021). As our expertise shows, companies face a unilateral adjustment of the customs value of goods allegedly due to discrepancies in the documents. In such cases often one can't do without an administrative appeal and the BOC mediation in helping business prove their case and confirm a product's declared price.

Actions of state regulators

In the reporting quarter, 4% of complaints to BOC related to actions of state regulators. It was about complaints against the NEURC (the National Energy and Utilities Regulatory Commission). However, we rejected the complaints received against the NEURC in the reporting quarter due to absence of violation elements in those cases.

Individual complaints, one of which is under investigation, referred to the delay in returning budget VAT refund amounts, when entrepreneurs had trouble with the State Treasury Service when returning funds to their accounts.

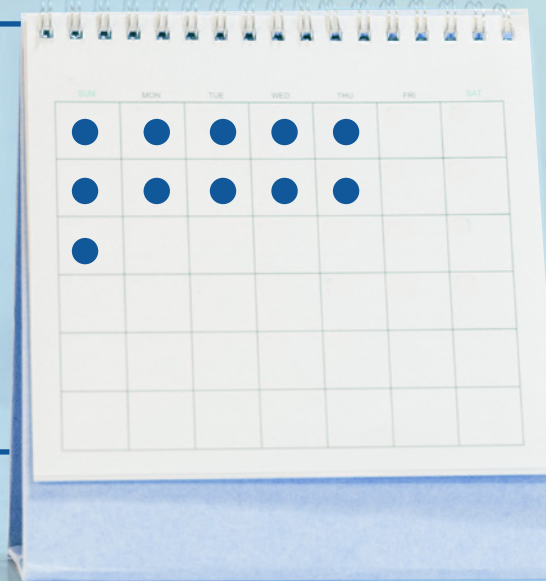
Actions of the Ministry of Justice

The Council received only 9 complaints about actions of the Ministry of Justice, which was only 2% of the total number of complaints. 6 of them concerned actions of the State Executive Service Department, and 3 – State Registration Department.

1.3 Timelines of the preliminary review of complaints

In Q2 2023, the preliminary review of complaints on average last

11 working days.



Our Rules of Procedure recommend to review complaints during 10 working days. However, in view of the wartime to conduct a comprehensive analysis and impartially assess the legitimacy of a complainant's actions, in some particular cases the timeline for complaints review can be extended.

1.4 Number of investigations conducted and grounds for dismissing complaints

In Q2 2023, BOC conducted 155 investigations out of 361 complaints that amounts to a half of all complaints received. 64 complaints remained at the preliminary assessment stage. The Council rejected 144 appeals as not fitting the Council's eligibility criteria foreseen by the institution's Rules of Procedure.



1.5 Main reasons for complaints dismissal in Q2 2023

Complaints outside Business Ombudsman's competence	83
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	12
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	12
Other circumstances where the Business Ombudsman, in his sole and absolute discretion, determines that an investigation of the complaint is not necessary	12
In the opinion of the Business Ombudsman, the Complaint has no substance	10
Complaints arising in the context of private-to-private business relations	5
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	2
The complaint was withdrawn	2
The party affected by the alleged business malpractice has not exhausted at least one instance of an administrative appeal process available under the current legislation	2
A complaint relates to an issue that has already been addressed by the Business Ombudsman	2
Any appeals that do not contain malpractice related complaints are not considered complaints and not a subject of the Business Ombudsman's consideration	2

1.6 Timelines of conducting investigations

Average duration of investigations was

70 days

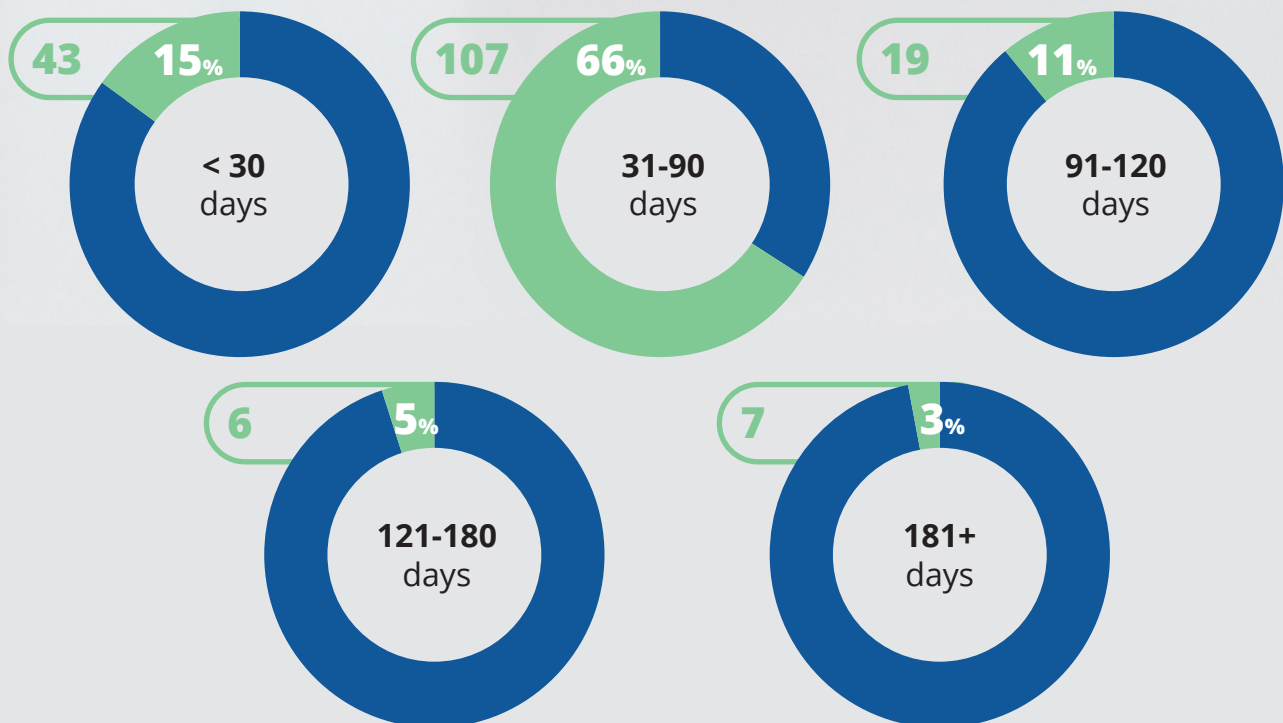
which is

20 days

less than a standard envisaged by the BOC Rules of Procedure.

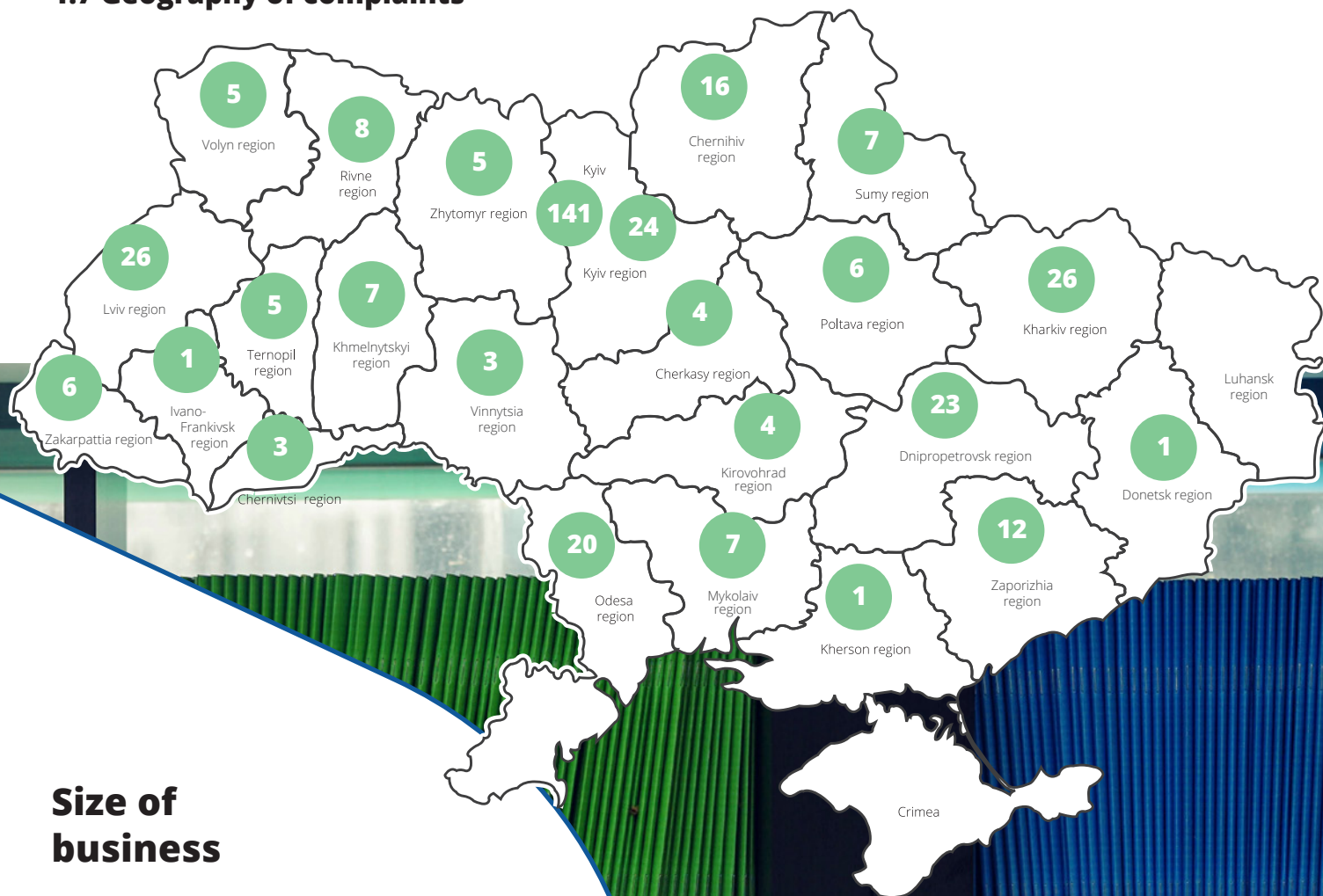


Ratio of closed cases by days:



Two thirds of all completed investigations in Q2 2023 we investigated within 90 days implementing the norm of the BOC Rules of Procedure.

1.7 Geography of complaints



Size of business

67% Small and medium-sized

33% Large

Traditionally, small and medium-sized business amount to the largest share of complainants to the Business Ombudsman Council – 67%. The share of large companies which turned to the Council in Q2 2023 was 33%.

Origin of capital

88% Ukrainian companies

12% Foreign companies

In the reporting quarter, the Council received 88% of complaints from Ukrainian business. The share of foreign business amounted to 12%.

1.8 Government agencies subject to the most complaints

State Tax Service	243
State Customs Service	22
Prosecutor's Office	16
National Police	11
Ministry of Justice	10
Verkhovna Rada, Cabinet of Ministers and President of Ukraine	8
Local government authorities	7
Ministry of Economy	5
State enterprises	4
Other	8

Given that in Q2 2023 the prevailing number of complaints to the Business Ombudsman Council was mostly tax-related, it was the State Tax Service that ranked first in the list of state bodies businesses complained most about (243 complaints). After the STS the ranking is followed by law enforcement agencies – the Prosecutor's Office and the National Police – 16 and 11 complaints respectively. Actions of the Ministry of Justice were challenged in 10 appeals.



I would like to sincerely thank the Business Ombudsman Council for their incredible work and resolution of a very difficult tax issue of our company. Your effective work and ability to achieve results are important for all the entrepreneurs in the Ukrainian business environment. Your team not only showed a deep understanding of our situation, but also professionalism, patience and great dedication to their work. Your advice and recommendations helped us understand complexity of the situation and find optimal ways to resolve the problem."

Vash Pereviznyk LLC

1.9 Implementation of individual recommendations by state bodies

	Recommendations under monitoring	Recommendations implemented by state bodies	Number of recommendations issued to state bodies
	from May 2015 till Q2 2023	from May 2015 till Q2 2023	from May 2015 till Q2 2023
State Tax Service, Tax Police, State Customs Service	12	3400	3632
National Police of Ukraine	5	216	265
Prosecutor's Office of Ukraine	2	147	181
Ministry of Justice	1	132	142
Local government authorities	3	116	157
Ministry of Economic Development and Trade of Ukraine	1	76	86
Security Service of Ukraine	0	62	65
Ministry of Ecology and Natural Resources of Ukraine	0	50	52
Ministry of Agrarian Policy and Food of Ukraine	0	40	45
State Enterprises	0	38	41
Ministry for Communities and Territories Development of Ukraine	1	37	40
Parliament, the Cabinet of Ministers, the President of Ukraine	0	30	36
Ministry of Infrastructure of Ukraine	1	25	31
Ministry of Finance of Ukraine	1	23	30
State Service of Ukraine on Food Safety and Consumer Protection	1	16	18
Ministry of Health of Ukraine	0	14	17
Ministry of Internal Affairs	1	11	15
National Commission for State Regulation of Energy and Public Utilities	0	12	13
Ministry of Social Policy and Labour of Ukraine	0	12	13
Other	0	11	11

	Recommendations under monitoring	Recommendations implemented by state bodies	Number of recommendations issued to state bodies
	from May 2015 till Q2 2023	from May 2015 till Q2 2023	from May 2015 till Q2 2023
Antimonopoly Committee of Ukraine	0	9	12
National Bureau of Investigation of Ukraine	0	9	10
Commercial and other courts	0	8	8
National Anti-Corruption Bureau of Ukraine (NABU)	1	4	7
State Emergency Service of Ukraine	0	4	4
State Funds	0	3	6
Ministry of Education and Science of Ukraine	0	3	3
National Bank of Ukraine	0	2	5
Communal Services of Ukraine	0	2	2
National Council of Ukraine on Television and Radio Broadcasting	0	1	1
Ministry of Defence of Ukraine	0	1	2
Ministry of Digital Transformation	0	1	1
State Border Guard Service of Ukraine	0	1	1
State Regulatory Service of Ukraine	0	1	2
Other	1	10	13

Since launch of BOC operations, state bodies implemented 91% of the Council's individual recommendations. We observe gradual qualitative changes in state governance and the readiness of state bodies to cooperate with BOC in solving controversial issues of entrepreneurs.

2

Problems in the VAT system: monitoring implementation of recommendations by state bodies based on our own initiative investigation results

Having presented its own initiative investigation results on problems with SMKOR functioning in early spring this year, the Business Ombudsman Council is keeping a close eye on their implementation progress. After all, business needed immediate steps towards fixing the system.

The Council continued a close dialogue with the State Tax Service and during the second quarter held a number of meetings with the representatives of the STS, the Ministry of Finance and the Verkhovna Rada regarding clarifying changes implementation mechanism.



In May 2023, the Business Ombudsman Roman Waschuk delivered a special report "Tax Invoices Suspension: Recommendations Implementation Status" and encouraged the STS and the Ministry of Finance to accelerate changes in the VAT system.

Long awaited [amendments to Decree No. 1165](#) were made by the Cabinet of Ministers in June 2023.

Thus, one of the Council's main recommendations regarding introduction of decisions appeal procedures concerning riskiness and tax data tables non-acceptance, which we have been promoting since 2019, was taken into consideration.

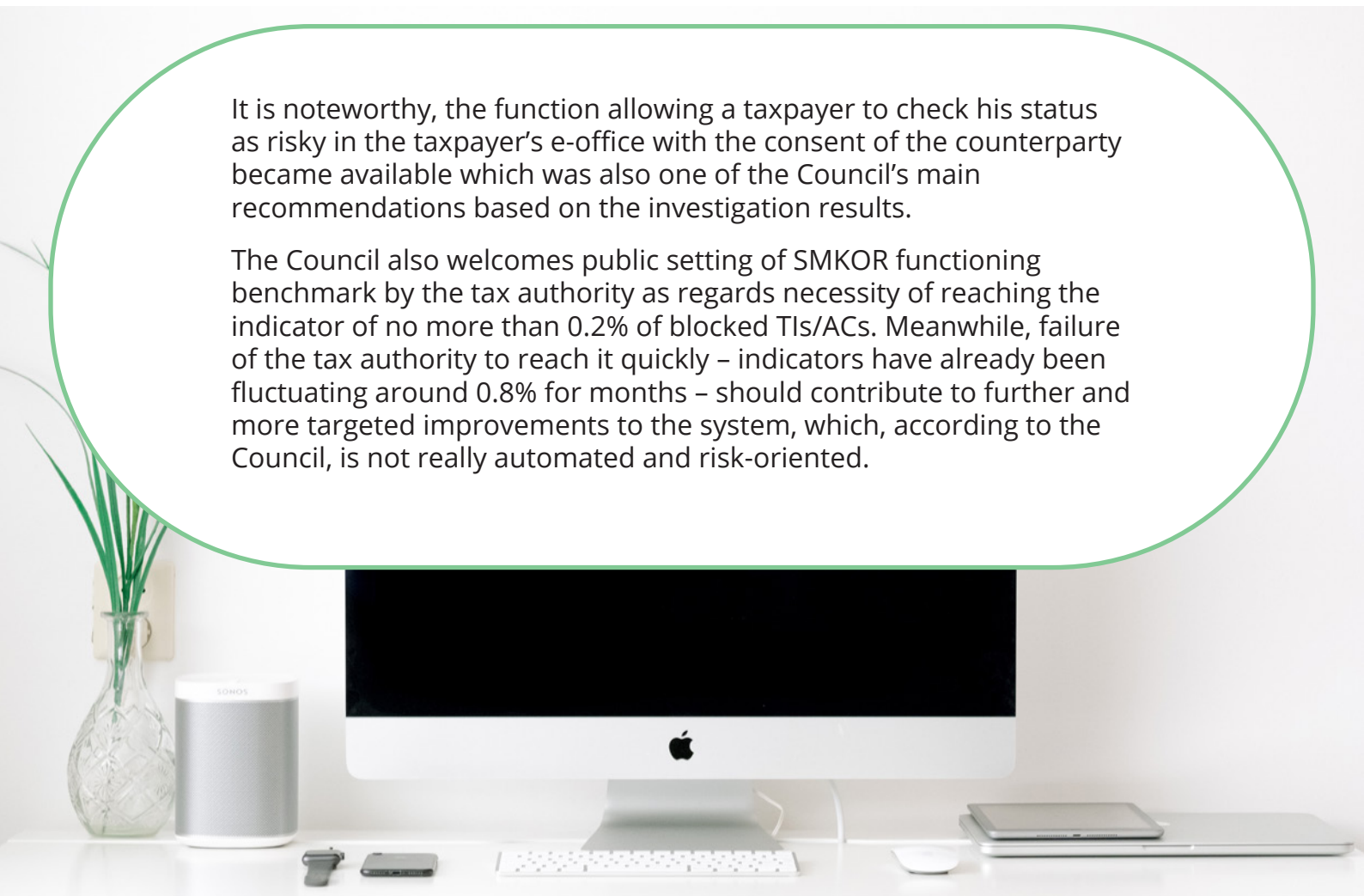
According to the new amendments to Decree No. 1165:

TIs/ACs are automatically registered provided a taxpayer is excluded from the "risky" list and the decision on VAT payer data tables acceptance is made.

An administrative appeal decisions mechanism of including a taxpayer in the "risky" list and data tables non-acceptance is defined.

It is noteworthy, the function allowing a taxpayer to check his status as risky in the taxpayer's e-office with the consent of the counterparty became available which was also one of the Council's main recommendations based on the investigation results.

The Council also welcomes public setting of SMKOR functioning benchmark by the tax authority as regards necessity of reaching the indicator of no more than 0.2% of blocked TIs/ACs. Meanwhile, failure of the tax authority to reach it quickly – indicators have already been fluctuating around 0.8% for months – should contribute to further and more targeted improvements to the system, which, according to the Council, is not really automated and risk-oriented.



3

BOC systemic wins in the second quarter

Tax benefits for business from temporarily occupied territories became available

With the beginning of the full-scale invasion of the Russian Federation into Ukraine, many Ukrainian entrepreneurs found themselves in the war zone or in temporary occupation. Exactly this business category could not for a long time use tax benefits introduced by the state with the amendments made to the Tax Code in the spring of 2022.

According to the amendments which became effective in March-April 2022, for the period of martial law and during some time after its completion, payers received the right of exemption from real estate and environmental taxes accrual.

For this purpose, the Government had to approve the territories list where hostilities are (were) conducted, as well as territories temporarily occupied by armed units of the Russian Federation (territories list). However, situation remained not fully settled during the year, as from the very beginning the Ministry of Reintegration of Temporarily Occupied Territories and not the Cabinet of Ministers of Ukraine was responsible for maintaining the list.

During this time, the Council was approached by a lot of entrepreneurs, particularly from Kharkiv, Kherson, Chernihiv, Kyiv Oblasts and the city of Kyiv itself - all of them could not take advantage of benefits offered by the state. In addition, in some cases based on tax audit findings, the tax office even charged penalties for real estate tax amounts understatement. The reason for it was no approved territories list.

BOC upheld their complainants' position and jointly with all the stakeholders started a dialogue with the Government of Ukraine in to speed up lawmakers movement towards the list adoption.

Starting from August 2022, the Council addressed written requests to the Prime Minister of Ukraine, the Ministry of Reintegration of Temporarily Occupied Territories, the Ministry of Defense and the Ministry of Finance, requesting to legislatively settle the issue. Besides, the Business Ombudsman met with First Deputy Prime Minister – Minister of Economy of Ukraine Yuliia Svyrydenko. During the meeting, among other things, he stressed the importance of the territories list approval. In parallel, the Council actively covered this issue in the media and at public events, trying to attract government officials and society attention to the problem. You can read about it in this [publication](#).

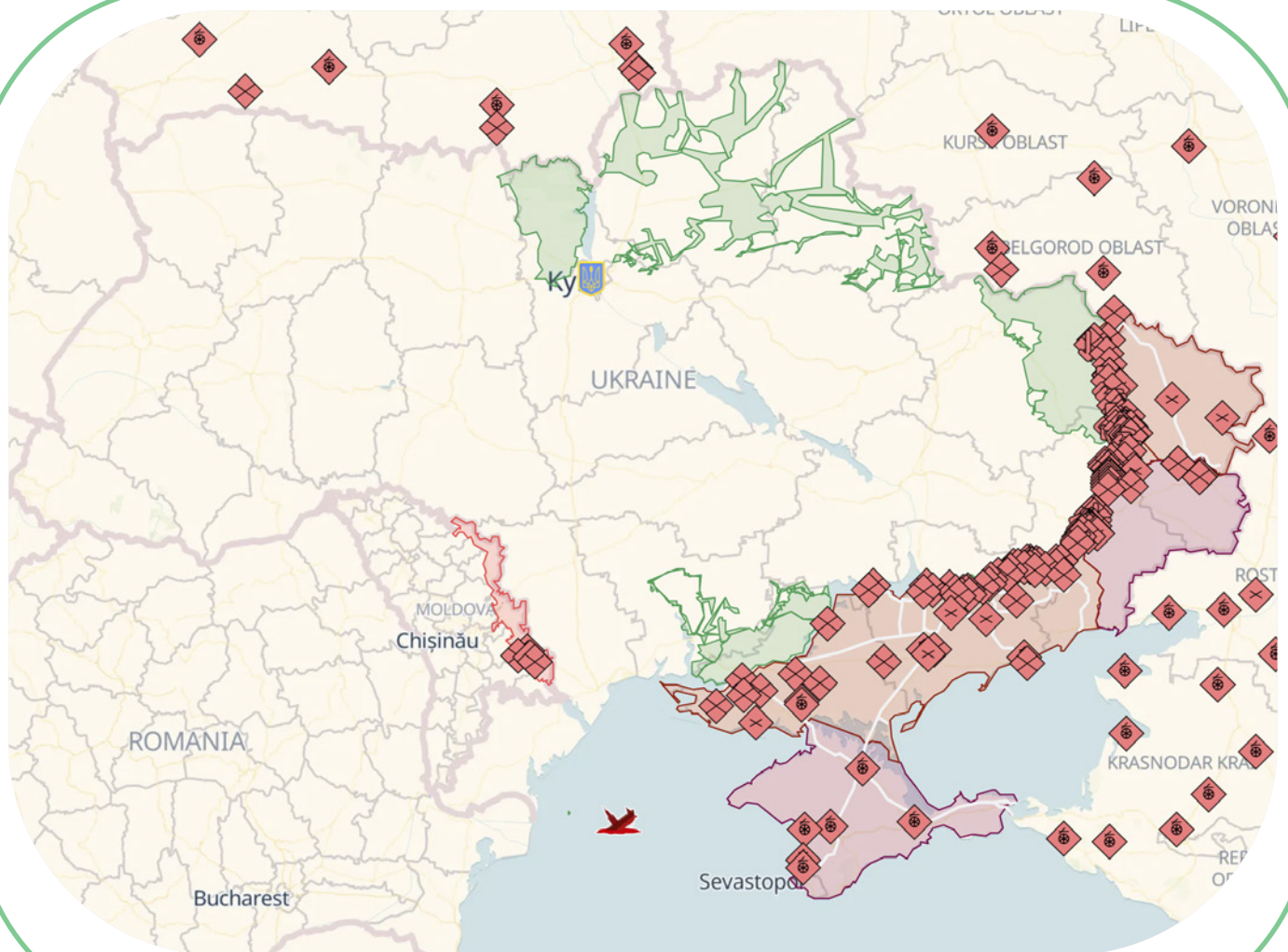
In December last year, the Government finally adopted the Decree No. 1364 defining the unified territories list formation mechanism and authorized the Ministry of Reintegration to maintain it. In late 2022 the Ministry of Reintegration approved the updated list. However, by April 2023, in its consultations the State Tax Service, with the support of the Ministry of Finance, continued refusing to acknowledge the opportunity of using the Ministry of Reintegration list for taxation purposes and, accordingly, nor did it give opportunities for such categories of payers to take advantage

of benefits for real estate located on affected territories. As a result, the number of inspections and charged penalties started growing rapidly. Formally, the Government had to form a respective list itself and not reassign this task to one of the ministries because it is exactly what the direct norm of the Tax Code says. These points were frequently discussed by the Council both in general and illustrated by certain cases at joint Expert Group meeting with the State Tax Service.

Finally, on April 11, 2023, the Verkhovna Rada adopted the Law No. 3050-IX officially enshrining the territories list is not directly defined by the Cabinet of Ministers but formed according to the

procedure established herein. It legalized actions taken by the Government back in December 2022 through entrusting the list formation to the Ministry of Reintegration including tax purposes. Apart from that, the Law retrospectively corrected tax benefits application conditions for 2021-2022, particularly by providing for the opportunity of revoking (cancelling) supervisory authorities' decisions on penalties already charged for payers.

Although it took a long time, concerted efforts of BOC and stakeholders involved contributed to a positive problem resolution on a nationwide scale and it is a good example of the Council's common mediation and dialogue with state bodies.



Online map of hostilities in Ukraine Deepstatemap.Live



Benefits for unmanned aerial vehicles manufacturers became available

In the reporting quarter, a Ukrainian drones producer turned to the Business Ombudsman Council. The company could not apply a preferential tax regime for parts of unmanned aerial vehicles (UAV) (without weapons) that upon import to the customs territory of Ukraine are classified by codes 8802 and 8803 according to UCG FEA.

The UAV manufacturer would be entitled to an exemption from VAT payment according to amendments made to the Tax Code of Ukraine in April 2022. However, according to the Law of Ukraine "On the Customs Tariff of Ukraine" that entered into force in November 2022, the State Customs Service approved by its order Transition tables from UCG FEA 2017 to UCG FEA 2022 version, in which codes 8803 do not exist. Accordingly, tariff headings under codes 8803 were transformed into codes 8807 and tax benefits were no longer covered by them. The company applied to the State Customs Service and the Ministry of Finance of Ukraine, however it did not get any response. Therefore, the drones manufacturer faced products cost increase by 20% and risk of non-fulfillment of the contract concluded with the Ministry of Defense of Ukraine.

Having taken up the complaint, the Business Ombudsman and the investigator in charge visited UAV production facilities in Kyiv and talked to the enterprise's CEO. In the course of the investigation BOC concluded that the problem arose due to active legislation asynchrony in the customs and tax spheres. The situation needed immediate settlement, since the state's duty, especially during an ongoing full-scale war against Russian aggressor was strengthening and support of the defense sector. The BOC investigator articulated the Council's position – to improve legislation and enable tax benefits for domestic drones producers – in a [special](#) publication in the media.

Ultimately, in May 2023, the Verkhovna Rada of Ukraine passed Draft Laws No. 9275 and 9276 envisaging exemption from VAT during martial law and import duties on components for UAVs production and repair. The company informed the Council that component parts had been successfully cleared by customs according to the simplified procedure with benefits application.

4

Examples of completed investigations

Agricompany registers tax invoices worth UAH 434k

An agricultural company from Odesa region recognized by a tax office as a risky taxpayer and suspended the company's invoices amounting to UAH 434k. The company successfully challenged the actions of tax officials in court, but the tax authority did not enforce the court's decision regarding registration of suspended invoices.

The Council appealed to the regional tax authority and submitted the company's case for consideration at the Expert Group with the STS of Ukraine asking to exclude the company from the risky taxpayers' list and to register tax invoices.

As a result, the tax office informed BOC that it excluded the agricultural company from risky taxpayers' list and registered its invoices.



Exporting is not the same as "smuggling"

Recently, a company engaged in wholesale trade of waste and metal scrap turned to the Business Ombudsman Council. It turned out that for unknown reasons Volyn Customs did not let the company's goods cross the border at first. The company exported ferrous metal scrap to Poland. When crossing the border, the customs officials refused to pass the goods, later referring to the instructions of the Anti-Smuggling Department of Volyn Customs and the State Bureau of Investigation (DBR). Trucks with goods remained in the paid customs control zone, the company was threatened with a fine for late delivery. The company was waiting for the DBR to inspect the goods and the company's trucks were in the respective area for over five days.

BOC immediately responded to the appeal and held negotiations with the Anti-Smuggling Department of Volyn Customs. The Council asked to speed up the inspection of trucks and to coordinate its duration with the DBR.

In the long run, the goods were inspected, and the customs and law enforcement bodies had no remarks at all. The company's trucks successfully crossed the Ukrainian-Polish border. The company confirmed that in the future, the customs clearance time of their vehicles got significantly reduced.



The STS drops company's fine worth UAH 1.2 mn

Having conducted an audit of an agricultural company with foreign investment, tax officials detected the complainant overestimated the budget VAT refund amount by over UAH 1.2 mn.

While investigating the case, BOC fully supported the company's position. During the joint complaint review with the STS of Ukraine, BOC investigator drew attention to the fact that the agricultural company had the right to declare the VAT amount for the budget refund. The fact of the company's purchase of corn was earlier confirmed by the tax authority itself. In particular, the logistics services for transporting corn abroad were also confirmed by respective documents. BOC also noted that minor deficiencies in filling out the documents should not create any tax consequences for the enterprise.

After the Council's intervention, the STS satisfied the company's complaint and cancelled TNDs totally amounting to UAH 1.2 mn.

The Ministry of Economy extends deadlines for goods delivery

A Turkish company engaged in the development of "green" energy in Ukraine ordered components for turbine generators from a German contractor necessary for a wind power plant construction in Lviv Oblast.

The company managed to pay and import part of the ordered equipment to Ukraine in 2021. It expected to deliver the rest of the equipment by May 2022. However, due to the full-scale invasion of the Russian Federation in Ukraine, the wind farm construction project was suspended, and the company decided to postpone the delivery of the remaining equipment.

In order to avoid imposition of a penalty for currency legislation violation, the company had to receive an opinion from the Ministry of Economy on extension of the deadline for goods payments. However, it is known that administrative services provision deadlines and permitting documents issuance during martial law, particularly consideration of applications for maximum payment deadlines extension, were suspended by the CMU Decree of December 28, 2022 No. 165.

Having unsuccessfully submitted all the necessary documents to obtain the opinion of the Ministry of Economy, the company turned to the Council. Thanks to effective communication of BOC with the Ministry of Economy, in March 2023, the company received a positive opinion from the Ministry of Economy on its application.

VAT and discounted goods: minus UAH 5 mn. of company's fine

An electrical goods distributor complained to the Business Ombudsman about Kyiv Tax Service. According to the tax audit findings, tax officers charged the company with tax liabilities amounting to almost UAH 5 mn.

According to the tax authority, the company understated the VAT amount and did not register tax invoices. It's all because the company allegedly sold the goods below the purchase price and did not accrue VAT on discounted goods.

The company denied the Tax Service's claims by noting violation of the inspection procedure. In particular, the company stressed it did not sell the cut-price goods, so they did not include VAT, and, at the same time, registering tax invoices was not required.

During the investigation, the Council's investigator participated in the discussion of the enterprise's administrative complaint together with tax officials and the company itself. In addition, the Business Ombudsman Council turned to the State Tax Service of Ukraine (STS of Ukraine) with a letter in which it upheld the complainant's position. BOC noted the Tax Code of Ukraine norms did not provide for the obligation of the payer to accrue tax liabilities in connection with goods devaluation, nor did they stipulate charging VAT on the discounted part of such goods value. Thanks to the Council's mediation in the case, the STS of Ukraine canceled the company's tax liabilities worth UAH 5 mn.

The documents are fine – the decision to adjust the customs value of goods cancelled

A foodstuffs distributor submitted several complaints to BOC about decisions of Odesa Customs. The fact is that during the company's import of food and technical salt from Turkey, Odesa Customs adjusted the customs value of these goods. Customs officials stated an incomplete list of documents as the reason, particularly, the lack of information on the cost of packaging, transportation from the factory to the port, cargo insurance, and also suspected the company of forging the customs declaration and the contract for goods transportation.

Having upheld the company's position BOC supported it in appealing the customs' decisions. BOC turned to the State Customs Service (SCS) and presented its own arguments.

Firstly, the company submitted all the necessary documents to the customs with information on the goods packaging price, transportation from the factory to the port, and cargo handling. Secondly, insuring goods was a right, not an obligation of the complainant, so the company chose not to insure the goods in this case. The rest of the discrepancies and inaccuracies in the documents mentioned by the customs, were unconfirmed in the course of considering complaints.

After BOC intervention, the State Customs Service of Ukraine canceled decisions to adjust the customs value of goods.

Audit of a French glass manufacturer: what is wrong?

It is not the first time that a large French glass manufacturer has turned to the Business Ombudsman Council. Back in 2021, BOC helped the company exclude it from the risky taxpayers' list. This time, the company disagreed with another tax audit findings. The tax authority allegedly established that the company had overestimated the VAT negative value amount included in the tax credit of the next reporting period by UAH 2 mn , as well as the budget compensation amounting to UAH 313k. Thus, according to the STS, the company did not utilise energy resources (gas and electricity) used in the glass mass production (with simultaneous reflection of cullet formation and use) in its business activity.

The Council upheld the company's position during the joint review of the complaint with the STS of Ukraine. The Council emphasized that the tax office did not provide a proper assessment of the economic operations of the company's placing in property the cullet obtained in the course of production. The company confirmed that as a result of production, in addition to finished products, it received return waste (its own cullet), which was written off, but subsequently brought on charge and further remelted for finished products manufacturing. That is why it should be considered that the company used energy resources in its economic activity. The very next day after considering the complaint, the STS of Ukraine canceled tax notifications-decisions.

A company receives a license from Mineconomy for goods import

A distributor of imported spare parts for refrigeration equipment complained to the Business Ombudsman Council that it could not obtain a license from the Ministry of Economy to import goods containing controlled substances (in this case, ozone-depleting substances and/or fluorinated greenhouse gases). The company submitted an application to the Ministry of Economy through the electronic services Portal, having enclosed all the necessary documents. However, despite the positive experience of obtaining a similar license within a few weeks last year, this time the process of issuing the document was delayed for two months.

The Ministry of Economy explained that the delay was due to the CMU Decree dated February 28, 2022, No. 165 in effect which suspended the deadlines for administrative services provision.

After processing the company's complaint, BOC sent a letter to the Ministry of Economy. The Council emphasized that despite the formal suspension of deadlines for providing administrative services, the service of issuing the license to the company must be provided within a reasonable period of time. Moreover, it was known that last year, despite the effect of the same Decree, the company received licenses within 2-4 weeks.

Immediately after BOC intervention, the Ministry of Economy informed of the license issuance that was later confirmed by the complainant.



The company confirms the customs value of imported tableware

Back in December 2021, the Council was approached by a Ukrainian company importing various types of tableware from Bulgaria, manufactured by the parent company, i.e. an affiliated company.

The point was, the customs office repeatedly resorted to adjusting the customs value of imported tableware, increasing its value almost twice, and that was becoming systematic. The company stated Ukrainian and Bulgarian companies affiliation did not affect the customs value, while the customs, in turn, pointed out to discrepancies in the documents related to goods transportation.

When processing the complaint, the Business Ombudsman Council organized a tripartite meeting with the local customs and the importer.

Meanwhile, the local customs made a request through the State Customs Service of Ukraine to the National Customs Agency of the Republic of Bulgaria to check information on possible discrepancies.

The BOC also brought up the complaint for consideration of the joint Expert Group with the State Customs Service of Ukraine.

Later, thanks to the EU Public Finance Management Support Program for Ukraine (EU4PFM) one could find out details of the reply letter from the Bulgarian customs agency, which for unknown reasons, had never been received by the Ukrainian recipient since September 2022.

Moreover, with the support of the Embassy of Ukraine in the Republic of Bulgaria managed to confirm authenticity of documents from the exporter and absence of any discrepancies.

Then the State Customs Service of Ukraine satisfied the importer's complaints and since the beginning of May 2023, systematic adjustment of the customs value had stopped.

As a result, the business managed to save over UAH 1 mn, having ensured importing and sales of about ten batches of tableware in Ukraine.

5

The role of BOC in the post-war reconstruction of Ukraine



Ukraine Recovery Conference in London

This year the Business Ombudsman Council took part in the Ukraine Recovery Conference (URC) in London.

For the second time since the beginning of the full-scale invasion of the Russian Federation in Ukraine, a large conference URC2023 has been held and become an international platform for discussing various aspects of the reconstruction of Ukraine with a focus on attracting business and private capital during martial law, creating conditions for

encouraging investments and economic transformation.

In the United Kingdom, world leaders have clearly demonstrated their intention not only to continue supporting Ukraine until victory in the war, but also in the process of the post-war recovery. The need to ensure the rule of law, transparency and continuation of anti-corruption reforms has become a key demand of politicians, public organizations and businesses to the Government of Ukraine.

During this year's conference, the leadership team of the Business Ombudsman Council conducted working meetings with international partners, representatives of Ukrainian and international business, as well as joined discussions and events that took place in parallel with the political part of the conference. Together with the Council's Supervisory Board we were pleased that the BOC's special role in protecting business rights and its contribution to anti-corruption activities was mentioned at one of the high-level events organized by the EBRD concluding the conference.



In his numerous comments on the sidelines of URC2023 for the press and partners, the Business Ombudsman Roman Waschuk emphasized:

"BOC will help everyone who will participate in the post-war recovery process, and business can fully count on the Council's support in settling possible disputes with the state. The Business Ombudsman, in particular, highlighted that foreign investments, should become the foundation for successful development. Therefore, compliance with the principles of the rule of law, transparency in reconstruction processes, as well as state support for business should become the basis for attracting both foreign and Ukrainian investors."



For its part, BOC accumulates efforts and develops cooperation with all stakeholders involved in reconstruction in order to provide a strong support for business that is actively operating, despite the ongoing war.



Cooperation with the Restoration Agency

An important element of the Business Ombudsman Council's operations in the process of Ukraine's recovery is cooperation with the State Agency for Restoration and Infrastructure Development of Ukraine (Restoration Agency).

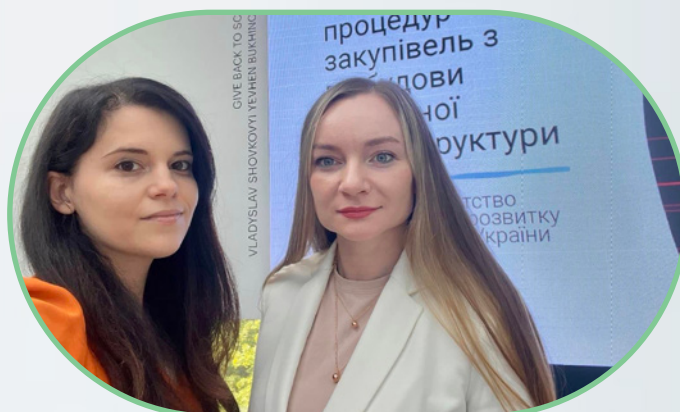
Consolidation of efforts with partners directly involved in the reconstruction will allow to provide maximum support to the private sector in the post-war reconstruction of the country.

In Q2 2023, the Council joined activities carried out by the Restoration Agency within the framework of the Memorandum of Cooperation concluded earlier this year.

The BOC investigators helped the Restoration Agency in drafting tender documentation for the procurement of civil engineering works for the implementation of the first major reconstruction infrastructure projects.

The Council also directly joined the organization of market consultations regarding procurement of works in civil construction. At the event, the investigators presented BOC and its mission in protecting business rights and outlined cases in which entrepreneurs should turn to the Council for help.

Therefore, the Council will act as a defender of the rights of reconstruction participants. Such interaction will ensure transparent conditions for the implementation of restoration projects according to the legislation and increase the level of trust and attract more investors to Ukraine.



6

Cooperation with stakeholders

6.1 Meeting of the President of Ukraine with Business

The Business Ombudsman Roman Waschuk participated in the first meeting of the President of Ukraine with the leaders of Ukrainian business since the full-scale invasion. During the meeting, representatives of the non-oligarchic business conveyed the importance of issues BOC also underlines: unpredictable administration of taxes, pressure of law

enforcement bodies, lack of coordination in the state's policy towards business. The President reacted with creating a coordinated platform for communication with business regarding problems with law-enforcement, the State Tax Service and customs. The Business Ombudsman was invited to join the new organization.

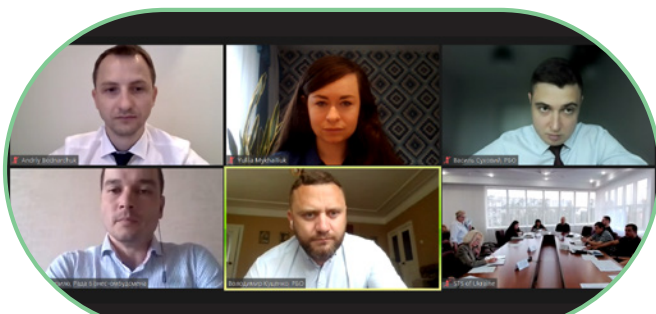


"The state has the correct officially defined goals - service approach, determined clear parameters, presumption of correctness of the tax payer in the event of a conflict of rules — however, at the same time, there are informal KPIs that state bodies try to achieve or exceed collection plans at all costs. Signals from top verticles are needed that declared not informal objectives should be recognized and rewarded. "Squeezing" resources from business by fiscal and law enforcement agencies should not be a natural state of things", – thinks the Business Ombudsman Roman Waschuk.

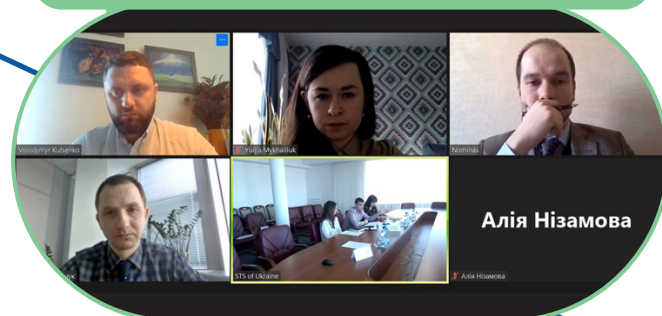
6.2 Expert groups meetings with state bodies

	Number of meetings	Number of considered cases
State Tax Service	3	114
The Main Department of the STS in Kyiv city	4	44
The Main Department of the STS in Kyiv region	3	12
Prosecutor General's Office	2	24
State Customs Service	1	3

Expert Group with Prosecutor General's Office



Expert Group with the STS of Ukraine

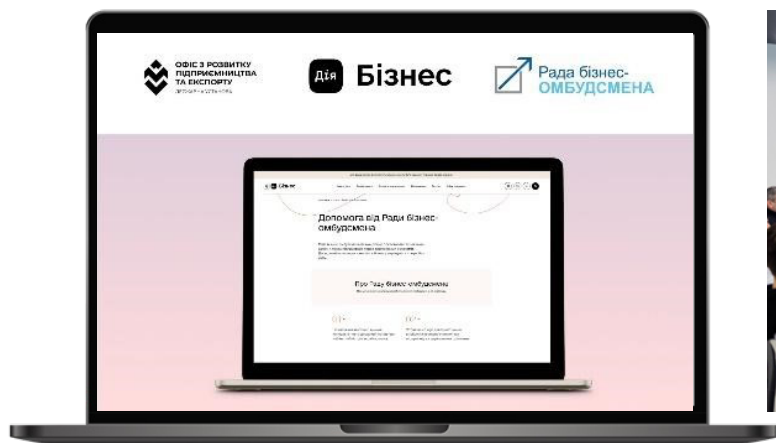


Expert Group with the MD STS in Kyiv City

In Q2 2023, BOC deepened cooperation with state bodies at the regional level. The Council's investigators regularly communicate with the STS of Ukraine regional offices representatives through communication platforms to speed up the resolution of business complaints. In the reporting quarter, BOC held working meetings with the MD STS in **Zaporizhia, Kharkiv, Poltava, Chernihiv, Volyn, Lviv, and Odesa regions.**



6.3 Cooperation of BOC and Diia.Business national project



The Business Ombudsman Council actively develops cooperation and establishes contacts with partners related to business in Ukraine supporting the development of the private sector and contributing to improvement of the business climate.

The Council maintains close collaboration with the Entrepreneurship and Export Promotion Office and the Diia.Business national project. Having a successful experience of presenting the Business Ombudsman Council at the event in the regional Diia.Business support center in Lutsk in April this year, we plan to extend our trips to the regions to communicate with entrepreneurs.

In particular, BOC has agreed with the Entrepreneurship and Export Promotion Office and the Diia.Business national project on holding a joint series of webinars in the fall. At the events, the Council's investigators will present the role of BOC in relations of business vis-a-vis the state and remind Ukrainian entrepreneurs of its free services.

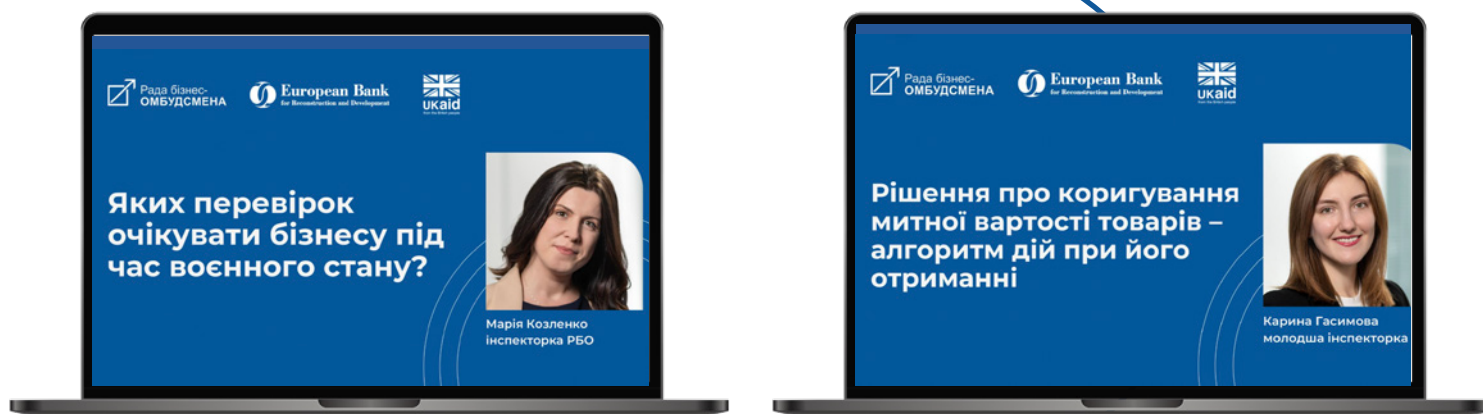
It is worth reminding that BOC is presented on the official Diia.Business web portal, which testifies to positive results of our work and will inform about our future projects.



We sincerely thank the Business Ombudsman Council for prompt and high-quality work, as well as quick response. Currently, you are the only institution with which it is possible to resolve the issue, particularly with the STS, out of court."

UK Lex Assistance LLC

6.4 EBRD communication platform for small and medium-sized businesses



In April-July 2023, the Business Ombudsman Council contributed to filling the EBRD information platform "Business Guide for SMEs" and notified representatives of small and medium-sized businesses about urgent issues of doing business.

"Business Guide for SMEs" is an EBRD initiative created to help businesses in Ukraine. The platform was launched in 2021, but after the full-scale invasion of Ukraine by the Russian Federation, the

project became an important source of information for entrepreneurs doing business under martial law. The initiative aims to help citizens better navigate the legislation and inform about the nuances of doing business during wartime.

The Business Ombudsman Council is committed to support businesses, so we use the platform to share useful advice with entrepreneurs, particularly newly-created companies. In Q2 2023, two such materials were published.



I'm grateful to the Business Ombudsman Council for the professional approach and individual support during the appeal of the tax notification-decision (TND) in the STS of Ukraine.

Thanks to your experience, detailed study of arguments and coordinated cooperation, the tax authority canceled the TND with monetary demands to the company worth almost UAH 1.7 mn."

A company engaged in real estate industry

6.5 Events calendar

03/04/2023

Nomination Committee Meeting
Ministry of Economy of Ukraine

14/04/2023

US-Ukraine Partnership Forum
American Chamber of Commerce

20/04/2023

Factoring Forum in Ukraine-2023
Ukrainian Alliance for Trade Finance and Factoring (UATFF)

21/04/2023

НАУКОВЕ ТОВАРИСТВО ІМ. ШЕВЧЕНКА В КАНАДІ
SHEVCHENKO SCIENTIFIC SOCIETY OF CANADA
SOCIÉTÉ SCIENTIFIQUE SEVČENKO DU CANADA

**БІЗНЕС І ВЕРХОВЕНСТВО ПРАВА
У ВОЮЮЧІЙ УКРАЇНІ**

П'ЯТНИЦЯ,
21 КВІТНЯ, 2023
7:30 ВЕЧ.

OLD MILL TORONTO
WESTMINSTER ROOM
21 OLD MILL ROAD

ДОПОВІДАЧ
РОМАН ВАЩУК
БІЗНЕС-ОМБУДСМЕН УКРАЇНИ
КАНАДСЬКИЙ ДИПЛОМАТ, ІСТОРИК,
ПОСОЛ КАНАДИ В УКРАЇНІ 2014-19

PARKING PERMIT: WWW.NTSH.CA

СПОНСОР ВЕЧОРА:
BCU Foundation

Roman Waschuk's report "Business and the Rule of Law in Warring Ukraine" at the Shevchenko Scientific Society in Toronto, Canada
Scientific Society named after Shevchenko in Toronto, Canada

25/04/2023

The first Ukrainian-Scandinavian Forum of entrepreneurs
Chamber of Commerce and Industry of Ukraine

25/04/2023

Fireside Chat
Post-War Ukraine: Security, Reconstruction, Recovery and New Order

SPECIAL GUEST

Roman Waschuk
Business Ombudsman of Ukraine

Zenon Potichny
President, Canada-Ukraine Chamber of Commerce

Tuesday, April 25th, 2023
KUMF Gallery, 145 Evans Ave., Toronto, ON

6:30 PM - Fireside Chat
7:30 PM - Networking Reception

CANADA-UKRAINE
CHAMBER OF COMMERCE

A conversation with the President of the Canada-Ukraine Chamber of Commerce "Security, Reconstruction, Restoration and New Order in Postwar Ukraine"
Canada-Ukraine Chamber of Commerce

27/04/2023

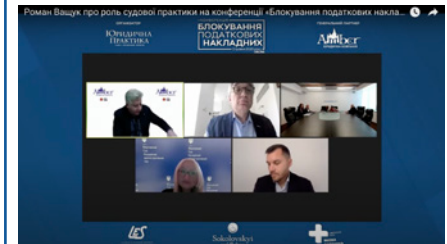
SUP DAY FORUM 2023: STAY RESILIENT
27 квітня 2023

НОВА П... НОВА ПОШТА

OLX ENOHIP Creatio

SUP DAY FORUM 2023: STAY RESILIENT
Ukrainian League of Industrialists and Entrepreneurs (ULIE)

03/05/2023



Conference "Tax Invoices Suspension"
Yurydychna Praktyka Publishing House

04/05/2023

Meeting with Semen Kryvonos, the Head of NABU
National Anti-Corruption Bureau (NABU)

04/05/2023

Meeting with Mustafa Nayyem, the Head of the Restoration Agency
Restoration Agency

05/05/2023

Meeting with the State Secretary of the Cabinet of Ministers Oleksandr Yarema
Cabinet of Ministers of Ukraine

11/05/2023



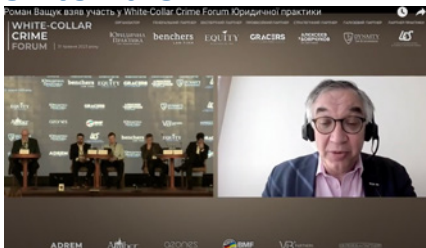
Annual General Meeting of UNIC Members: "Integrity-Based Recovery: a Path to a New Ukraine"
Ukrainian Network of Integrity and Compliance (UNIC)

22-23/05/2023



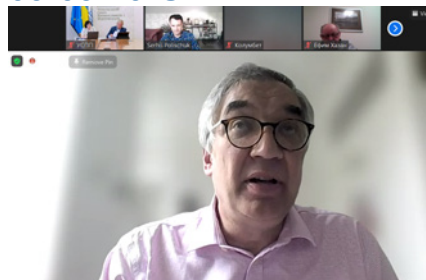
Expert meetings on government incentives and assessments for promoting corporate anti-corruption compliance in Paris
Organisation of Economic Cooperation and Development (OECD)

31/05/2023



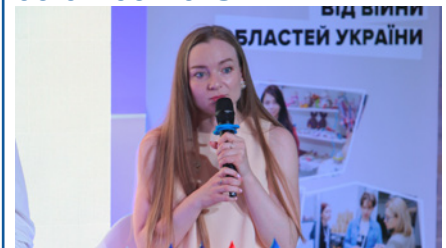
White-collar Crime Forum
**Yurydychna Praktyka
 Publishing House**

06/06/2023



Round table "Building Trust – Rebuilding the Country"
Ukrainian NGO "Association of Taxpayers of Ukraine" (NGO APPU), Ukrainian League of Industrialists and Entrepreneurs (ULIE) and Ukrainian NGO "Federation of Professional Accountants and Auditors of Ukraine" (NGO FPAAU)

06-07/06/2023



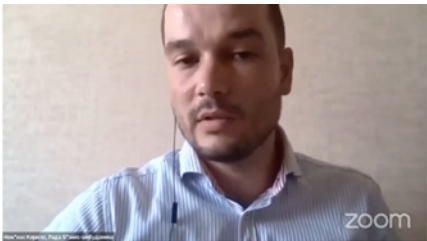
Fair "East-Expo 2023"
United Nations Development Program (UNDP) in Ukraine

07/06/2023



United Nations
Development Program
(UNDP) in Ukraine
**Ukrainian Business
Council (URB) and the
National Business
Coalition**

13/06/2023



Round table "VAT and Excise
Duties: How to Harmonize
Taxes with the EU Without
Harming Ukrainian
Business"
**Center for Economic
Strategy**

15/06/2023

Panel discussion
"Empowering Ukrainian
Refugees to Build a Future"
EBRD

15/06/2023

Meeting with Nadia Petkova,
Director of SME Finance &
Development at the EBRD
EBRD

15/06/2023

Open dialogue "From
Lugano to London: Vision
of Honest Business for the
Reconstruction of Ukraine"
**Ukrainian Network of
Integrity and Compliance
(UNIC)**

29/06/2023

Forbes Business Forum
Forbes Ukraine

30/06/2023



Business Protection Forum
**Association of Advocates
of Ukraine**

30/06/2023



Conference "5 Years
of Small Privatization:
From the First Auction
to 14 Billion Hryvnias in
budgets"
Prozorro. Sales



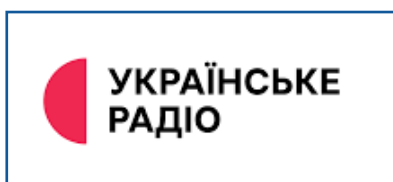
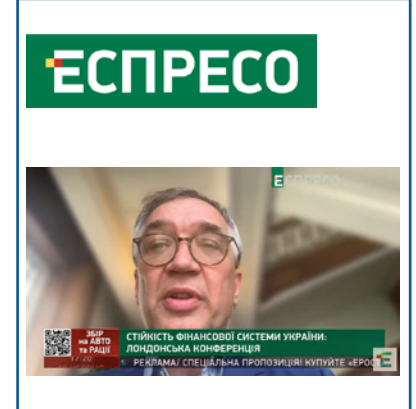
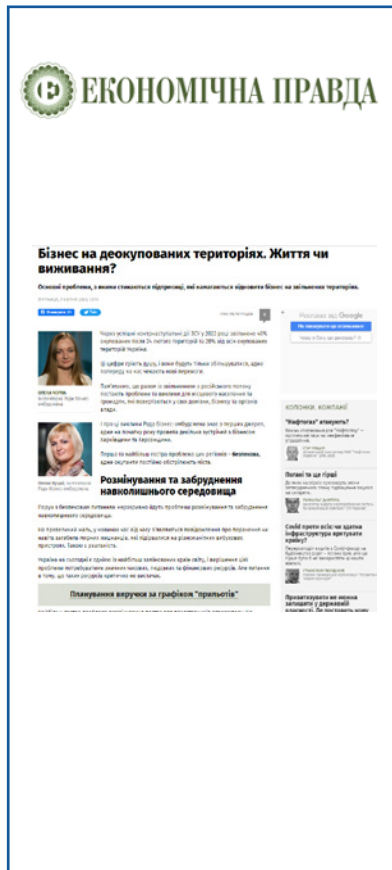
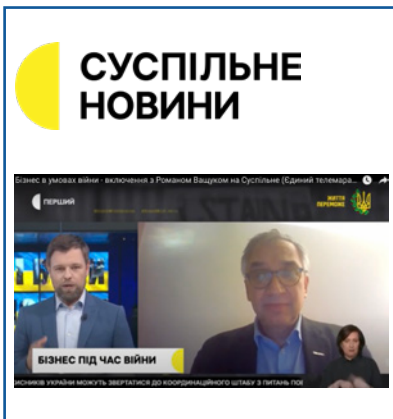
It was difficult, long, yet with tremendous support we went the distance of excluding our company from the "risky" category together, that we couldn't do on our own – without your help. We would like to thank the Business Ombudsman Council and everyone who took an invisible part in the common cause. Your assistance and, above all, its results – they inspire and give hope that Ukraine can be changed, set free and saved from outdated "soviet-based" management methods, namely tax administration.

CEMTO PE

6.6 Cooperation with the media

The Business Ombudsman Council actively cooperates with the media. The Business Ombudsman and his team give interviews, comments and write publications to draw public attention to activities of the institution and problems of entrepreneurs that it helps to solve. BOC shares its own view of the situation, assesses the business climate and current events in the country's economic life.

In the reporting quarter, we cooperated with both Ukrainian and international media.

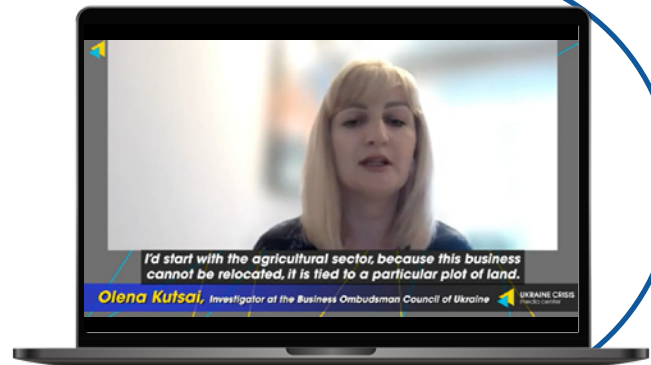


Ukraine in Flames



"Ukraine in Flames" project of the Ukrainian Crisis Media Center

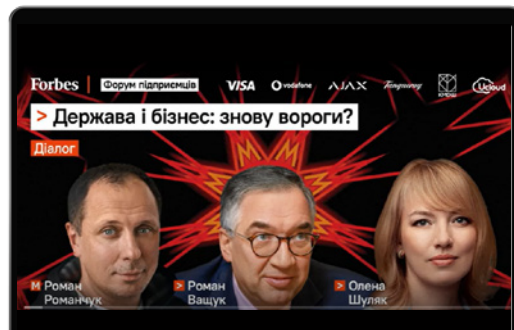
The Business Ombudsman Council participated in the preparation of episode #450 on survival of Ukrainian business during the war.



Cooperation with Forbes Ukraine

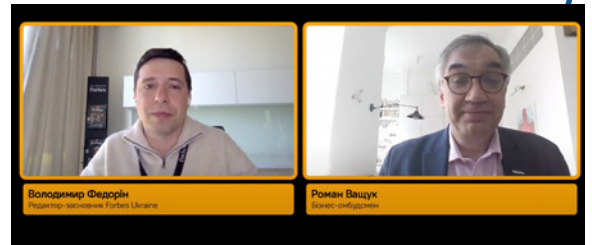
Forbes Business Forum

Forbes
UKRAINE



Forbes Business Breakfast

The interview with the Business Ombudsman got over 52k of views among the business audience.



Telegram chat works at the Business Ombudsman Council contact number +380 99 237 37 37.

We answer in the chat on weekdays from 9:00 a.m. to 6:00 p.m.



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