



Business  
**OMBUDSMAN**  
Council

# ANNUAL REPORT

**2020**

# THE BOC IS FUNDED



through the Multi-donor Account for Ukraine set up at the European Bank for Reconstruction and Development (EBRD) in 2014.

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

# BUSINESS OMBUDSMAN'S FOREWORD

Dear friends, colleagues and partners,

I am pleased to present to you the results of the Business Ombudsman Council's operations in 2020.

In 2020, due to COVID-19 many companies conducting business in Ukraine had to slow down, reduce, and sometimes close their business. Against the background of old problems of



Marcin Świąćicki,

Business Ombudsman

*Marcin Świąćicki*

entrepreneurs, new ones related to the pandemic appeared. In 2020, we received 1737 complaints, closed 1159 cases and helped businesses to save and return UAH 843 mn. During 2020, the number of complaints in almost all quarters was higher than in the pre-coronavirus 2019. The growth was especially high in Q1 2020: +13% compared to the same period of 2019.

Along with that, the portrait of BOC complainants remained similar to previous years: 74% of complaints came from SMEs, 26% — from large companies. The vast majority of applicants (87%) were domestic enterprises and only 13% — with foreign investment. Among TOP-5 regions by the number of appeals were the city of Kyiv (40% of complaints), Kharkiv (8%), Dnipro (8%), Kyiv (7%) and Odesa (6%) regions.

As usual, the block of tax appeals remains the most common in our portfolio, but the internal structure of the block has changed. In March 2020, the Government introduced a moratorium on most tax inspections. Hence, we received 146 fewer complaints on tax audits (224) in comparison with 2019. Meanwhile, the number of complaints about tax invoice suspension tripled: from 95 in 2019 to 273 in 2020. Entrepreneurs complained more about ungrounded inclusion in "risky" taxpayers' lists (the number of complaints increased from 127 in 2019 to 207 in 2020). However, we received only 10 appeals concerning a VAT refund — it is much less than in 2015-2017.

The volume of appeals for pandemic regulation was unexpectedly small. Business complaints, inter alia, related to re-export of medical goods, prohibition of stores operation, registration and renewal of individual entrepreneurs' activities. First of all, we attribute this to the fact that business, although voiced doubts regarding quarantine restrictions, did not face illegal actions of state bodies in this regard.

We conducted two systemic studies on administration of taxes paid by businesses, and

the problem of court decisions non-enforcement. We issued two packages of recommendations (64 systemic recommendations in total) to state bodies on how to improve the corresponding government processes at the systemic level.

Among systemic recommendations issued since launch of the BOC operations, the following were implemented in 2020:

- The Verkhovna Rada passed a law abolishing obligation of enterprises to inform the tax authority of the newly appointed CEO, fines amounts were revised taking into account severity and the employer's degree of guilt, as well as the possibility of applying warnings for minor offenses;
- The Cabinet of Ministers adopted resolutions aligning technical regulations for assessing the conformity and acceptability of industrial goods with the EU Association Agreement;
- The Verkhovna Rada adopted a law approving Technical Regulations for Construction Materials in full compliance with the EU Commission regulations;
- The Cabinet of Ministers adopted a resolution introducing a mechanism for providing arguments to companies being on risky taxpayers list, as well as information on how to be removed therefrom;
- The Verkhovna Rada passed a law aimed at de-shadowing the market and increasing transparency of scrap metal export and import operations.
- The Verkhovna Rada passed a law harmonizing conditions for functioning of construction products domestic market with European rules;
- The Cabinet of Ministers, the Ministry of Digital Transformation and the Export Promotion Office launched the Single Export Web Portal to support national exporters;
- The Ministry of Finance resumed regular work of the Expert Council on preparation of generalized tax consultations;
- The Ministry of Finance and the STS organizationally and technically ensured

renewal of VAT electronic administration system indicators for those taxpayers whose registration was canceled and later renewed;

- The STS and the Ministry of Finance provided an opportunity to write off accrued arrears on single contribution tax for "dormant" private entrepreneurs, who ceased their activities.

During pandemic, the BOC's mode of work has changed. Instead of the usual "complainant-state officials-BOC" tripartite discussions, we held meetings online, whenever it was possible. However, online format does not always help to solve the problem in a way that a personal meeting can do. Expert groups established under the Memoranda between the BOC and key state bodies worked almost flawlessly, and the most complex complaints were submitted for consideration. In 2020, the BOC had 68 Expert group meetings, where 650 business cases were considered.

The Business Ombudsman, his Deputies and investigators participated in dozens of events where they shared the BOC work experience, most of those events were online. The positive effect of this form of communication and meetings is the opportunity to cover a larger audience. For instance, 800 participants joined us at one of the recent webinars. We also prepared two brochures with practical advice on how to protect the business from raidership and how to correctly report on corruption in government agencies.

Jointly with Members of the Parliament, the Business Ombudsman Council worked on a document designed to enshrine the BOC activities at the legislative level. In June 2020, the Parliament rejected the Draft Law of 2016, while 39 MPs from almost all factions registered a new Draft Law No.3607 "On the Business Ombudsman Institution in Ukraine". It gained support of three Verkhovna Rada Committees and the Cabinet of Ministers. However, the Verkhovna Rada's Scientific and Expert Department and some deputies questioned certain provisions of the document. We prepared a new version of the document at the request of the Draft Law's Deputies-authors, where one removed or worked up the most controversial points. The new draft law version is ready to be registered and considered in the Verkhovna Rada.

# ABOUT OUR OFFICE

## WHO WE ARE

The Business Ombudsman Council is an independent permanent advisory body of the Cabinet of Ministers of Ukraine established in Ukraine after the Revolution of Dignity. It was initiated in November 2014, but started to accept business appeals in May 20, 2015. The institution's mission is to help establish a transparent business environment through protecting entrepreneurs' rights from state officials' malpractice and thus prevent corruption in state bodies, local government authorities and in state-owned enterprises.

## THE LAW

Currently, the Business Ombudsman Council operates according to the CMU Resolution, however, the law on the Business Ombudsman Institution is to be adopted soon. It is expected that the BOC status will be underpinned at the level of law, that will extend the institution's toolkit in business protection and will ensure sustainability of its work.

## THE SUPERVISORY BOARD

the Council's governing body, includes authorized representatives from three blocks

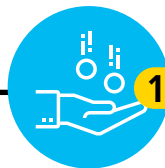


**1 VOTE**

### BLOCK 1

#### Government agencies:

The Cabinet of Ministers



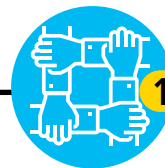
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### BLOCK 2

#### International financial institutions:

the European Bank for Reconstruction and Development (EBRD)

Organization for Economic Cooperation and Development (OECD)



**1 VOTE**

### BLOCK 3

#### Independent business associations:

the American Chamber of Commerce (ACC)

European Business Association (EBA)

the Federation of Ukrainian Employers (FUE)

the Ukrainian Chamber of Commerce and Industry (UCCI)

and the Ukrainian League of Industrialists and Entrepreneurs (ULIE)

Every block has one vote in the Supervisory Board



### CHAired BY

**Matteo Patrone**  
EBRD Managing Director,  
Eastern Europe and the  
Caucasus

# GOALS AND PRINCIPLES

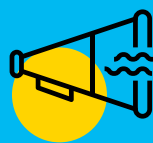
## OUR GOALS



Facilitate the fight against corruption and other business abuse



Contribute to greater investment attractiveness of Ukraine



Promote a public service culture of fairness, openness and accountability

## OUR GUIDING PRINCIPLES

Independence

Neutrality

Accessibility

Openness and transparency

Accountability

Integrity

Confidentiality



# TEAM

The Business Ombudsman Council includes

the Business Ombudsman

two Deputies

the Secretariat

At the end of the reporting period,  
the Council's team consisted of

# 31

## DISTINGUISHED EXPERTS

with mostly western education and practical experience in law, strategic management, economics, auditing, and risk management.



**Business Ombudsman**

**Marcin Świącicki**



**Two Deputies**

**Iaroslav Gregirchak**



**Tetyana Korotka**

**Secretariat**



**Viktoriia Antonenko**  
Communications  
Assistant



**Andriy Bodnarchuk**  
Investigator



**Olena Chorna**  
Investigator



**Alla Cherniak**  
Administrative Manager  
till Dec 2020



**Oleh Dykyi**  
Junior Investigator



**Yurii Gaidai**  
Investigator



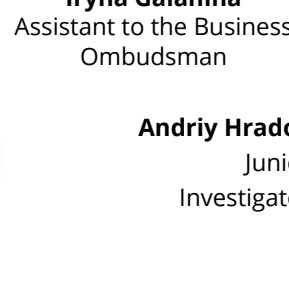
**Iryna Galanina**  
Assistant to the Business  
Ombudsman



**Sergii Gavrylenko**  
IT Manager



**Ivanna Medvedieva**  
Junior Investigator



**Andriy Hradov**  
Junior  
Investigator







**Tetyana Kheruvimova**  
Investigator



**Oleksandr Khomenko**  
Investigator



**Vitaliy Kirmach**  
Driver



**Olena Kutsay**  
Investigator



**Volodymyr Kutsenko**  
Investigator



**Yuliya Lebedeva**  
Team Assistant



**Yuliia Mykhailiuk**  
Investigator



**Oleh Mykhaliuk**  
Investigator



**Kirill Nominas**  
Investigator



**Olha Nykonchuk**  
Receptionist



**Maryna Pavlenchyk**  
Investigator



**Olena Scherba**  
Administrative Manager  
from Jan 2021



**Kyril Slastunov**  
Investigator



**Oleksiy Spivak**  
Investigator



**Iryna Stanislavska**  
Chief Communications  
Officer



**Vasyl Sukhovi**  
Junior Investigator



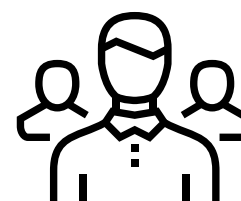
**Yuliana Revyuk**  
Investigator



**Volodymyr Zabudskiy**  
Investigator



**Vladislav Zhabskiy**  
Investigator



# WHAT WE DO

We deal with business complaints about malpractice by state bodies, local government authorities and state-owned companies. In case an entrepreneur faced state bodies' malpractice, tried to appeal it through available procedures, but didn't succeed, the Council is here to help. However, sometimes issues raised in complaints exceed the Business Ombudsman's mandate.



## WHAT WE CAN DO:

- Navigate the bureaucracy to find a solution, if your efforts to do so have failed
- Help resolve your issue through liaising with relevant public authorities
- Determine whether the complainant's and government agency's actions were fair
- Persuade the state body to implement the court decision, that has already entered into force
- Refer you to others who can help, if the matter exceeds the scope of our activities
- Flag trends in complaints to government officials and Deputies of the Verkhovna Rada and recommend systemic changes to legislation affecting business on the whole



## WHAT WE CAN'T DO:

- Overturn court decisions and consider appeals which are currently being processed by courts
- Change public policy
- Take complaints about private business, judges or court decisions
- Take inquiries if the complainant hasn't exhausted at least one instance of an administrative appeal process
- Review complaints if over one year has passed since last occurrence of malpractice

**WE WOULD LIKE TO EXPRESS OUR DEEP RESPECT AND GRATITUDE TO THE ENTIRE BUSINESS OMBUDSMAN COUNCIL'S TEAM FOR THEIR ACTIVE HIGHLY PROFESSIONAL SUPPORT AND ASSISTANCE IN CONSIDERING THE COMPANY'S COMPLAINT. WE ARE CONVINCED THE PARTICIPATION OF THE COUNCIL CONTRIBUTED TO THE TRANSPARENCY OF STATE BODIES' ACTIVITIES AND PREVENTED VIOLATION OF LEGITIMATE INTERESTS OF OUR COMPANY.**

**TOMASZ MIKOLAJCAK  
CEO FERRERO UKRAINE**

# HOW WE WORK

**1**

## ASSESS COMPLAINTS

A complainant receives a response within 10 working days whether his/her complaint is eligible or not

**2**

## INVESTIGATE COMPLAINTS

We examine the complaint in more detail and issue recommendations to the respective state body within 3 months from the date on which we initiated the investigation.

**3**

## ISSUE AND MONITOR RECOMMENDATIONS

Our specialists follow up all our recommendations until they are properly implemented, and monitor to ensure problems do not recur.

**4**

## FLAG SYSTEMIC ISSUES

We constantly monitor systemic issues in complaints and recommend changes to legislation affecting business environment on the whole.

**5**

## COMMUNICATE

We communicate the outcome of investigations to complainants, relevant government agencies, and, observing confidentiality rules, to the media.

**6**

## REPORT

We present results of our operations in quarterly and annual reports that are shared publicly on our website, via social media, and news media. Hard copies are also available from our Office.

# REPORT HIGHLIGHTS AT A GLANCE

**1737**  
COMPLAINTS  
RECEIVED

**78%**  
received via the website  
and in emails

**22%**  
received as hard copies

**1159** CASES  
CLOSED

**89%**

OF CASE-BY-CASE  
RECOMMENDATIONS  
TO STATE BODIES  
WERE IMPLEMENTED  
(2015-2020)

DIRECT FINANCIAL  
IMPACT IN 2020  
ALONE

UAH

**843** MN

## TOP-5 BLOCKS OF COMPLAINTS

**64%** Tax issues

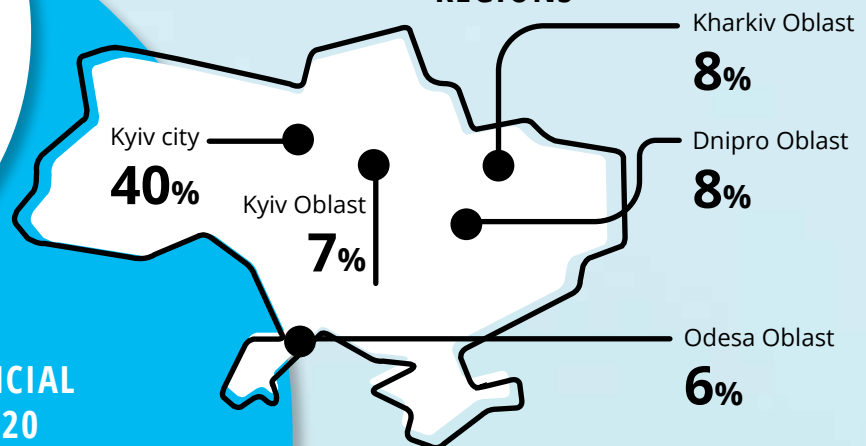
**12%** Actions of law  
enforcement bodies

**5%** Actions of state  
regulators

**4%** Customs  
issues

**4%** Actions of local government  
authorities

## TOP-5 MOST ACTIVE REGIONS



TOTAL  
FINANCIAL  
EFFECT  
EXCEEDS

UAH **18.8**  
BILLION

# TOP-5 INDUSTRIES



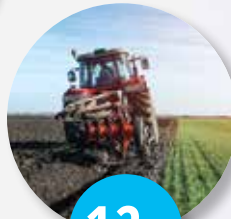
26%

Wholesale and Distribution



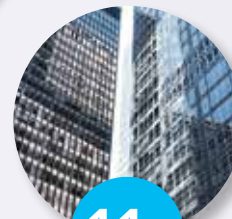
12%

Manufacturing



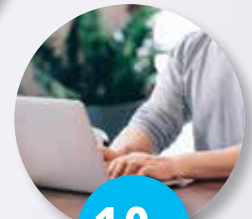
12%

Agriculture and Mining



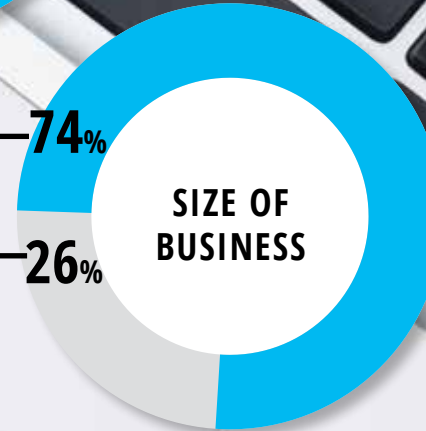
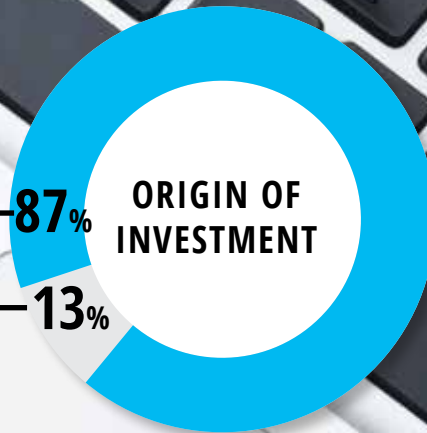
11%

Real Estate and Construction



10%

Individual Entrepreneur



## IMPLEMENTATION OF THE BUSINESS OMBUDSMAN COUNCIL

# KPIs

\* As of December 31, 2020

	TARGET VALUE	RESULT IN 2020
Standard investigation duration of 90 days is met in XX of cases	80%	86%
Share of satisfied complainants	75%	98%
Ratio of recommendations implemented by relevant government authorities within 6 months of receipt	50%	82%

## 2 SYSTEMIC REPORTS PREPARED:

ADMINISTRATION OF TAXES PAID BY BUSINESS

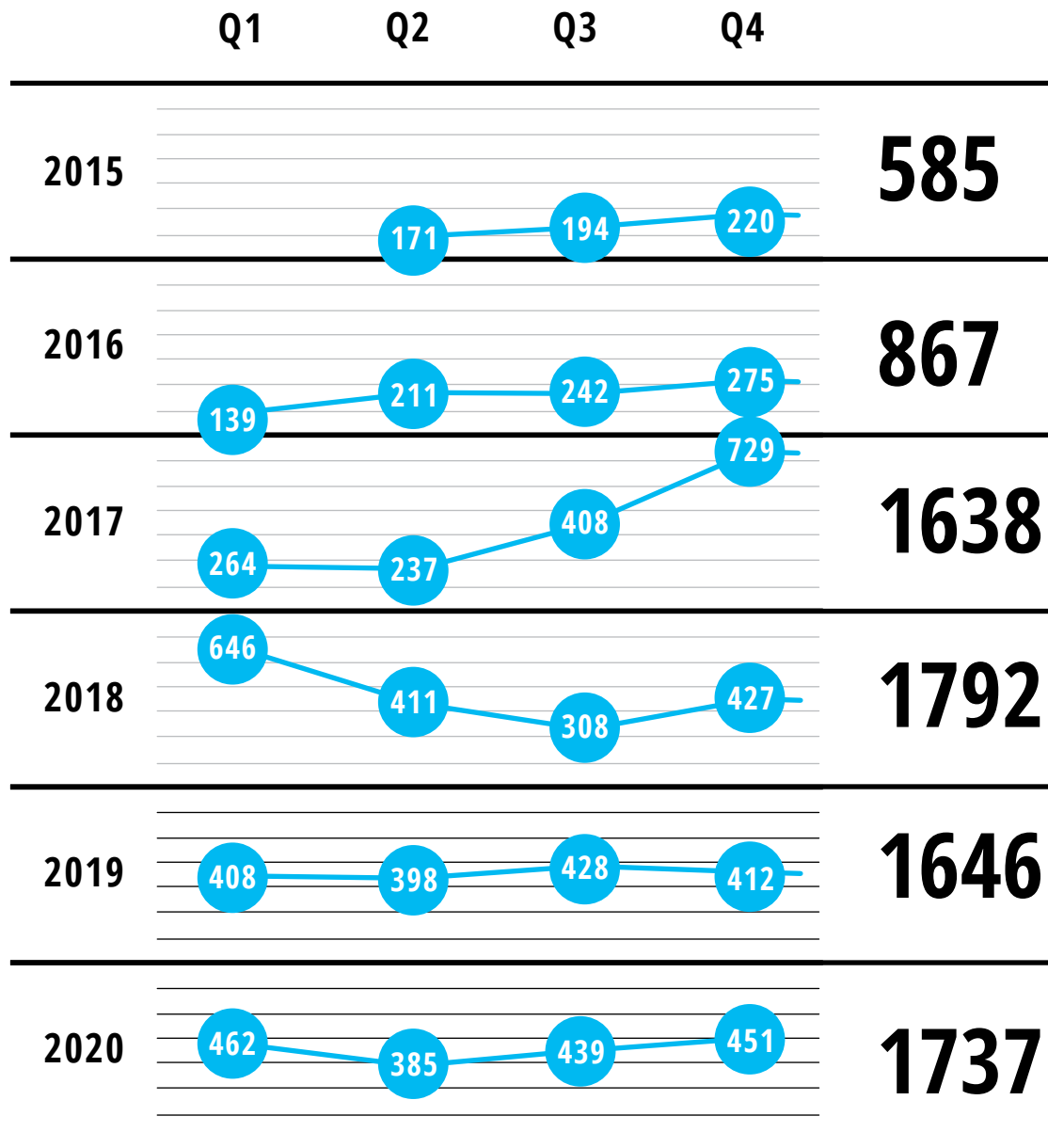


HOW BUSINESS CAN SEEK ENFORCEMENT OF COURT DECISIONS IN UKRAINE

# 1. YEAR IN REVIEW

## 1.1. VOLUME OF COMPLAINTS RECEIVED

(Clause 5.3.1 (a) of Rules of Procedure)



TOTAL APPEALS  
RECEIVED:

**8265**



The Business Ombudsman Council began accepting business appeals concerning state bodies malpractice in May 2015. For 7 months of 2015, the BOC received 585 complaints from entrepreneurs, while in 2016, the first full year of BOC operations – 868. Back then, the most pressing issues of Ukrainian businesses were already clear: tax issues (more than half of all appeals), actions and inactivity of law enforcement bodies and state regulators.

In 2017, Ukrainian tax authorities switched to the automatic VAT refund, that allowed to solve to the large extent the business issue of VAT refund, which used to last for years. In the third quarter of 2017, the risk assessment criteria monitoring system for registration of tax invoices (SMKOR) was launched. Aiming to reduce VAT refund fraud, the SMKOR independently checks all applications for registration of tax invoices, and identifies those that meet certain risk criteria. At the same time, the number of business complaints about the blocking of tax invoices has skyrocketed and since then has been the major share of appeals to the BOC.

In Q4 2017 and Q1 2018, during SMKOR work adjustment, the BOC received an extremely large number of respective appeals. After those peak quarters the situation stabilized in Q2 2018 and, since April 2018, on average, the BOC has been processing circa 400 business complaints per quarter:

382 complaints in 2018

412 complaints in 2019

434 complaints in 2020

Thus, if to compare 2020 with 2016, the number of problems that entrepreneurs addressed to the BOC has doubled. Despite the forced business slowdown in 2020 due to COVID-19 pandemic, the fact that many companies had to either downsize or even terminate their activities, the number of appeals to the BOC went up, it was even higher than in the pre-pandemic year of 2019. Below we will describe in detail what exactly has changed and what business appeals trends were in 2016-2018.

## 1.2. GOVERNMENT AGENCIES SUBJECT TO THE MOST COMPLAINTS

# TOP-10 GOVERNMENT AGENCIES SUBJECT TO THE MOST COMPLAINTS

	2020	2019	2018	2017	2016
State Tax Service, State Customs Service, State Fiscal Service	1193	1073	1153	1059	481
National Police of Ukraine	122	111	116	75	35
Local government authorities	68	62	61	85	83
Prosecutor's Office of Ukraine	53	81	107	70	33
Ministry of Justice	52	60	56	45	25
State Enterprises	29	18	23	26	25
State Security Service	25	17	31	41	19
Ministry of Social Policy	21	25	20	10	6
Ministry for Development of Economy, Trade and Agriculture	19	39	37	49	28
Parliament, the Cabinet of Ministers, the President of Ukraine	19	17	19	30	18

\* By the end of 2019, the State Fiscal Service had been divided into the State Tax Service, the State Customs Service and the State Fiscal Service (Tax Police)



**THE HIGH LEVEL OF PROFESSIONAL EXPERTISE AND PRACTICAL EXPERIENCE OF THE AUTHORIZED INVESTIGATORS ALLOWED TO FINALLY SOLVE THE PROBLEMATIC AND EXTREMELY IMPORTANT ISSUE WITHOUT APPEALING TO THE COURT, BUT THROUGH A CONSTRUCTIVE DIALOGUE WITH THE REPRESENTATIVES OF THE CONTROLLING AUTHORITY.**

**V. AVERKIN**  
**DIRECTOR GENERAL**  
**STATE ENTERPRISE BEST ALTERNATIVA**



## THE STATE FISCAL SERVICE:

### THE STATE TAX SERVICE

### THE STATE CUSTOMS SERVICE

### THE TAX POLICE

If to compare 2020 with the first year of BOC operations, the number of business complaints has grown with respect to all key subjects of appeals. Exceptions were only two state bodies from the TOP-10.

In 2019, the reform of the State Fiscal Service (SFS) was finally completed, which implied separation of the State Tax Service and the State Customs Service into independent services and keeping the State Fiscal Service functions under the Tax Police

(Investigative Department of Tax Investigations). For ease of comparison, let us observe the dynamics of these three state bodies as the SFS in general. In the first full year of the BOC operations, we received 481 complaints regarding the SFS. A year later, the number of appeals doubled. And in 2020, entrepreneurs lodged 1193 complaints with us, or two and a half times more than back in 2016. This is even more than in 2018, when we recorded the largest annual number of complaints due to boom in appeals related to tax invoice suspension.

## LAW ENFORCEMENT BODIES:

### THE NATIONAL POLICE

### PROSECUTOR GENERAL'S OFFICE

### THE STATE SECURITY SERVICE

Over the recent year, despite quarantine and a slowdown in business activities, entrepreneurs have complained more about malpractice of the National Police. While in 2016 we received 35 complaints against this body, in 2020 the number of appeals was almost 4 times more — 122. We notice a continuous upward trend in complaints concerning the National Police in 2016-2020. Every second complaint against law enforcers concerned actions or inaction of the National Police.

The number of complaints against the Prosecutor's Office increased significantly in 2016-2018. We record the highest number of appeals regarding this state body in 2018, when we received 107 complaints. Since then, the number of appeals has been declining every year.

The third law enforcement body — the State Security Service of Ukraine — was no exception, the number of business complaints against it increased in 2020 compared to 2016, by 32%. In general, among all law enforcement agencies, the business complained the least about the SSS, its share in this block is only 14%.

At the same time, the number of complaints against local government authorities in 2018-2020 decreased compared to 2016-2017. In particular, in 2020, entrepreneurs submitted 8% complaints fewer regarding local government authorities than back in 2016.

In the reporting year, companies mentioned the Ministry of Justice twice as many times as in 2016. But it should be noted that after the annual significant increase of complaints regarding the Ministry during 2016-2019, in 2020 we recorded the cessation of this trend — in 2020 we only received 52 complaints, which is 13% less than in 2019.

Compared to 2016, the number of complaints against state-owned enterprises increased by 16% (from 25 to 29), three and a half times — against the Ministry of Social Policy (from 6 to 21) and by 6% — against the actions of the Verkhovna Rada, the Cabinet of Ministers and the President of Ukraine (from 18 to 19). At the same time, the number of complaints against the Ministry for Development of Economy, Trade and Agriculture decreased significantly — by 32%. Moreover, after the peak of 2017, the number of complaints against this state body had been steadily decreasing in 2018-2020.

## OTHER COMPLAINÉES INCLUDE 2020

National Bureau of Investigation of Ukraine	19
Ministry for Communities and Territories Development	12
Antimonopoly Committee of Ukraine	11
Commercial and other courts	9
State Funds	8
Ministry of Internal Affairs	8
Ministry of Finance of Ukraine	8
Ministry of Energy and Coal Industry of Ukraine	7
Ministry of Infrastructure of Ukraine	6
Ministry of Defense of Ukraine	5
Ministry of Ecology and Natural Resources of Ukraine	5
National Anti-corruption Bureau (NABU)	5
Communal Services of Ukraine	4
Ministry of Health of Ukraine	3
National Bank of Ukraine	3
State Border Guard Service of Ukraine	2
National Commission for State Regulation of Energy and Public Utilities	2
Ministry of Digital Transformation	1
State Regulatory Service of Ukraine	1
State Emergency Service of Ukraine	1
Ministry of Education and Science of Ukraine	1
Other	15

**GRAND TOTAL**

**136**

### 1.3. NATURE OF COMPLAINTS RECEIVED

(Clause 5.3.1 (a) of Rules of Procedure)

Analysis of complaints received in 2016-2020 demonstrates that Ukrainian businesses most frequently faced the following problems:

	2020	2019	2018	2017	2016
<b>TAX ISSUES</b>	<b>1117</b>	<b>981</b>	<b>1098</b>	<b>1001</b>	<b>423</b>
Tax inspections	224	370	243	153	84
<b>Appeals related to SMKOR operation:</b>					
“Classic” complaints about suspension of tax invoices	273	95	546	532	0
Inclusion of taxpayers in “risky” lists	207	127	11	0	0
Non-enforcement of court decisions to register tax invoices	147	108	19	0	0
Tax criminal cases	52	56	63	41	60
VAT electronic administration	51	52	57	74	40
VAT refund	10	16	26	55	74
Tax termination/renewal/refusal of VAT payers registration	9	4	6	9	7
Termination of agreement on recognition of electronic reporting and Tax status 09	2	12	17	58	62
Tax other	142	141	110	79	96

Year-on-year tax issues remain the most common business problem addressed to the BOC. In 2020, the number of tax-related complaints reached a historic high — the BOC processed 1117 such appeals, which amounts to almost two-thirds of all appeals per year. Below we will consider the structure of tax block and look how business problems had been changing in 2016-2020.

#### TAX INSPECTIONS

The number of appeals concerning tax audit results in which businesses sought the BOC help was 84 cases in 2016, while in 2020, the figure tripled to 224. The peak of appeals on this issue was recorded in 2019 — the companies appealed to the BOC 370 times then.

In March 2020, the government imposed a moratorium on most tax audits, except for audits related to budget VAT refunds and excisable goods (inspections with respect

to excisable goods have been allowed since August 2020). According to the State Tax Service, the number of tax audits conducted in 2020 was almost twice less than in 2019 (a total of 7,449 inspections compared to last year's 13,877). Given the limited scope of possibility to conduct tax audits, tax authorities have apparently relied even more on tools related to the SMKOR operation, trying to prevent VAT-related abuse.

## SUSPENSION OF TAX INVOICES

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The problem of tax invoice suspension emerged in 2017 and the number of complaints to the BOC in this respect immediately crossed the mark of half a thousand per year, remaining at the same level in 2018. In 2019, it seemed that the SMKOR system worked smoothly and the issue was solved — we only received 95 complaints in this regard. However, in 2020, the number of complaints regarding blocking of tax invoices went up again and set at the level of almost three hundred appeals.

Unfortunately, currently there are no complete and detailed official statistics on the SMKOR operation publicly available (by the way, public disclosure of such statistics is one of systemic recommendations provided by the Council in its systemic report in August 2020). Following the information received by the Council from the State Tax Service of Ukraine at its request, it is observed that only for 9 months of 2020 registration of 483 thousand of tax invoices and adjustment calculations totalling over UAH 6.853 bn was suspended.

## LISTS OF "RISKY" TAXPAYERS

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The subject of inclusion of taxpayers in the "risky" lists appeared in the BOC portfolio in 2018 — that year we received only 11 complaints in this regard. In 2019 we received 127 appeals on this issue. In 2020, the number of complaints on this subject has increased 20 times to 207 complaints, making it the third most common subject of business appeals in 2020, after the classic blocking of invoices and tax inspections.

According to the STS data, in January-September 2020, 31,795 VAT tax payers were included in "risky" taxpayers lists, only 4,052 taxpayers were excluded therefrom. Data tables of 10,327 VAT taxpayers were accepted, and data tables of 17,960 taxpayers were rejected. Thus, activity of tax authorities in this area in the past year was quite significant.

On February 1, 2020 a new Procedure No. 1165 regulating suspended registration of invoices and adjustment calculations came into force. The new legal act has brought a range of useful innovations for taxpayers compared to the old Procedure No. 117. In view of these improvements, a certain reduction in the number of complaints could apparently be expected. At the same time, in practice some novelties (for example, the long-awaited introduction of a unified form of decision on inclusion in the "risky" taxpayers list, with setting a requirement to motivate such decisions and indicating in the form itself that the decision is subject to administrative appeal), apparently, encouraged businesses to more actively defend their rights and more often complain about their violations instead, including to the Business Ombudsman Council.

## NON-ENFORCEMENT OF COURT DECISIONS REGARDING REGISTRATION OF TAX INVOICES

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Non-enforcement of court decisions regarding registration of tax invoices is another business problem that appeared in 2018 and is rapidly gaining momentum to this day. In three years, the problem has increased 7 times: from

19 complaints in 2018 to 108 in 2019 and 147 in 2020. We have analysed this problem thoroughly as well as ways to overcome it in a new systemic report on non-enforcement of court decisions.

## TAX-RELATED CRIMINAL CASES

Criminal cases on tax issues are one of the subjects in which the number of complaints has decreased as compared to 2016. In 2016-2020, the number of appeals against ungrounded criminal proceedings was

in the range of 41-63 appeals, but as per 2020 results, the number of complaints on this subject decreased by 13% compared to 2016 and by 9% as compared to 2019.

## VAT E-ADMINISTRATION

The number of appeals regarding VAT e-administration was the highest in 2017 (74 complaints), but in general fluctuated

at the level of 40-57 complaints per year. Since 2016, the number of complaints on this issue has increased by 28%.

## VAT REFUND

The refund of VAT was the most widespread subject of appeals to the BOC until the third quarter of 2017. In 2016, the problem reached a maximum of 74 complaints, but in monetary

terms it was about billions of hryvnias. In 2019 we received 16 complaints in this regard and in 2020 — only 10, which is 86% less than in 2016.

## TERMINATION OF AGREEMENTS ON THE RECOGNITION OF E-REPORTING

Termination of agreements on recognition of electronic reporting a powerful tax instrument of pressure on business, has also decreased significantly. In 2016 we received 62 complaints

in this regard, while in 2020 — only 2. A sharp decline in the number of complaints on this subject has been recorded since 2018.

## REFUSAL OF VAT TAXPAYERS REGISTRATION

Refusal of VAT taxpayers registration did not exceed 9 complaints per year. If to compare the reporting year with the first full year of the

BOC operations, an increase in the number of complaints by 29% or 2 appeals is noted.



**WE PRESENT OUR COMPLIMENTS AND EXPRESS GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL'S TEAM FOR PROMPT, HIGH-QUALITY, PROFESSIONAL AND EFFICIENT WORK IN CONSIDERATION OF OUR COMPLAINT. THE SYSTEMATIC OPERATION OF THE BUSINESS OMBUDSMAN COUNCIL ALLOWED THE OIL PREMIUM TRADING HOUSE LLC TO RESTORE ITS LEGAL RIGHT TO OBTAIN A LICENSE AND FOCUS ON DOING BUSINESS AND FURTHER DEVELOPMENT OF THE ENTERPRISE WITHOUT A CONSIDERABLE WASTE OF TIME AND MONEY ON LITIGATION. WE BELIEVE THAT THE BUSINESS OMBUDSMAN COUNCIL ENSURES EFFECTIVE SYSTEMATIC COMMUNICATION OF BUSINESS WITH THE GOVERNMENT, STATE BODIES AND LOCAL GOVERNMENT AUTHORITIES, REPRESENTS AND PROTECTS BUSINESS INTERESTS IN STATE BODIES AND HELPS BUILD THE RULE OF LAW IN THE STATE.**

**YURII DUKA  
DIRECTOR OF THE OIL PREMIUM TRADING HOUSE LLC**

	2020	2019	2018	2017	2016
<b>NATIONAL POLICE ACTIONS</b>	<b>121</b>	<b>111</b>	<b>116</b>	<b>76</b>	<b>35</b>
National Police procedural abuse	67	51	47	33	17
National Police inactivity	41	40	41	21	9
National Police criminal case initiated	5	8	9	14	7
National Police corruption allegations	2	1	4	2	1
National Police other	6	11	15	6	1

In 2020, entrepreneurs lodged 121 complaints with the BOC about malpractice of the National Police — a record number for the entire period of Institution's operations. For comparison, in 2019 we received 111 appeals, while in 2016 — 4 times less — 35 appeals. The key driver of such growth was procedural abuses of the National Police and its inactivity — in 2020 the number of complaints on these subjects were 4 times higher than in 2016. These complaints concerned a variety of violations, ranging from failure to respond to inquiries about violations of reasonable time limits for investigations and

delays in pre-trial investigations for years. At the same time, the number of appeals regarding ungrounded criminal cases decreased by 2 complaints as compared to 2016, with the peak of appeals (14 complaints) recorded in 2017. In general, since 2017, we have observed a gradual downward trend of appeals regarding the National Police. As for the accusations of law enforcers of corruption, there were very few such complaints, only 1-4 per year during 2016-2020. But much more often complainants told us about such episodes not for the record.

	2020	2019	2018	2017	2016
<b>PROSECUTOR'S OFFICE ACTIONS</b>	<b>56</b>	<b>81</b>	<b>108</b>	<b>70</b>	<b>33</b>
Prosecutor's Office procedural abuse	35	48	59	21	11
Prosecutor's Office inactivity	12	10	12	23	9
Prosecutor's Office criminal case initiated	5	13	24	19	5
Prosecutor's Office corruption allegations	2	2	1	2	0
Prosecutor's Office other	2	8	12	5	8

In contrast to the National Police, the number of business complaints against the Prosecutor's Office in 2020 was one of the lowest during the BOC operations. Since 2018, when the peak of complaints on law enforcers was recorded (108 complaints), there has been a stable downward trend in the number of appeals. In particular, entrepreneurs complained less about

procedural abuses, inactivity of the Prosecutor's Office and initiated criminal proceedings. Among such violations, the frequent issue is the seizure of property, which the investigating judge did not allow to seize, less frequent — the unreasonable use of force or not allowing lawyers to get familiar with case materials.

	2020	2019	2018	2017	2016
<b>ACTIONS OF THE STATE SECURITY SERVICE</b>	<b>24</b>	<b>17</b>	<b>31</b>	<b>41</b>	<b>19</b>
State Security Service procedural abuse	14	7	15	17	11
State Security Service criminal case initiated	3	3	7	7	2
State Security Service corruption allegations	1	0	0	3	1
State Security Service inactivity	1	0	0	0	0
State Security Service other	5	7	9	14	5

In 2020, the BOC considered 24 complaints about possible violations by the State Security Service of Ukraine — the smallest number among all law enforcement bodies. However, this low number does not reflect the complexity or extraordinary nature of cases. Sometimes we face unprecedented cases, such as storage of seized money in bags in the department office instead of putting them on deposit in the bank,

according to the procedure. We have recently recorded a growth in the number of appeals concerning this body (on its procedural abuse inter alia) — in 2020 we have received 41% more complaints as compared to 2019 and +26% as compared to 2016. The highest number of complaints lodged to the BOC regarding the State Security Service was recorded in 2017 — 41 appeals.

	2020	2019	2018	2017	2016
<b>CUSTOMS ISSUES</b>	<b>72</b>	<b>85</b>	<b>42</b>	<b>53</b>	<b>43</b>
Customs valuation	34	32	9	11	15
Customs clearance delay/refusal	26	30	16	19	11
Customs criminal proceedings	1	0	0	1	0
Customs administrative proceedings	1	0	0	0	0
Overpaid customs duties refund	0	6	6	7	2
Customs other	10	17	11	15	15

After a peak in 2019, the number of business appeals on customs issues went down by 15% in 2020. At the same time, in 2020 customs value adjustment was the topic of the biggest concern since launch of operations — we received 34 appeals in this respect. The second most common subject of complaints were delays or refusals in customs clearance — in 2020, the

business lodged 26 such complaints. The BOC received no appeals on customs overpayments refund in 2020 at all, although three years earlier we consistently received about half a dozen of such appeals a year. As compared to 2016, the total number of complaints on customs issues in the reporting period increased by 67% — from 43 to 72 complaints.

	2020	2019	2018	2017	2016
<b>ACTIONS OF STATE REGULATORS</b>	<b>90</b>	<b>130</b>	<b>134</b>	<b>146</b>	<b>81</b>
Antimonopoly Committee of Ukraine (AMCU)	11	11	4	7	5
State Architecture and Construction Inspectorate (DABI)	9	13	8	18	4
StateGeoCadastre	7	13	9	17	11
National regulatory agencies NBU other	3	0	0	0	2
National regulatory agencies NERCUS other	2	3	7	1	6
National regulatory — National Television and Radio Broadcasting Council of Ukraine actions	0	0	0	1	0
National regulatory agencies NBU inactivity	0	0	0	0	1
National regulatory agencies NBU licensing	0	0	0	1	1
Other state regulators	58	90	106	101	51

Among state regulators a considerable share of business complaints relates to the AMCU, particularly to violations during public procurements or tenders of state-owned enterprises. In 2020, we received 11 appeals regarding AMCU, which is the same as in 2019 and twice more than in 2016.

In 2020, companies appealed actions of DABI 9 times, which is twice less than in 2016. These complaints concerned, among other things, obtaining

permits for performing construction works for complex objects or registering a declaration of commencement of works for simple objects, as well as obtaining documents on readiness of construction facilities.

In 2020, actions of the StateGeoCadastre, which is responsible for land in state ownership, were in the focus of seven complaints. For comparison, in 2016 we received one third more appeals on this state body, while the peak of complaints was recorded in 2017.



**WE EXPRESS OUR GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR ASSISTANCE IN RESOLVING THE ISSUE OF ENSURING OBSERVANCE OF OUR RIGHTS AND LEGITIMATE INTERESTS BY THE INTERDEPARTMENTAL COMMISSION ON INTERNATIONAL TRADE IN THE PROCESS OF CONDUCTING A SPECIAL INVESTIGATION ON IMPORTS INTO UKRAINE NOTWITHSTANDING THE COUNTRY OF ORIGIN AND EXPORT. THANKS TO YOUR TIMELY INTERFERENCE IN THE ABOVE MENTIONED SPECIAL INVESTIGATION, IT WAS POSSIBLE TO CHANGE THE PREVIOUS DECISION OF THE COMMISSION.**

**DMITRII IORGACHOV  
DIRECTOR GENERAL OF THE PJSC ODESAKABEL**



	2020	2019	2018	2017	2016
<b>ACTIONS OF LOCAL GOVERNMENT AUTHORITIES</b>	<b>68</b>	<b>60</b>	<b>60</b>	<b>77</b>	<b>59</b>
Local government authorities — land plots	16	14	16	15	17
Local government authorities — permits	15	11	12	13	9
Local government authorities — disputes	1	1	1	1	6
Local government authorities — other	36	34	31	48	27

In 2020, the number of complaints concerning local government authorities was the second highest (68) since launch of BOC operations — we received more appeals only in 2017 (77). The most common issue in which entrepreneurs sought assistance from the BOC was the allocation of land plots in municipal ownership. Quite often businesses complained about obtaining permits, particularly for installation of

temporary structures and outdoor advertising. An interesting subject of appeals is investment disputes with local government authorities when they did not fulfill their obligations undertaken under the investment project. While in 2017-2020, we received only one such complaint a year, back in 2016, at the beginning of BOC operations, we reviewed six such requests.

	2020	2019	2018	2017	2016
<b>ACTIONS OF THE MINISTRY OF JUSTICE</b>	<b>49</b>	<b>57</b>	<b>49</b>	<b>43</b>	<b>25</b>
Department of State Registration and Notary	29	32	28	20	12
Department of State Enforcement Service	20	25	21	23	13

Complaints against this body concern actions of Notary and State Registration Department and the State Enforcement Service Department of the Ministry of Justice. Appeals on actions of state registrars mostly relate to raidership episodes. In particular, complainants reported on cases when state registrars made changes in the companies' charter, changed CEOs and owners with violations or did it in an illegal manner. Thus, in 2020, the entrepreneurs sent us 49 complaints — that is 14% less than in 2019, but twice more as compared to 2016. In general, the peak of complaints on actions of Notary and State Registration Department was recorded in 2019 — we received 57 complaints then.

Appeals against the Department of State Enforcement Service usually concern inaction or ineffective work regarding enforcement proceedings in performing certain actions, e.g. collection of funds from the debtor. Sometimes, disproportionate measures are applied to a debtor instead, such as arrests all accounts for debts of several thousands of hryvnias. In 2020, we received 20 complaints about inactivity or ineffective work of the Department of State Enforcement Service — that is 20% less than in 2019, but 53% more than in 2016.

	2020	2019	2018	2017	2016
<b>ACTIONS OF STATE-OWNED COMPANIES</b>	<b>28</b>	<b>21</b>	<b>18</b>	<b>24</b>	<b>25</b>
State-owned companies abuse of authority	14	9	0	0	5
State-owned companies investment/commercial disputes	5	0	0	3	1
State-owned companies other	9	12	18	21	19

Most often businesses complain that state-owned companies abuse their powers. Particularly difficult are situations when a utility company, a monopoly, refuses to conclude agreements, which are vital for businesses (e.g., for water or heat supply) or imposes multiple fines on entrepreneurs. We received 14 such

complaints this year, which is almost 3 times more than in 2016.

Cases when a state-owned enterprise receives goods or services from private companies, but then delays payment for years, are also quite common. In 2020, entrepreneurs sent us 5 such complaints, while in 2016 — only 1.

	2020	2019	2018	2017	2016
<b>LEGISLATION DRAFTS/AMENDMENTS</b>	<b>19</b>	<b>13</b>	<b>45</b>	<b>47</b>	<b>73</b>
Deficiencies in regulatory framework — state regulators	6	5	17	21	4
Deficiencies in regulatory framework — tax	3	2	15	14	15
Legislation drafts/amendments	1	0	0	1	0
Deficiencies in regulatory framework — local councils/municipalities	0	0	1	2	21
Deficiencies in regulatory framework — customs	0	1	1	0	0
Deficiencies in regulatory framework — other	9	5	11	9	33

Complaints of this block are not related to actions or inaction of a specific state body, but rather deal with shortcomings of state regulation harming business in general. If a company complains about the law, which is wrong in its opinion, we are unable to help, since adopting and changing of laws lies within parliamentary competence being a state policy reflection. We have to dismiss such complaints. However, it happens that the company pays our attention to some obvious inconsistencies and legal conflicts. For example, the Government secured

the right to receive unemployment benefits for individual entrepreneurs, particularly for people with disabilities (the disabled). However, the law states that assistance is provided only to those entrepreneurs, who pay a Single Social Contribution, meanwhile the disabled do not pay it. Thus, the BOC recommended to align these rules.

Overall in 2020, we received 19 such complaints, which is 6 complaints more than in 2019, but almost 4 times less than in 2016.

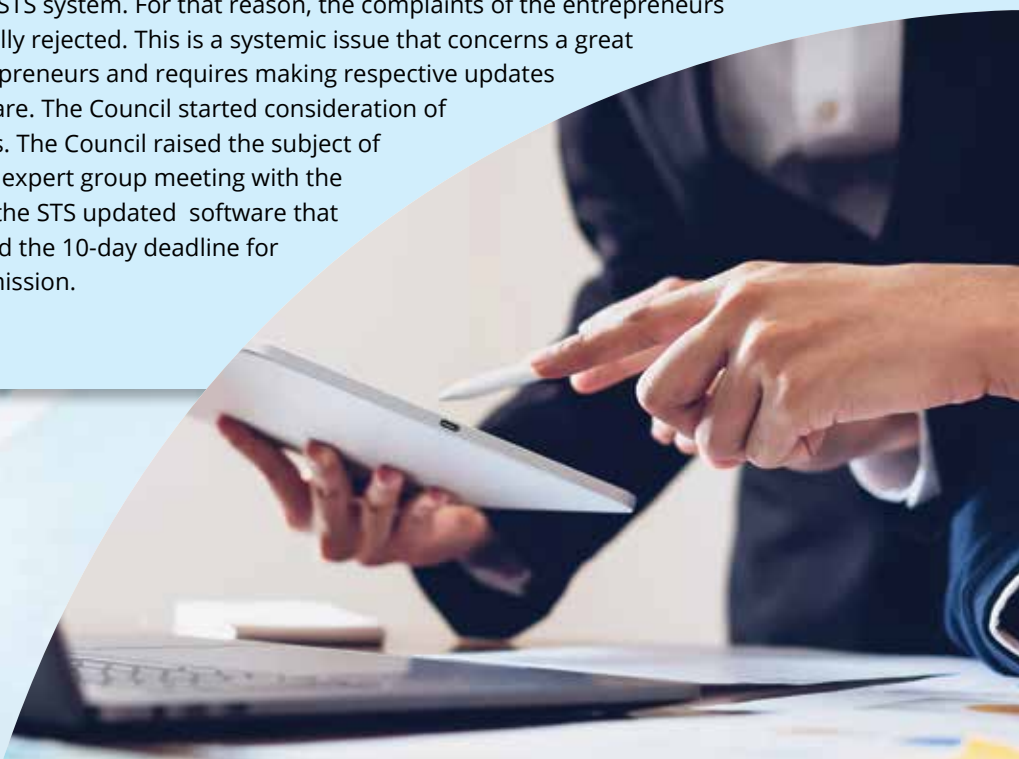
# COVID-19

## RESTRICTIONS RELATED ISSUES

2020 challenged the world with the global pandemic of COVID-19. The quarantine measures introduced by the Government of Ukraine forced many businesses either to slow down their entrepreneurial activity, or even suspend their work for the strict lockdown period. Although business was not happy about quarantine measures, they were not considered illegal. Hence, the BOC did not receive much complaints related to COVID-19 restrictions. However, in the first half of 2020, there were several appeals which originated from the lockdown restrictions that the Council investigated.

Two separate companies, the **expeditionary company and fruits and vegetables supplier** informed that they could not appeal the decision of the tax audits of the State Tax Service (STS) due to expiration of the 10-day deadline set in the Tax Code.


The matter was that on 30.03.2020 the 10-day deadline was prolonged by the law № 540-IX for the whole period of the quarantine. However, the respective technical changes were not made in the STS system. For that reason, the complaints of the entrepreneurs were automatically rejected. This is a systemic issue that concerns a great number of entrepreneurs and requires making respective updates to the STS software. The Council started consideration of these complaints. The Council raised the subject of complaint at the expert group meeting with the STS. As a result, the STS updated software that allowed to extend the 10-day deadline for complaints submission.



**A private entrepreneur from Dnipropetrovsk region** could not get unemployment benefits from the state. In accordance with the legislation, the PEs that had to suspend their entrepreneurship activities because of the quarantine have a right for unemployment benefit according to the same procedure as the employees who lost their job due to the quarantine.

Furthermore, the Cabmin has recently made an amendment to the respective Resolution and specified that even those PEs who did not pay a Unified Social Contribution, in particular those who are retired persons by age or disability, have a right for such unemployment benefit. They have a right for getting assistance in the amount of two thirds of the minimal wage (UAH 2872) for the period of up to 4 months when they did not make profit during the quarantine.

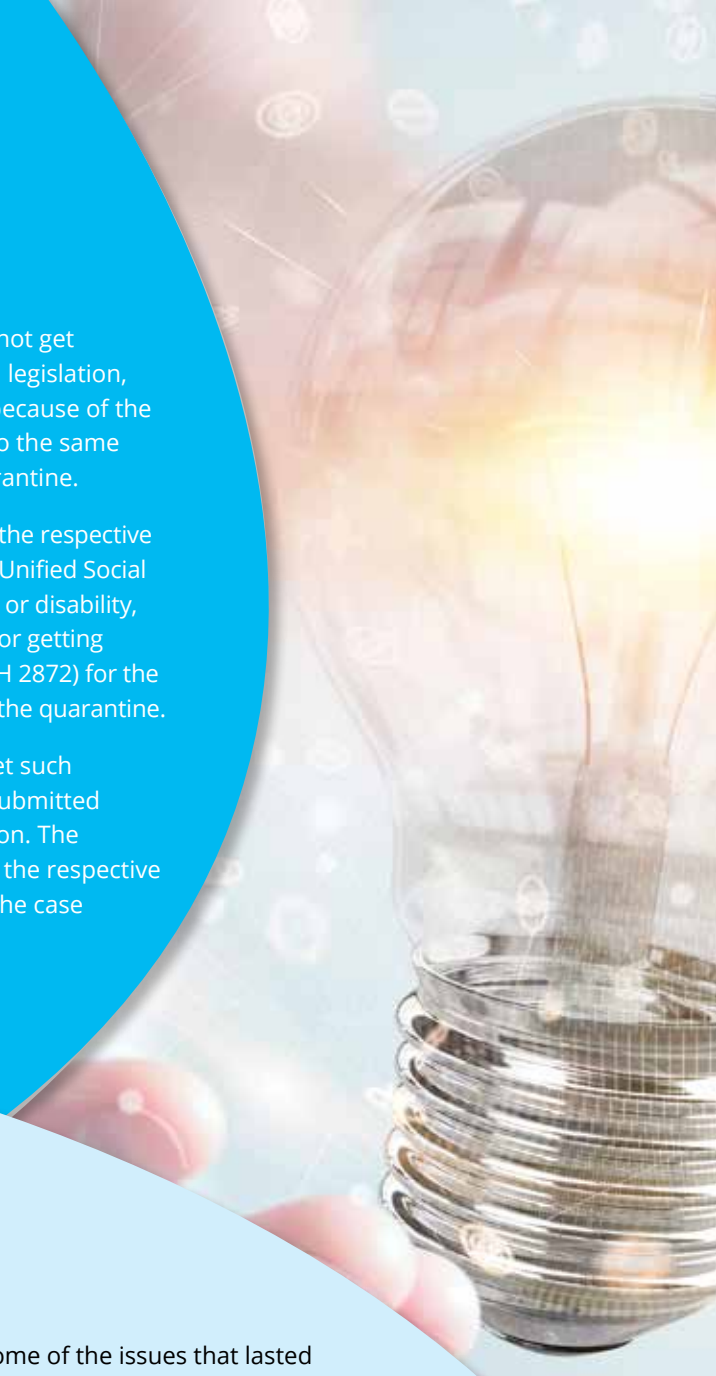
Our complainee (a disabled PE) pointed out that she tried to get such assistance, but the employment center refused to accept the submitted application. According to her, other PEs are in the same situation. The Council started consideration of this complaint and conducted the respective communication with the Ministry of Social Policy. As of today, the case consideration is extended.




On the other hand, some of the issues that lasted for years were successfully settled with a start of the pandemic. Hence, **manufacturers of antiseptics** finally managed to obtain registration documents for their goods.


Since 2018, the registration procedure of disinfectants has changed: instead of the State Sanitary and Epidemiological Service the responsibility for registration of antiseptics shifted to the MOH.

Due to absence of the normative base the new procedure had not come into operation. Since then no manufacturer could register or re-register its goods. In March 2020 the Cabinet of Ministers of Ukraine adopted the Regulation No. 908 that facilitated the state registration mechanism of disinfectants. On this ground, two complainants successfully re-registered disinfectants that had a registration expired last year. The products important for the quarantine appeared in stores.





**Regional Association of Landlords and Entrepreneurs** made a collective complaint. If the PEs of the first group (Group I and II) who pay a fixed taxation rate notwithstanding the fact of making profit, decided to suspend registration of PEs due to the quarantine and a couple of months later decided to restart their activity and repeatedly register as PEs, they would not be able to pay a Social Contribution Tax until the end of 2020. That is how the respective norm is interpreted by the tax authority. At the same time, there is a little number of court decisions in favor of payers who insist on illegitimacy of such interpretation of the norm. We sent letters to the STS, Ministry of Finance and the Verkhovna Rada Committee with a request to reconsider the current approach to application of the respective norm. This is a systemic issue that we included in the systemic report "Administering Taxes Paid by Business". In its systemic report, the Council recommended that the Ministry of Finance of Ukraine clarify provisions of the Tax Code of Ukraine that would establish the procedure for selecting a simplified taxation system by individual entrepreneurs and ensure a single tax refund in case of business activity resumption during the calendar year. Currently, the BOC is closely monitoring recommendations implementation by state bodies.



**A Polish investor** faced a problem of registering as a taxpayer. The entrepreneur had to obtain a tax ID to register a company in Ukraine. However, the tax office replied that the registration was not provided temporarily during quarantine unless there is a threat to life or health. That means, that the service is provided, but based on a selective principle, which creates corruption factors with respect to the state body operations and does not contribute to attracting foreign investment at all. The Council commenced the case investigation. After the Polish investor repeatedly appealed to the MD STS and submitted all the necessary documents, the MD STS easily registered the Polish investor in Ukraine.

**Two medical gowns manufacturers** complained about the actions of the State Customs Service. The complainants' cargo was detained at the border without any official notification or explanation of reasons for the delay. Earlier these products were exported without any problems, but recently the Cabinet of Ministers has restricted export of some goods due to quarantine.

The BOC found out that provisions of the Cabinet of Ministers of Ukraine Resolution No.1109 of 24.12.2019 (as amended by the Resolution of the Cabinet of Ministers of Ukraine of 11.03.2020) relating to restrictions on exports of certain products, did not give a clear idea whether


restrictions applied to products re-export. The BOC managed to draw the attention of state bodies to the systemic problem of entrepreneurs.

In early April 2020, the Cabinet of Ministers adopted Resolution No.268 amending Resolution No.1109. The new document already made it clear that restrictions in Regulation No.1109 did not apply to re-export. Thus, thanks to the Council's involvement and respective explanations of the State Customs Service of Ukraine as well as amendments to Resolution No.1109, new batches of complainants' goods successfully crossed the border.

**A driving school** approached us with a complaint concerning actions of the Main Department of the Ministry of Internal Affairs. The state authority did not allow the school to conduct theoretical classes online. This question was also relevant before quarantine, but now it has become especially urgent, since it's impossible to conduct off-line classes during the quarantine at all.

As a result of the investigation, the Council established that the possibility of remote registration of study groups at driving schools still exists but it is technically complicated due to imperfections of the existing free software. Following the review, the Council forwarded the complaint, together with the materials collected during its review, to the Main Service Center of the Ministry of Internal Affairs for their additional consideration and work on software upgrades.

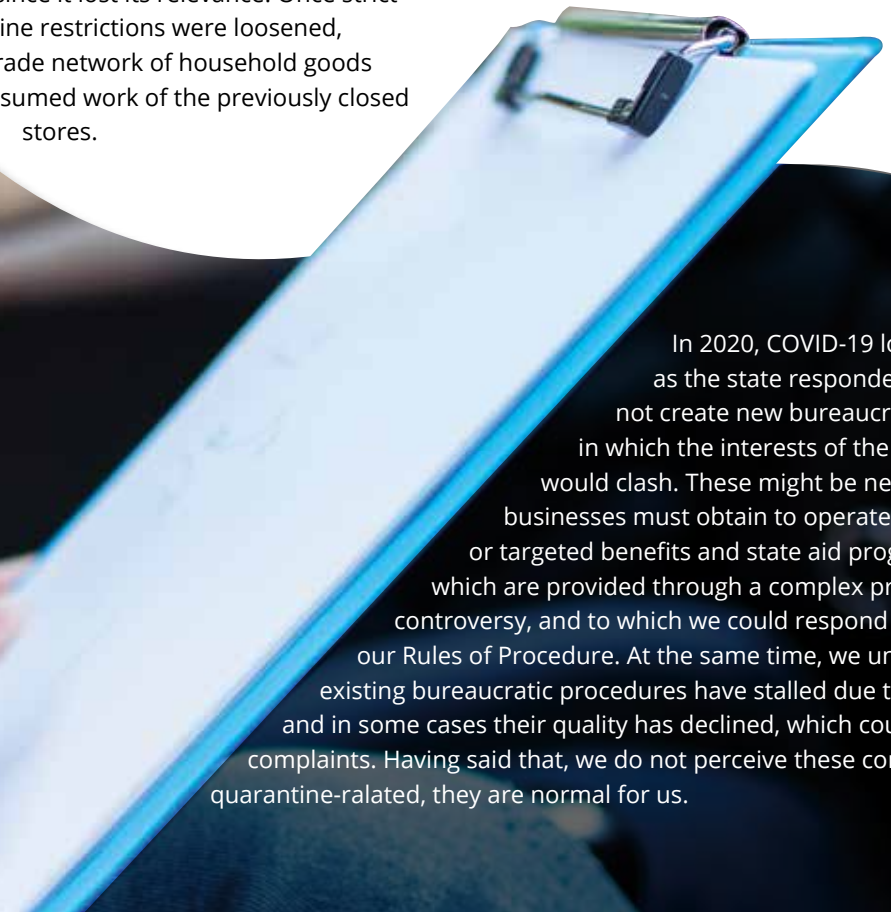




**A retail chain of personal care and household goods** complained on actions of local government authorities. In several cities, local authorities ordered shops to close. In other cities, however, shops were allowed to operate. The investigator immediately considered the company's case. The Council appealed to the Cabinet of Ministers and requested a clarification on the norms of the Resolution of the Cabinet of Ministers No.211. This Resolution is applied to trade and consumer services companies trading in hygiene products which the complainant's company belonged to.

However, the authority did not rush to give a reply to the Council and only responded to its appeal 30 days later. The letter, which the Council received from the Ministry for Development of Economy, Trade and Agriculture, did not contain the clarification requested. Thus, the Council repeatedly appealed to the Cabinet of Ministers asking for clarification.

Not having received clarification from the Cabinet of Ministers, the Council closed the case, since it lost its relevance. Once strict quarantine restrictions were loosened, the trade network of household goods resumed work of the previously closed stores.



In 2020, COVID-19 lockdown as the state responded to it, did not create new bureaucratic processes in which the interests of the state and business would clash. These might be new special permits that businesses must obtain to operate during quarantine, or targeted benefits and state aid programs for business, which are provided through a complex procedure and may cause controversy, and to which we could respond in accordance with our Rules of Procedure. At the same time, we understand that some existing bureaucratic procedures have stalled due to quarantine specifics, and in some cases their quality has declined, which could have led to more complaints. Having said that, we do not perceive these complaints as purely quarantine-related, they are normal for us.

## 1.4. TIMELINES OF THE PRELIMINARY REVIEW OF COMPLAINTS

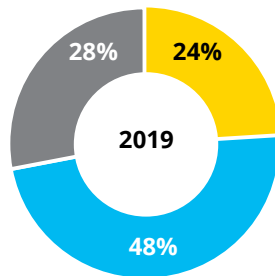
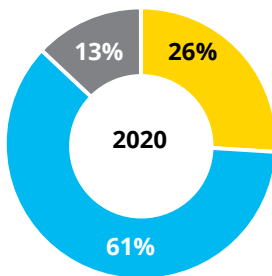
(Clause 5.3.1 (b) of Rules of Procedure)

The average time for preliminary review of a complaint in 2020 was

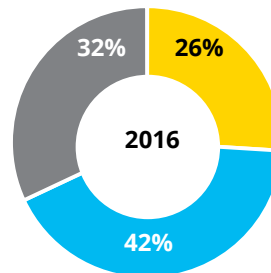
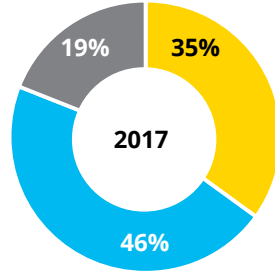
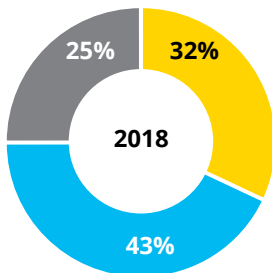
# 7.9

**WORKING  
DAYS**

**For reference —** according to our Rules of Procedure, the time for preliminary review should not exceed 10 working days.



- Number of complaints reviewed less than in 5 days
- Number of complaints reviewed in 5-10 days
- Number of complaints reviewed in more than 10 days



# 87%

**OF APPEALS FROM BUSINESSES WERE PRELIMINARY PROCESSED WITHIN 10 DAYS AS STANDARDLY ENVISAGED BY THE BOC REGULATIONS.**



## 1.5. NUMBER OF INVESTIGATIONS CONDUCTED AND REASONS FOR DECLINING COMPLAINTS

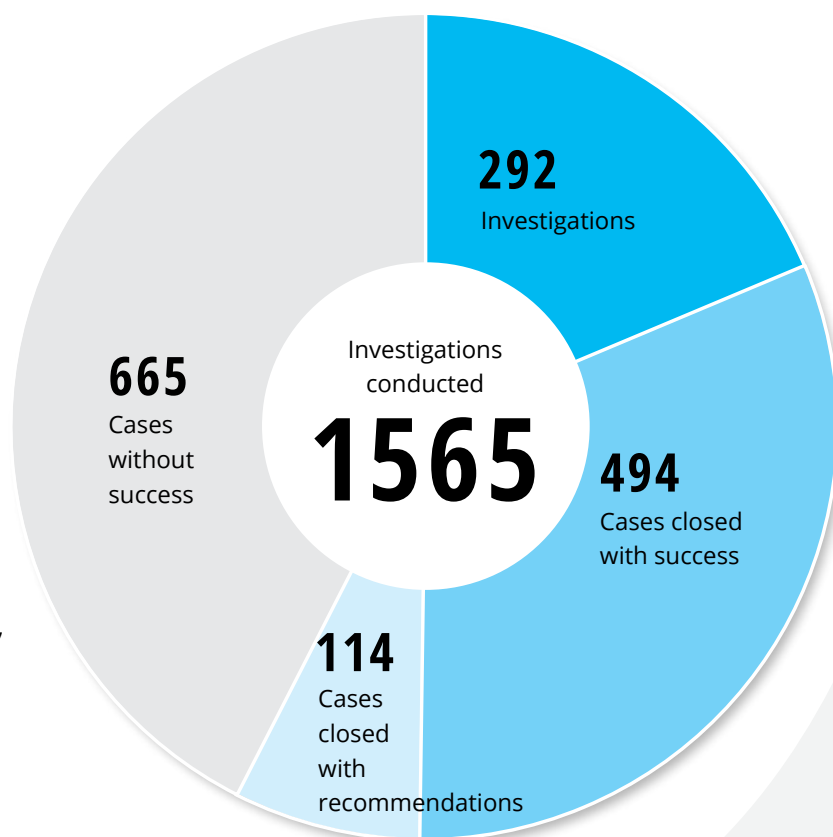
(Clause 5.3.1 (c) of Rules of Procedure)

### INVESTIGATIONS CONDUCTED\*

\* Number of investigations conducted includes closed cases and investigations in progress

The BOC completed investigation of 1195 cases, of which 494 were closed successfully, 114 — with recommendations, implementation of which was being monitored, and 665 — without success. As for the latter, companies could go to court using arguments developed by the Council.

The rest 292 cases remained at the investigative stage as of December 31, 2020.



### DISMISSED COMPLAINTS

	2020	2019	2018	2017	2016
Complaints received	1737	1646	1792	1638	868
Complaints rejected	499	530	502	373	246
Ratio of dismissed complaints	29%	32%	28%	23%	28%

In 2020, we had to reject 499 complaints — 29% of all received complaints, because they did not fit criteria, stipulated by the BOC's Rules of Procedure. The share of dismissed appeals in 2020 was 3 pp less than in 2019.

The most common (52%) and growing (+12% as compared to 2019) reason for dismissal — the subject of appeal was outside our competence. Active court proceedings (15%) and absence of substance (6%) were also typical in 2020.

# TOP-10

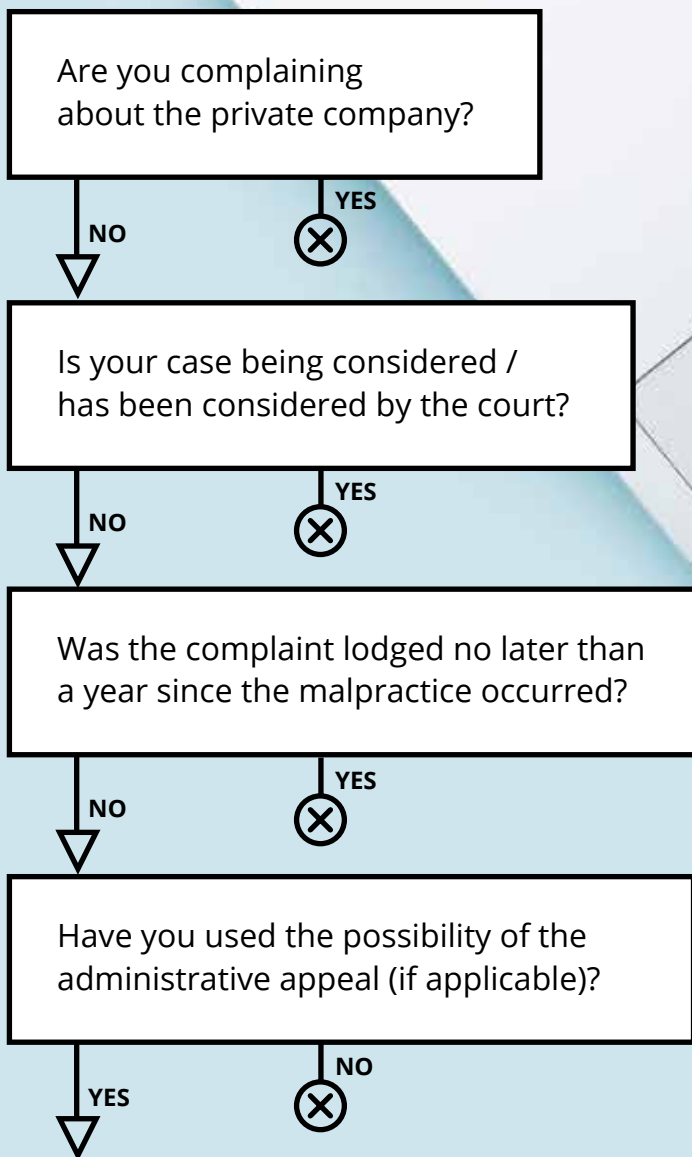
## REASONS FOR COMPLAINTS DISMISSAL

	2020	2019	2018	2017	2016
Complaints outside Business Ombudsman's competence	258	230	162	105	73
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	76	107	81	70	43
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	63	38	55	36	29
The complaint had no substance, or other agencies or institutions were already investigating such matter	28	56	76	63	11
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	12	22	19	15	16
A complaint filed repeatedly	11	10	11	7	1
The party affected by the alleged business malpractice has not exhausted at least one instance of an administrative appeal process	7	10	20	13	10
Investigation by the Business Ombudsman in a similar case is pending or otherwise on-going	7	7	5	2	2
If a complainant requests to withdraw the complaint, the Business Ombudsman shall cease pursuing the investigation unless he/she decides to pursue the matter in accordance with clause 6.1.2 of these Rules	7	5	2	3	0
A complaint relates to an issue that has already been addressed by the Business Ombudsman in his/her previous decisions	7	9	3	3	4
<b>TOTAL</b>	<b>476</b>	<b>494</b>	<b>434</b>	<b>317</b>	<b>189</b>

Despite the fact that we are constantly informing businesses about the range of problems we can help them with, the number of appeals that fall outside our institutional capacity is growing every year concurrently with the growing number of appeals addressed to the BOC.

The eligibility criteria are described in detail in the [Rules of Procedure](#), available at our web-site. In brief, 4 eligibility criteria are schematically presented below:

### CHECK WHETHER YOUR COMPLAINT MEETS THE REQUIREMENTS OF THE COUNCIL



### YOUR COMPLAINT IS ELIGIBLE

FOR CONSIDERATION BY THE BUSINESS OMBUDSMAN COUNCIL

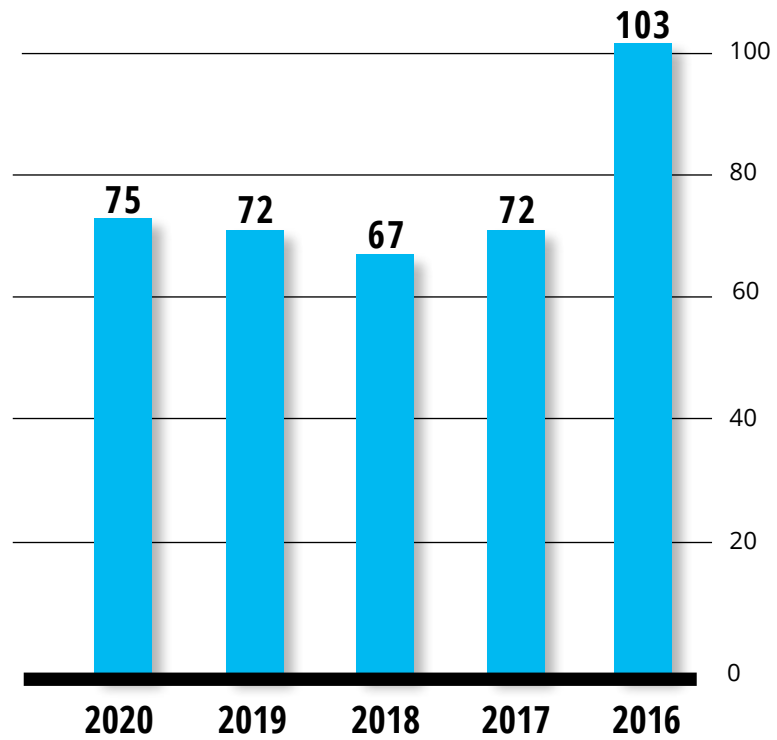


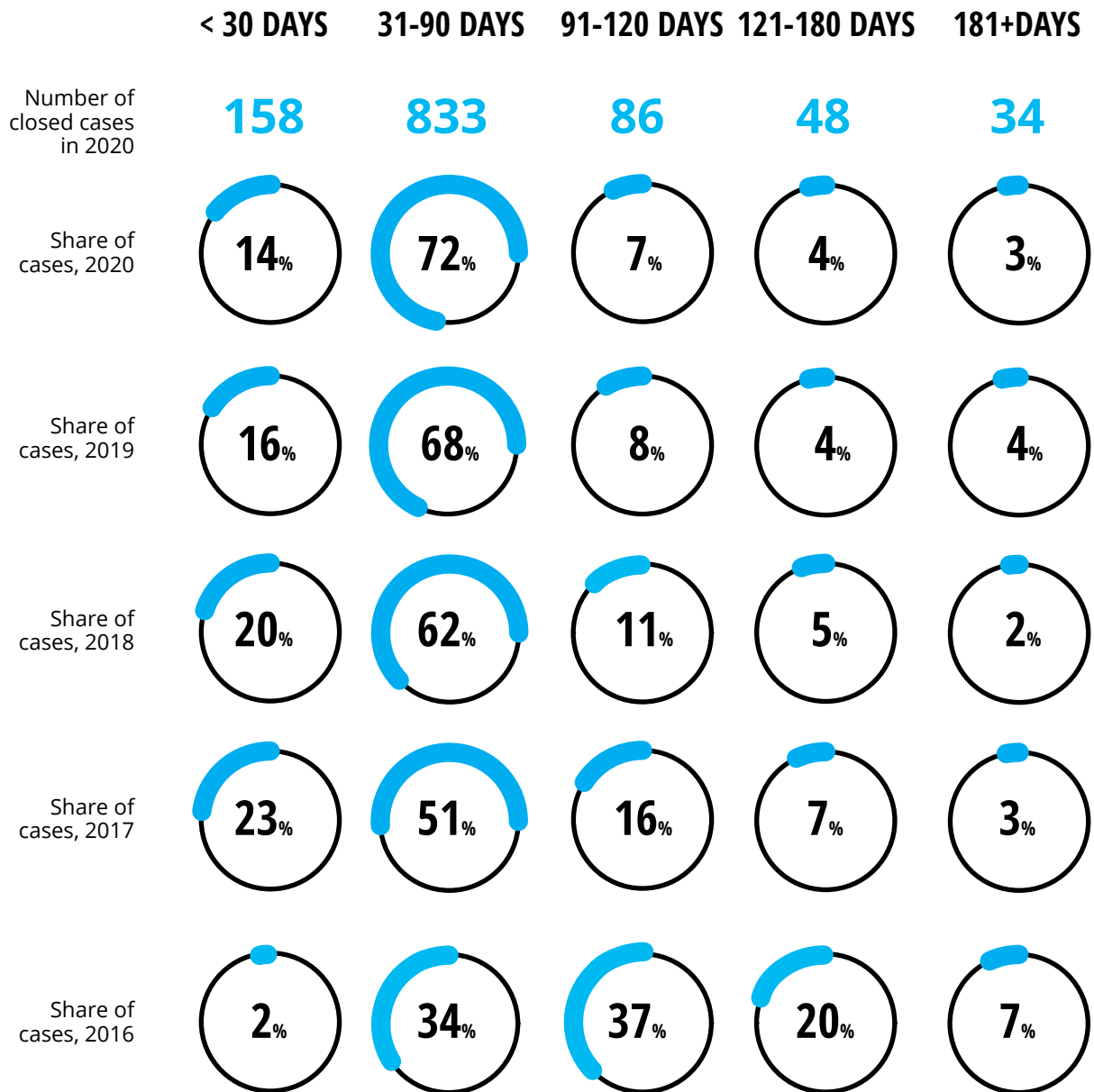
## 1.6. TIMELINES OF CONDUCTING INVESTIGATIONS

(Clause 5.3.1 (d) of Rules of Procedure)

In the reporting year, the BOC closed 1159 cases. Average time for conducting these investigations was

**75**  
DAYS.

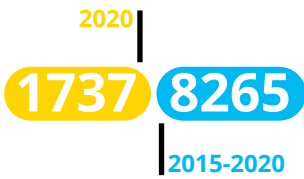
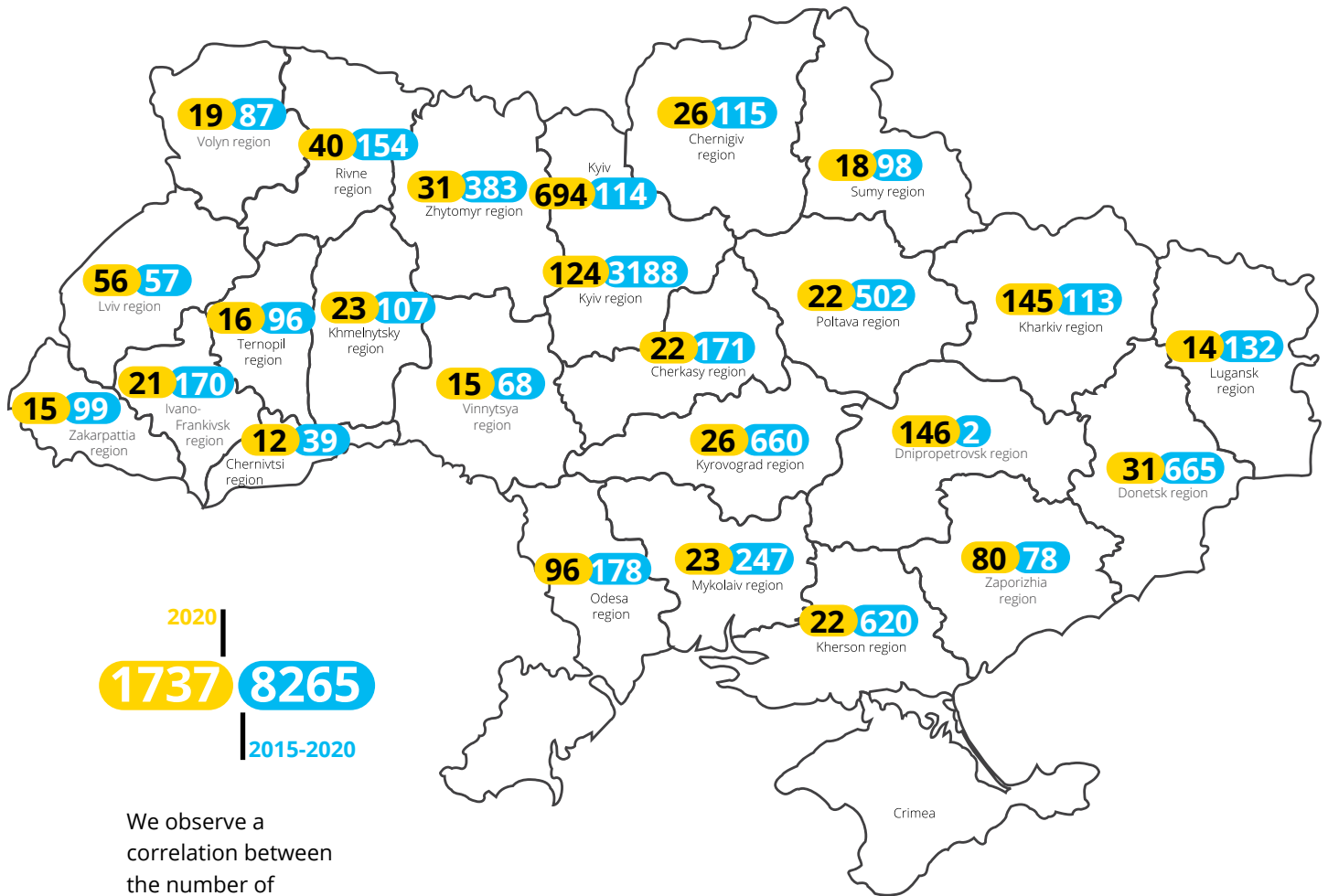




Despite the lockdown during many months of 2020, we managed to establish the remote regime of cases consideration with state bodies. The BOC organized cases consideration by tele- or videoconference. The average duration of investigation in 2020 was 75 days, which is 15 days faster than standardly envisaged in our Rules of Procedure. The majority of cases (86%) was closed within 90 days.

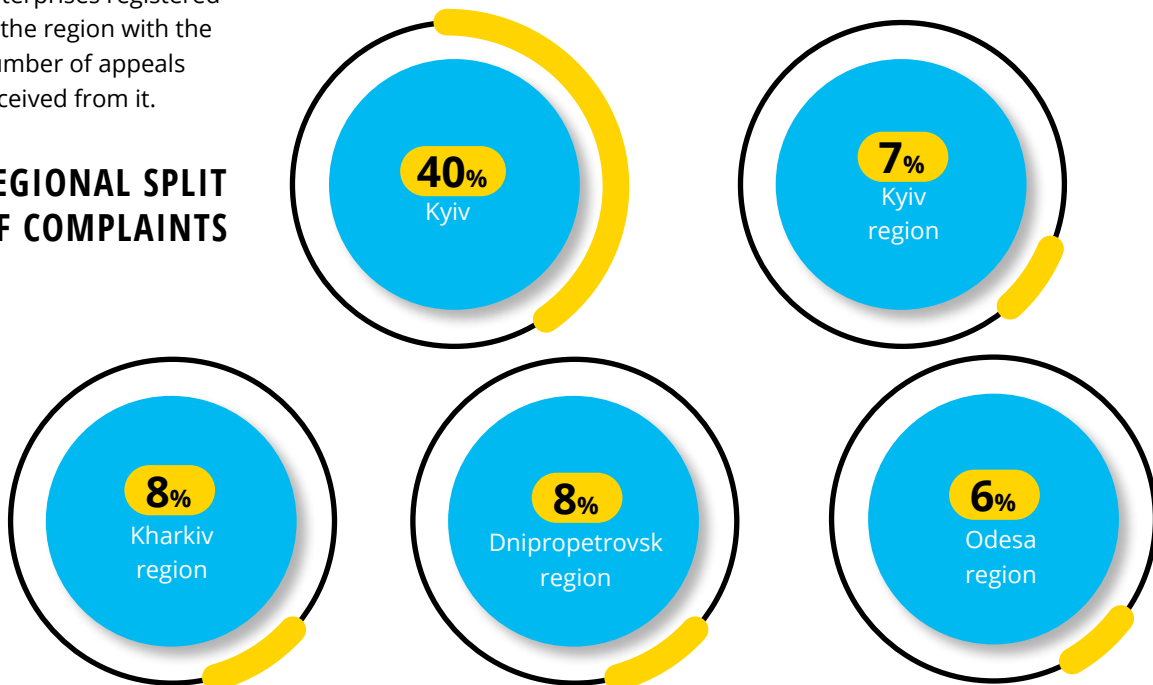
The reason why conducting investigations sometimes took more time than expected was that in the emerged circumstances of the pandemic, state bodies responsiveness became slower than before. However, soon state bodies improved their performance.

## 1.7.GEOGRAPHICAL DISTRIBUTION OF COMPLAINTS RECEIVED



We observe a correlation between the number of enterprises registered in the region with the number of appeals received from it.

### REGIONAL SPLIT OF COMPLAINTS



**Kyiv 694**

Tax issues	466
Actions of law enforcement bodies	78
Customs actions	33
Actions of State Regulators	30
Other	29

**Kharkiv region 145**

Tax issues	111
Actions of law enforcement bodies	15
Actions of State Regulators	8
Ministry of Justice of Ukraine	3
Legislation drafts/amendments	1

**Odesa region 96**

Tax issues	56
Customs Actions	11
Actions of law enforcement bodies	10
Actions of Local Councils/Municipalities	7
Actions of State Companies	2

**Lviv region 56**

Tax issues	24
Actions of State Regulators	6
Actions of Local Councils/Municipalities	5
Customs actions	4
Other	8

**Dnipropetrovs'k region 146**

Tax issues	99
Actions of law enforcement bodies	15
Actions of Local Councils/Municipalities	10
Actions of State Regulators	6
Actions of State Companies	6

**Kyiv region 124**

Tax issues	82
Actions of law enforcement bodies	19
Actions of State Regulators	6
Actions of Local Councils/Municipalities	3
Other	9

**Zaporizhzhia region 80**

Tax issues	58
Actions of law enforcement bodies	7
Actions of Local Councils/Municipalities	4
Ministry of Justice of Ukraine	4
Other	3

**Rivne region 40**

Tax issues	26
Actions of law enforcement bodies	7
Actions of State Regulators	4
Actions of Local Councils/Municipalities	2
Customs actions	1

**Donetsk region 31**

Tax issues	16
Ministry of Justice of Ukraine	4
Actions of Local Councils/Municipalities	4
Actions of State Regulators	2
Other	2

**Zhytomyr region 31**

Tax issues	16
Actions of law enforcement bodies	6
Actions of State Regulators	3
Actions of Local Councils/Municipalities	3
Deficiencies in regulatory framework	2

**Kirovograd region 26**

Tax issues	20
Actions of law enforcement bodies	3
Actions of State Regulators	2
Other	1

**Chernihiv region 26**

Tax issues	16
Actions of law enforcement bodies	2
Ministry of Justice of Ukraine	1
Customs actions	1
Other	3

**Mykolaiv region 23**

Tax issues	14
Actions of law enforcement bodies	3
Ministry of Justice of Ukraine	3
Actions of State Regulators	2
Other	1

**Khmelnysky region 23**

Tax issues	13
Actions of law enforcement bodies	4
Customs actions	2
Actions of Local Councils/Municipalities	1
Actions of State Regulators	1

**Kherson region 22**

Tax issues	7
Customs Actions	5
Actions of State Regulators	3
Actions of law enforcement bodies	3
Ministry of Justice of Ukraine	2

**Poltava region 22**

Tax issues	10
Ministry of Justice of Ukraine	3
Actions of State Regulators	3
Actions of law enforcement bodies	3
Other	2



**Cherkasy region 22**

Tax issues	10
Actions of law enforcement bodies	6
Actions of Local Councils/Municipalities	4
Permits and licenses environment/subsoil	1
Other	1

**Volynska region 19**

Tax issues	9
Customs actions	5
Actions of law enforcement bodies	2
Actions of State Regulators	1
Actions of Local Councils/Municipalities	1

**Ternopil region 16**

Tax issues	11
Actions of State Regulators	2
Actions of Local Councils/Municipalities	1
Actions of law enforcement bodies	1
Other	1

**Zakarpattia region 15**

Tax issues	5
Customs actions	3
Actions of law enforcement bodies	3
Actions of State Regulators	1
Other	2

**Ivano-Frankivsk region 21**

Tax issues	17
Ministry of Justice of Ukraine	1
Actions of State Regulators	1
Courts actions	1
Other	1

**Sumy region 18**

Tax issues	12
Actions of law enforcement bodies	4
Actions of Local Councils/Municipalities	2

**Vinnytsya region 15**

Tax issues	6
Actions of law enforcement bodies	4
Actions of Local Councils/Municipalities	2
Actions of State Regulators	2
Permits and licenses environment/subsoil	1

**Lugansk region 14**

Tax issues	5
Actions of law enforcement bodies	2
Deficiencies in regulatory framework	2
Actions of State Regulators	1
Other	4

**Chernivtsi region 12**

Tax issues	8
Actions of law enforcement bodies	1
Customs actions	1
Actions of Local Councils/Municipalities	1
Ministry of Justice of Ukraine	1

## SUMMARY OF CONDUCTED INVESTIGATIONS

(Clause 5.3.1 (f, g) of Rules of Procedure)

### TOP-10 SUBJECT MATTERS OF BOC'S INVESTIGATIONS\*

	2020	2019	2018	2017	2016
Tax inspections	202	312	68	35	38
"Classic" VAT invoice suspension	186	64	468	446	0
Inclusion of taxpayers in "risky" lists	171	98	8	0	0
Non-enforcement of court decisions on VAT invoice registration	137	102	16	0	0
VAT electronic administration	45	41	45	30	24
National Police procedural abuse	44	22	11	15	7
Other state regulators	36	51	45	41	27
Tax criminal cases	30	27	24	36	25
Customs valuation	29	21	5	12	11
Tax other	95	102	43	52	39

\* Breakdown is based on all investigations undertaken by the BOC. Dismissed complaints and cases that were in preliminary assessment as of 31 December 2020, are not included.

Following the moratorium of the majority of tax inspections introduced in March 2020, we received less appeals in this respect and hence conducted less investigations: 202 in 2020 compared to 312 in 2019 and 38 in 2016. At the same time, the number of conducted investigations regarding the "classic" VAT invoice suspension was three times higher than in 2019. Similarly, the number of appeals concerning inclusion of taxpayers in "risky" lists doubled as

compared to 2019. Meanwhile, with respect to non-enforcement of court decisions on VAT invoice registration — we observe a 30% increase in the number of conducted investigations since 2019.

The majority of other subjects from the TOP-10 list above also performed growth as compared to 2019 and increased significantly as compared to 2016.

In the second section of the report, we will provide statistics on closed cases and showcase the most important investigations.



**WE EXPRESS OUR DEEP GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL. A SUCCESSFUL SETTLEMENT OF THE ISSUE CONCERNING PAYMENT FOR WORKS WE PERFORMED FOR KYIVPASTRANS WOULD BE COMPLETELY IMPOSSIBLE WITHOUT YOUR PARTICIPATION, SINCE ALL OUR ATTEMPTS TO SOLVE THIS ISSUE ON OUR OWN DID NOT BRING ANY RESULTS.**

**THE BUSINESS OMBUDSMAN COUNCIL ENJOYS WELL-DESERVED RESPECT AND REPUTATION AMONG UKRAINIAN BUSINESS REPRESENTATIVES AND LEGAL ADVOCATES AS AN ORGANIZATION THAT IS ABLE TO PROMPTLY RESPOND TO BUSINESS NEEDS AND PROVIDE QUALITY SERVICES.**

**ANATOLII GLUSHKOV  
INDUSTRIAL AND COMMERCIAL COMPANY  
ALLIANCEREMTRAKTOR LLC**



**SOKIL-KYIV CYSS WOULD LIKE TO EXPRESS ITS SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR SUPPORTING OUR SCHOOL IN THE FIGHT AGAINST ILLEGAL ACTIONS OF THE STATE BODIES THAT TRIED TO SEIZE THE PART OF THE TERRITORY THAT IS A BASE FOR OLYMPIC, PARALYMPIC AND DEAFLYMPIC TRAINING. THANKS TO THE TIMELY INTERVENTION OF THE BUSINESS OMBUDSMAN COUNCIL, WE MANAGED TO DEFEND THE TERRITORY OF THE SPORTS COMPLEX AND PREVENT THE AUTHORITIES FROM COMMITTING ILLEGAL ACTIONS.**

**PARENT COMMITTEE OF SOKIL-KYIV CHILDREN`S YOUTH SPORTS SCHOOL (CYSS)**

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

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

**VOLODYMYR HRYTSAI  
ACTING CEO OF LUHANSK ENERGY UNION  
COMPANY LLC**

## 1.8. FINANCIAL AND NON-FINANCIAL IMPACT

**OVERALL FINANCIAL IMPACT IN 2015-2020:** UAH **18.8** BN

**FINANCIAL IMPACT IN 2019:** UAH **4.6** BN

**FINANCIAL IMPACT IN 2020:** UAH **0.8** BN

As a rule, the direct financial effect of the BOC activities for business is largely calculated from the amount of money the Council helped entrepreneurs return or save from cancelling results of tax inspections.

In 2020, the moratorium was introduced on most tax inspections that was the reason why the financial effect on this subject went down from UAH 3.6 mn in 2019 to 0.5 mn in 2020. Nevertheless, one more argument came from the BOC investigator's experience in cases consideration. It should be assumed also that in the reporting year the Council faced reluctance on the part of the Tax Office officials to solve disputable issues in favor of businesses.

Tax inspections  
 Tax VAT refund  
 Implementation of systemic recommendations  
 Tax other  
 Natural Monopolies other  
 Tax VAT electronic administration  
 Tax VAT invoice suspension  
 National regulatory agencies  
 NERCUS other  
 Other state regulators  
 Tax criminal cases  
 Other — Deposit Guarantee Fund of Ukraine — Debt settlement  
 Minjustice Department of State Enforcement Service  
 Fines cancelled by the Courts  
 State companies other  
 Customs other  
 Natural Monopolies inactivity/delays  
 Overpaid customs duties refund  
 Local councils/municipalities other — compensation  
 Customs valuation  
 State companies investment/commercial disputes  
 Prosecutor's Office — funds refund  
 State Treasury Service — budget compensations  
 National Police procedural abuse — funds refund  
 Customs clearance delay/refusal  
 State Security Service other  
 ATO budget compensations  
 National Police inactivity — debt settlement

**TOTAL**

in thousand of hrvnas

<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>TOTAL</b>
472 423	3 641 248	1 587 528	909 009	885 257	114 445	7 609 909
15 097	84 337	51 511	1 456 823	4 188 650	396 401	6 192 820
0	0	0	0	0	2 094 326	2 094 326
28 978	709 931	109 698	117 459	16 814	7 769	990 649
0	68	0	0	643 560	0	643 628
271 436	40 863	32 202	73 028	38 947	13 503	469 979
46 096	66 567	189 768	44 459	0	0	346 890
0	0	0	0	114 700	77 083	191 782
0	2 857	25 805	0	56 088	12	84 762
1 266	15 021	0	0	3 666	10 705	30 658
0	27 415	0	0	0	0	27 415
4 174	16	497	12 950	2 235	0	19 873
0	0	0	16 771	0	0	16 771
3 002	6 553	1 710	0	0	0	11 265
0	228	7 308	675	791	0	9 002
0	0	0	0	7 094	0	7 094
0	1 952	5 650	1 251	80	0	8 934
7	5 920	0	102	0	0	6 028
0	2 630	672	440	813	0	4 555
0	0	0	0	0	2 129	2 129
0	627	1 408	0	0	0	2 035
0	772	0	0	0	0	772
160	500	0	0	0	0	660
0	0	47	571	0	0	618
0	0	0	322	0	0	322
0	0	0	275	0	0	275
0	0	0	39	0	0	39
<b>842 638</b>	<b>4 607 507</b>	<b>2 013 804</b>	<b>2 634 174</b>	<b>5 958 695</b>	<b>2 716 373</b>	<b>18 773 191</b>

In addition to cases closed with financial result, the BOC closed cases with desirable non-financial impact for applicants:

## NON-FINANCIAL IMPACT






	2020	2019	2018	2017	2016	2015	TOTAL
Malpractice ceased by complaine	196	195	152	147	36	7	733
Tax records reconciled, tax reporting accepted	33	20	54	65	28	3	203
Criminal case against the Complainant closed; property/accounts released from under arrest	18	23	36	39	21	4	41
Permit/license/conclusion/registration obtained	15	14	27	41	3	10	110
Legislation amended/enacted; procedure improved	13	14	17	19	14	3	80
Criminal case initiated against state official/3rd party	6	5	4	8	1	2	26
State official fired/penalized	3	5	6	13	8	1	36
Contract with state body signed/executed	2	4	2	29	13	2	52
Claims and penalties against the Complainant revoked   Sanction lifted	1	6	2	12	2	2	25
All other	141	110	122	123	50	0	546
<b>TOTAL</b>	<b>428</b>	<b>396</b>	<b>422</b>	<b>496</b>	<b>176</b>	<b>34</b>	<b>1852</b>

Ceased malpractice of state officials remains the key non-financial impact for our complainants. Apart from that, in 2020, we helped complainants to successfully submit tax reporting, close ungrounded criminal cases, obtain permits and licenses in dozens of cases.

In comparison with 2019, the number of malpractice ceased increased by 32 cases, but over 5 times in comparison with 2016. A similar five-fold increase is recorded for the number of obtained permits. While the number of cases, in which we helped to submit tax reporting went up by 18%, the number of episodes of closed criminal cases went down by 14%. On a separate note, while we managed to penalize 8 officials in 2016, in 2020 we recorded only 3 such cases. The number of eventually executed contracts with state bodies was also higher in 2016 than in 2020 (13 vs. 2 cases).

## 1.9. COMPLAINANTS' PORTRAIT

# TOP-5 COMPLAINANTS' INDUSTRIES

	2020	2019	2018	2017	2016
 Wholesale and Distribution	443	430	525	485	178
 Agriculture and Mining	215	139	185	170	72
 Manufacturing	200	232	239	243	165
 Real Estate and Construction	183	158	162	139	62
 Individual Entrepreneur	177	154	119	100	69

In 2020, the record number of agricompanies sought help from the BOC — 215, which is almost twice more than in 2019 and 3 times more than in 2016. The number of complaints from individual entrepreneurs, the most vulnerable category of our complainants, is growing every year without exception. In 2020, we received 177 appeals from them, which is 15 more than in 2019 and 157% more than in 2016. This obviously indicates the increasing awareness about the BOC mandate among small businesses.

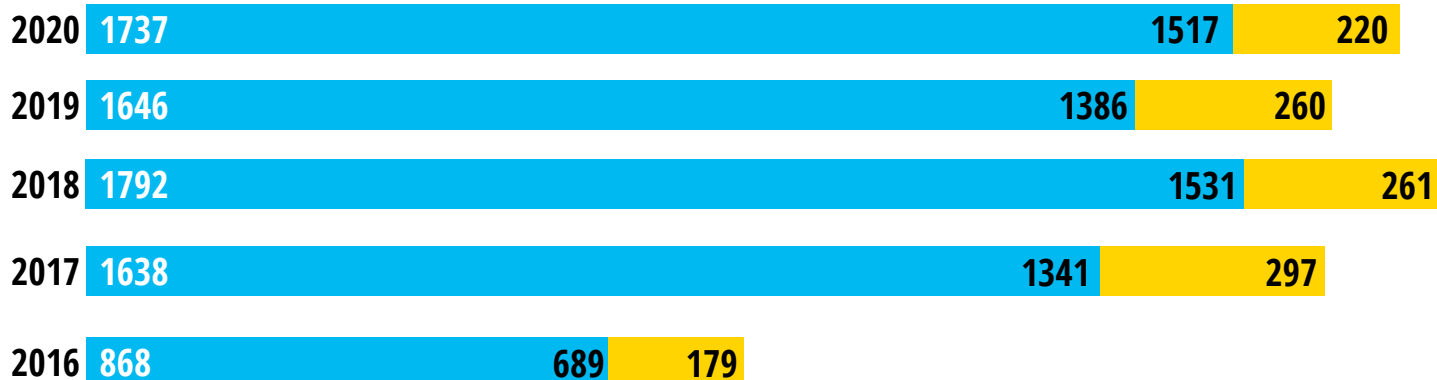
## OTHER INDUSTRIES IN 2020 INCLUDED:

Retail	<b>78</b>	Printing and reproduction activity	<b>9</b>	Restaurant business	<b>2</b>
Physical person	<b>56</b>	Health, Pharmaceuticals, and Biotech	<b>8</b>	Freight maritime transport	<b>2</b>
Auto transport	<b>45</b>	Warehousing	<b>7</b>	Ground and pipeline transport	<b>2</b>
Energy and Utilities	<b>27</b>	Activity in the field of architecture	<b>7</b>	Computer and electronics	<b>2</b>
Repair and maintenance services	<b>20</b>	Engineering, geology and geodesy areas activity	<b>7</b>	Activities in the field of employment	<b>2</b>
Financial services	<b>19</b>	Advertising	<b>6</b>	Insurance	<b>2</b>
Farming	<b>17</b>	Maintenance of buildings and territories	<b>6</b>	Investment companies	<b>2</b>
Hire, rental and leasing	<b>17</b>	Activities in the field of culture and sports, recreation and entertainment	<b>6</b>	Social assistance	<b>1</b>
Public organizations	<b>15</b>	Fishing services	<b>5</b>	Non-state pension provision	<b>1</b>
Information and Telecommunications	<b>12</b>	Scientific research and development	<b>5</b>	Accommodation services	<b>1</b>
Activity in the field of law	<b>12</b>	Funds management	<b>4</b>	Cleaning services	<b>1</b>
Transportation and storage	<b>11</b>	Private security firms activity	<b>3</b>	Household activities	<b>1</b>
Electric installation works	<b>11</b>	Tourism and travel-related services	<b>3</b>	Processing industry	<b>1</b>
Technical testing and research	<b>10</b>	Banks	<b>3</b>	Publishing and printing services	<b>1</b>
Supply of electricity, gas, hot water, steam and air conditioning	<b>9</b>	IT companies	<b>3</b>	Economic and commercial activity	<b>1</b>
Waste collection and disposal	<b>9</b>	Oil and gas	<b>3</b>	Charitable organizations	<b>1</b>
Education	<b>9</b>	Post office activities	<b>2</b>	Wastewater treatment, sewage	<b>1</b>
Forestry and logging	<b>9</b>	Activity of holding companies	<b>2</b>	State Enterprise	<b>1</b>
Consulting	<b>9</b>			Other	<b>10</b>



## LOCAL VS FOREIGN COMPLAINANTS

### NUMBER OF COMPLAINTS



### STRUCTURE



We are already accustomed to the fact that the share of Ukrainian business among complainants predominates. Moreover, in 2020, the share of Ukrainian enterprises gained 3pp in comparison with 2019 and was record high since launch of operations — 87%.

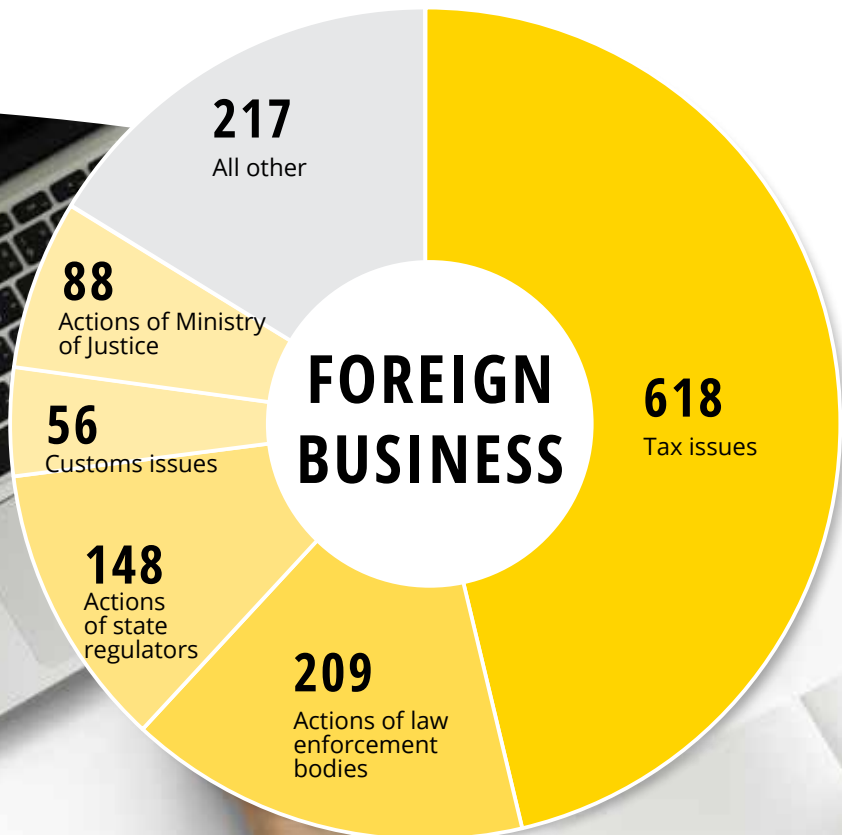
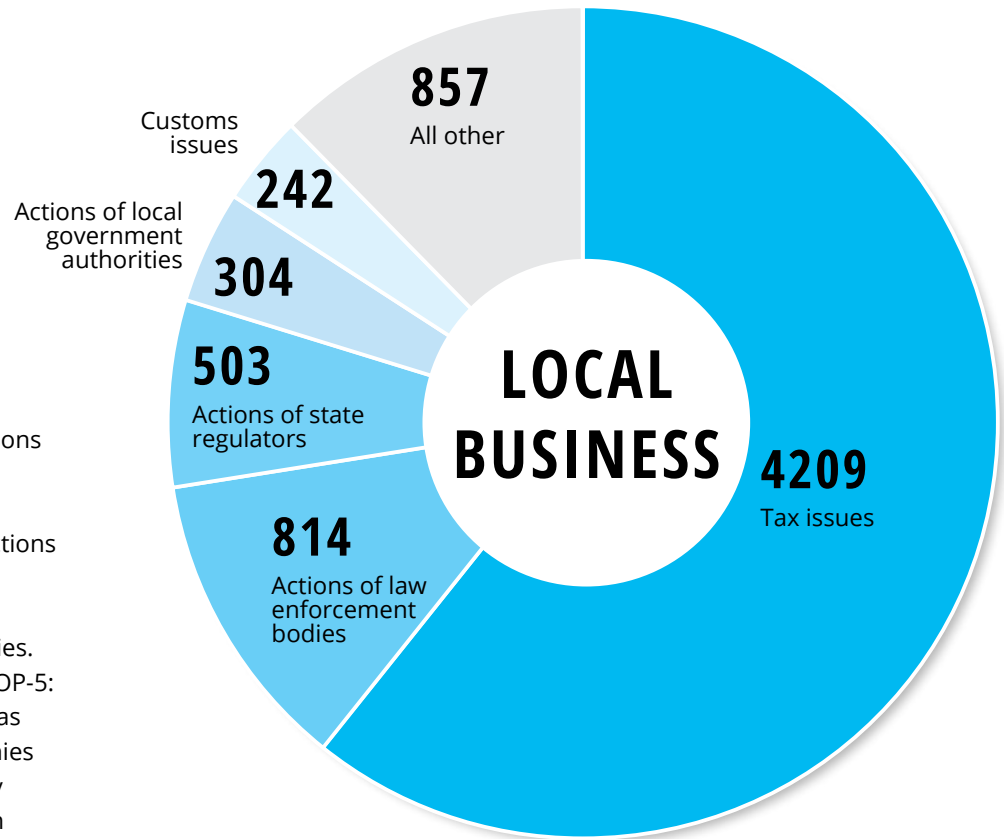


WE THANK THE BUSINESS OMBUDSMAN COUNCIL FOR ITS ASSISTANCE IN OBTAINING A CERTIFICATE FOR THE RIGHT TO DEVELOP DOCUMENTS JUSTIFYING THE AMOUNT OF EMISSIONS INTO THE ATMOSPHERE.

YEVHEN YEROMENKO  
DIRECTOR OF SCIENTIFIC TECHNICAL ENTERPRISE RESOURCE LLC

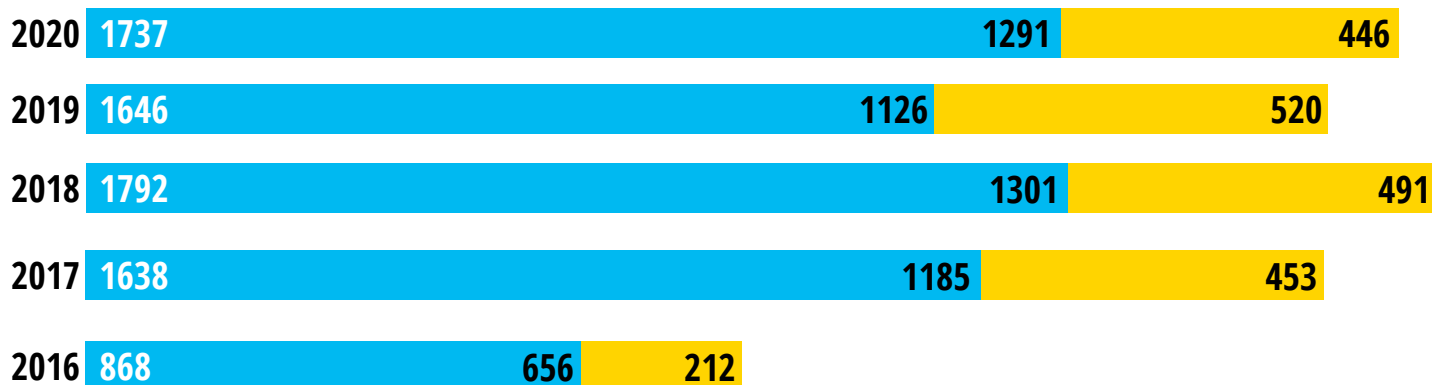
## SUBJECTS OF COMPLAINTS: BREAKDOWN BY ORIGIN OF COMPLAINTS

The most widespread reasons for international and local companies addressing us were similar: tax issues, actions of law enforcers and state regulators and actions of local government authorities. Subjects which varied in TOP-5: actions of customs issues as regards Ukrainian companies and actions of the Ministry of Justice in case of foreign businesses.



## SMALL/MEDIUM VS LARGE BUSINESSES

### NUMBER OF COMPLAINTS



### STRUCTURE



The share of SMEs in 2020 (74%) was the second highest one since 2016, when it amounted to 76% of total appeals.

Overall, in 2020 we received 1291 complaints from small and medium enterprises, which is 15% more than in 2019 and twice more than in 2016. Meanwhile, the number of appeals from foreign companies was also twice higher in 2020 than in 2016, we observe a decrease in the number of appeals from international businesses: it was the second lowest since 2016.



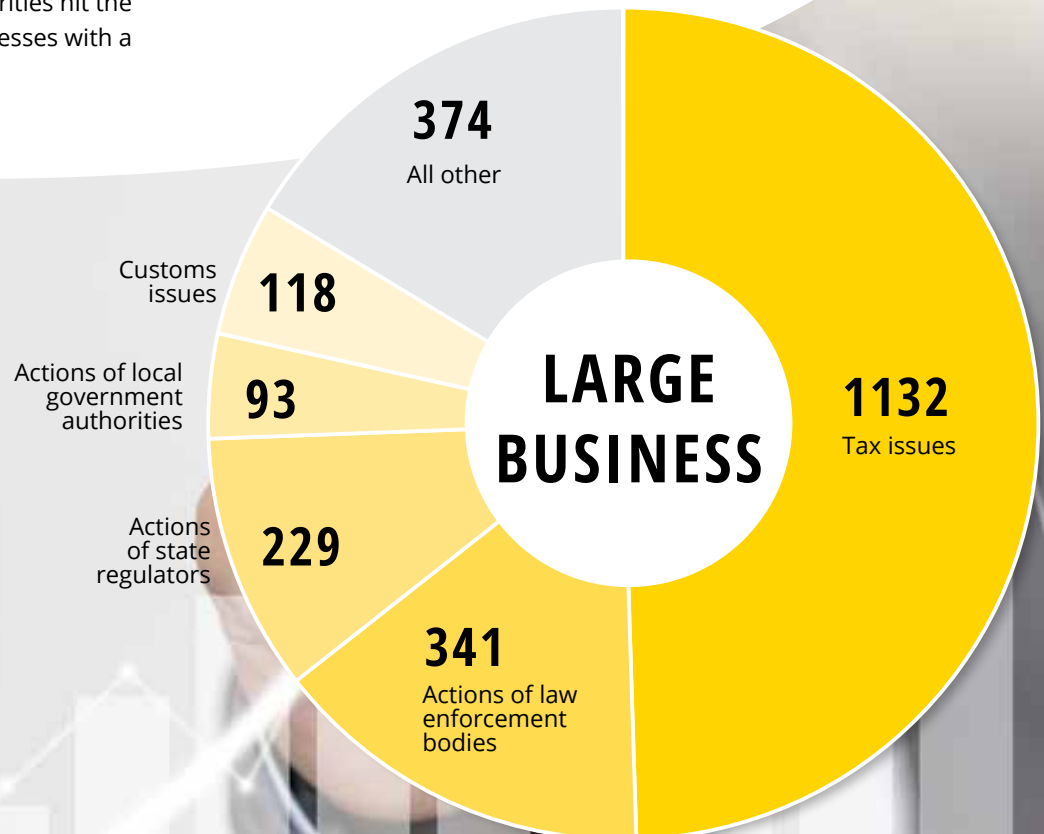
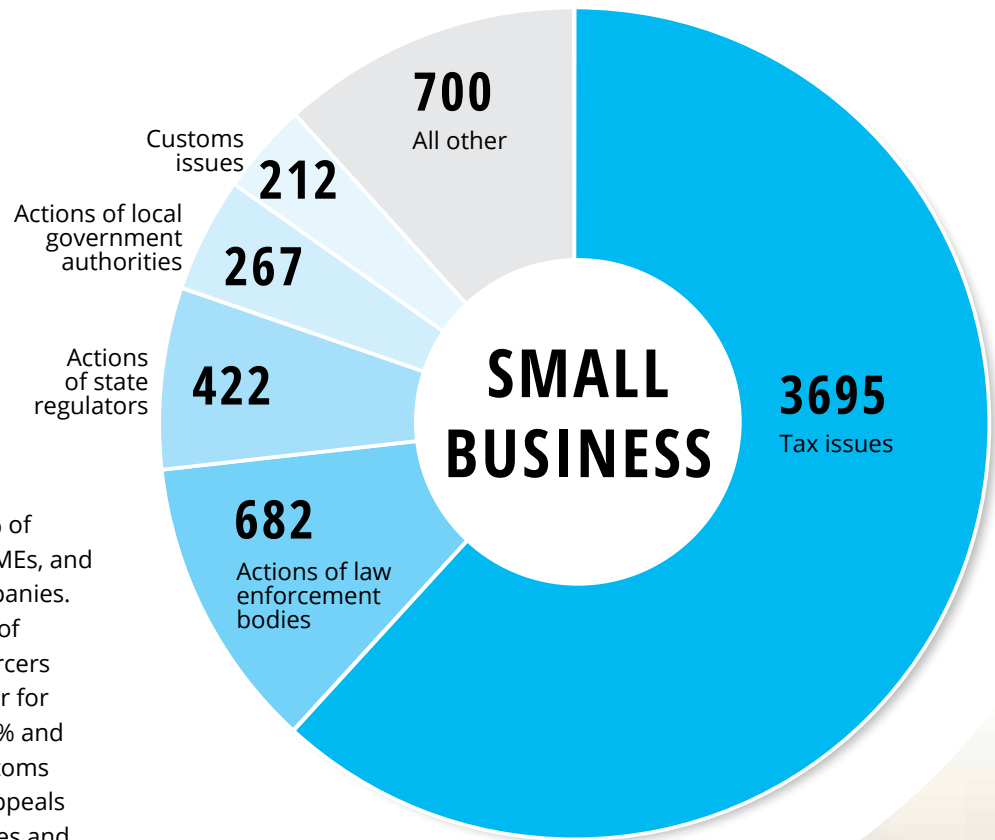
**WE TRULY THANK THE BUSINESS OMBUDSMAN COUNCIL FOR THE TWO-YEAR STRUGGLE. THE COURT DECISION IS ENFORCED!**

**ALINA MYRONOVSKA  
LAWYER  
CONSULTING COMPANY SIDCON LLC**

# TOP-5

## SUBJECTS OF COMPLAINTS: BREAKDOWN BY SIZE OF THE BUSINESS

Tax issues amounted to 62% of appeals in the portfolio of SMEs, and to 49% — among large companies. At the same time, the share of complaints against law enforcers and state regulators is higher for large enterprises: 15% vs 11% and 11% vs 7% respectively. Customs issues amounted to 5% of appeals submitted by large companies and 4% of SMEs, meanwhile actions of local government authorities hit the TOP-5 list of large businesses with a 4% share.



## 1.10. COMPLAINANTS' FEEDBACK

As soon as the investigation is completed and the case is closed (either with success or without it), we send a request for feedback to every complainant.

In the reporting year, we received

**479** FEEDBACK FORMS FROM OUR COMPLAINANTS.

### IN FEEDBACK FORMS THEY ASSESSED OUR WORK USING THE FOLLOWING CRITERIA:

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

They also indicate what they are satisfied with most in dealing with us and what areas need improvement.

As a result,

**98%**

of complainants said they were satisfied with working with us.





**WE'D LIKE TO SINCERELY THANK YOU FOR THE ADVOCACY & SUPPORT OF OUR INTERESTS. A REMARKABLE AND OUTSTANDING THING FOR US WAS HOW SKILLFULLY THE BUSINESS OMBUDSMAN COUNCIL'S INVESTIGATORS WERE FINDING ADDITIONAL ESSENTIAL ARGUMENTS IN FAVOR OF OUR COMPANY.**

**PETER KEREGYARTO  
GENERAL DIRECTOR  
ALLIANCE HOLDING LLC**

**OUR PERSONNEL IS SINCERELY GRATEFUL TO THE BUSINESS OMBUDSMAN COUNCIL FOR ITS HELP AND PRESENTS ITS COMPLIMENTS. WE WOULD LIKE TO EXPRESS A SPECIAL GRATITUDE TO THE RESPONSIBLE INVESTIGATOR, WHO WAS DEALING WITH THE ISSUE AND DID AS MUCH AS POSSIBLE (WITHIN THE LAW AND THE POWERS GRANTED TO HIM) TO ENSURE THE OBJECTIVE AND LEGAL DECISION TO BE TAKEN BY LAW ENFORCEMENT AGENCIES.**

**B. SMOLIY  
ATTORNEY  
REPRESENTATIVE OF AGROCOMPLEX  
LLC AND PLISKY-AGRO LLC**



**WE WOULD LIKE TO SINCERELY THANK THE BUSINESS OMBUDSMAN COUNCIL FOR THE PROMPT RESPONSE, APPROPRIATE CONSIDERATION OF OUR COMPLAINTS AND PROFESSIONAL ASSISTANCE THAT WE GOT IN SETTling THE ISSUE.**

**YAROSLAV DEMCHUK  
ATTORNEY  
4 SEASONS OF GRAIN LLC**

**WE WOULD LIKE TO EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR THE HIGH LEVEL OF PROFESSIONALISM, EFFORTS TAKEN TO IMPROVE THE ENTREPRENEURSHIP CONDITIONS AND PREVENT VIOLATIONS OF THE LEGAL INTERESTS OF THE ENTERPRISE.**

**M.B. DUBYNA  
ATTORNEY**



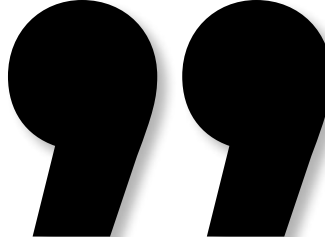


I WOULD LIKE TO SINCERELY THANK YOUR TEAM AND PERSONALLY THE INVESTIGATOR FOR THE UNPRECEDENTED WORK IN TERMS OF SOLVING ISSUES WITH TAX AUTHORITIES REGARDING MY PROBLEM.

**OLEKSANDR IVONIN**

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

**OLENA GOLUBEVA**  
LAWYER  
VARIANT AGRO BUD LLC

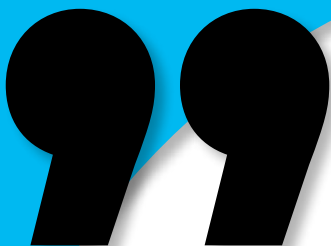


THANK YOU FOR YOUR PROFESSIONALISM. WE WOULD LIKE TO NOTE THAT YOUR HELP WAS EXTREMELY NECESSARY AND USEFUL. IT IS YOUR INSTITUTION THAT GIVES HOPE THAT UKRAINE IS MOVING TOWARDS POSITIVE CHANGES. IT IS THANKS TO YOUR EFFORTS THAT THE EXISTING SYSTEM OF BUREAUCRATIC REPLIES CAN BE LEFT IN THE PAST.

**OLENA ANTONEVSKA**  
REPRESENTATIVE OF ZHYTOMYR-AGROBUDINDUSTRIA LLC

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

**TETIANA KONDRATENKO**  
LAWYER  
ACTIO LAW FIRM




WE EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR ITS HIGH COMMITMENT TO THE IDEALS OF JUSTICE AND LEGITIMACY IN PROTECTING FOREIGN INVESTMENTS IN THE ECONOMY OF UKRAINE AND UKRAINIAN BUSINESS IN GENERAL. THANKS TO THE PROMPT AND PROFESSIONAL ASSISTANCE OF THE BOC IN RESOLVING OUR ISSUE, THE MINISTRY OF JUSTICE OF UKRAINE MADE CORRECT AND, MOST IMPORTANTLY, LEGAL CONCLUSIONS ABOUT THE SITUATION AND CANCELED ILLEGAL REGISTRATION ACTIONS, WHICH RESULTED IN THE ILLEGAL TAKEOVER OF OUR COMPANY. WE BELIEVE THAT THE BUSINESS OMBUDSMAN COUNCIL ACTIVITIES IN SETTLING OUR COMPLAINT ARE EXEMPLARY, TIMELY AND PROFESSIONAL, WHICH INSTILLS CONFIDENCE IN PROTECTION OF INTERNATIONAL INVESTMENTS IN THE ECONOMY OF UKRAINE.

**TETIANA IAKOVENKO**  
REPRESENTATIVE OF IVCJ JAPAN LLC

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**WE ARE VERY GRATEFUL FOR YOUR HELP. YOU ARE ALMOST THE ONLY INSTRUMENT IN THE COUNTRY BEING ABLE TO ENSURE COMPLIANCE WITH THE RIGHTS OF BUSINESS.**

**"M&P" LEGAL GROUP**




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**WE WOULD LIKE TO EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR ITS SUPPORT AND PROTECTION OF OUR INTERESTS. WE BELIEVE THE BUSINESS OMBUDSMAN COUNCIL'S CONTRIBUTION IS INVALUABLE FOR BUSINESS DEVELOPMENT, IMPROVING THE INVESTMENT CLIMATE AND COMBATING CORRUPTION IN UKRAINE.**

**V. V. KHRYSTYUK  
DIRECTOR OF LIGHT STAR BUSINESS LLC**

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**ON MY OWN BEHALF AND ON BEHALF OF THE LSC GROUP PERSONNEL, I WOULD LIKE TO EXPRESS MY GRATITUDE FOR THE ATTENTION PAID IN THE PROCEEDING ON THE COMPANY'S COMPLAINT ABOUT THE UNCONSTRUCTIVE ACTIONS OF THE CONTROLLING AUTHORITY.**

**DIRECTOR OF LSC GROUP  
YULIIA SHAPOVALOVA**

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**I'M TRULY THANKFUL FOR YOUR PARTICIPATION IN THE PROTECTION OF BUSINESS RIGHTS IN UKRAINE. YOUR PROMPT RESPONSE TO OUR COMPLAINT HAS ALLOWED THE COMPANY TO RETAIN ITS PROPERTY, RESTORE THE RULE OF LAW AND CONTINUE ITS BUSINESS ACTIVITIES.**

**I.O. DOVGAL  
DIRECTOR OF CITYSTATESERVICE LLC**

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**WE ARE CONVINCED THAT THE BUSINESS OMBUDSMAN INSTITUTION IS ABLE TO ENSURE EFFECTIVE MEDIATION BETWEEN BUSINESS AND THE STATE, PREVENT CORRUPTION AND OTHER VIOLATIONS OF THE RIGHTS AND INTERESTS OF ENTREPRENEURS, BECOME THE FIRST AND MAIN ADVISER TO THE STATE ON LEGAL REGULATION OF BUSINESS.**

**OKSANA ORYNCHAK  
EXECUTIVE DIRECTOR  
NATIONAL ASSOCIATION OF MINING  
INDUSTRY OF UKRAINE**




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**I WOULD LIKE TO THANK YOU AND THE BOC TEAM FOR THE PROFESSIONAL APPROACH IN SETTLING OUR COMPLAINT.**


**ZINOVIA GOLUBINKA  
PRIVATE ENTREPRENEUR**

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**I BELIEVE THAT YOUR LETTER TO THE CONTROLLING AUTHORITY AND PROFESSIONAL POSITIONING OF THE COMPANY BY THE INVESTIGATOR ALLOWED TO RECEIVE AN OBJECTIVE AND JUSTIFIED DECISION IN FAVOR OF THE TAXPAYER.**

**A.M. GRNYOV  
KYIVTRANSBUD LLC**





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**THANKS TO YOUR FULL SUPPORT AND ACTIVE POSITION THE REPORT ON THE INVENTORY OF POLLUTANT EMISSIONS INTO THE AIR BY STATIONARY SOURCES OF THE COMPANY WAS REGISTERED, AND WE RECEIVED A PERMIT FOR EMISSIONS OF POLLUTANTS INTO THE AIR. WE SINCERELY THANK YOU FOR YOUR SUPPORT AND LOOK FORWARD TO FURTHER FRUITFUL COOPERATION.**

**O.I. AFANASYEV  
DIRECTOR GENERAL  
UKRAINIAN MINERAL FERTILIZERS  
LLC**

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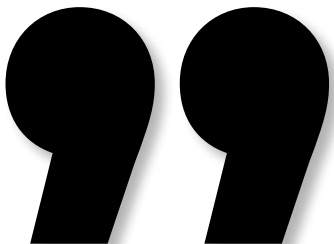
**PLEASE LET ME THANK YOU FOR YOUR HELP AND WISH YOU GOOD HEALTH AND SUCCESS IN YOUR ACTIVITIES. THE OPERATION OF THE BUSINESS OMBUDSMAN COUNCIL GIVES FAITH IN THE FUTURE SUCCESS OF UKRAINIAN BUSINESS AND BRINGS HOPE FOR JUSTICE IN OUR COUNTRY.**

**EUGENE BALASHOV  
CEO  
EU-TRANS LLC**

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**WE CONSIDER YOUR POSITION IN THE CONSIDERATION ON THE MERITS OF THE CASE SHAPED A POSITIVE LEGAL DECISION.**

**V.A. AKULOV  
DIRECTOR  
OF AGROIL LLC**



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**THANKS TO THE JOINT COOPERATION OF THE BUSINESS OMBUDSMAN COUNCIL AND THE ENTREPRISE'S ADMINISTRATION, THE SETTLEMENT OF THE DISPUTED ISSUE CONCERNING RECOGNITION OF A QUALIFYING PERIOD OF THE PJSC AZOVELEKTROSTAL'S EMPLOYEES TILL JUNE 2020 INCLUSIVE WAS POSSIBLE TO ACHIEVE. THE AGREEMENT WAS ALSO REACHED WITH THE STATE TAX SERVICE AND THE PENSION FUND OF UKRAINE ON THE PROCEDURE FOR REPAYMENT OF THE EXISTING SSC DEBT OF ENTERPRISES FOR THE DISPUTED PERIOD OF 2015-2017.**

**OLEKSII POPOV  
DIRECTOR GENERAL OF THE PJSC  
AZOVELEKTROSTAL**

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**WE EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL OF UKRAINE FOR ITS ASSISTANCE IN RESOLVING OUR ISSUE. DUE TO FACILITATION AND ASSISTANCE OF THE BUSINESS OMBUDSMAN COUNCIL, THE STATE TAX SERVICE OF UKRAINE ENFORCED THE COURT RULING TO A FULL EXTENT. THE COMPANY SINCERELY THANKS THE BOC FOR ITS ASSISTANCE AND A FIRM AND PROFESSIONAL APPROACH IN RESOLVING THE DISPUTED ISSUE AND EXPRESSES HOPE FOR FURTHER COOPERATION WITH THE BOC IN SETTLING PROBLEMATIC ISSUES.**

**VOLODYMYR GRYTSAI,  
DIRECTOR GENERAL OF THE LUHANSK ENERGY ASSOCIATION LLC**



## **2. SUMMARY OF KEY MATTERS AND RESULTS OF IMPORTANT INVESTIGATIONS RECEIVED IN 2020**

## TAX ISSUES

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
Tax inspections	70	5	146	221
Inclusion of taxpayers in "risky" lists	60	9	109	178
"Classic" VAT invoice suspension	67	6	61	134
Non-enforcement of court decisions on VAT invoice registration	102	7	11	120
VAT electronic administration	27	8	11	46
Tax criminal cases	9	7	7	23
VAT refund	3	2	2	7
Termination of agreement on recognition of electronic reporting and Tax status 09	3	0	0	3
Tax termination/renewal/refusal of VAT payers registration	1	0	2	3
Tax other	36	8	49	93
<b>Total</b>	<b>378</b>	<b>52</b>	<b>398</b>	<b>828</b>

### Subject: Tax inspections

**State Tax Service agrees to drop additional payments for FERRERO UKRAINE LLC worth UAH 3 mn**

#### Complainee:

Large Taxpayers Office of the State Fiscal Service (LTO)

### COMPLAINT IN BRIEF:

FERRERO UKRAINE LLC, an official importer of well-known finished confectionary products of FERRERO Group turned to the Council. The Complainant disagreed with the tax audit findings, according to which he had to additionally pay UAH 3 mn in taxes.

The tax authority stated that the complainant had understated his VAT and income tax liabilities. In particular, according to tax officers, the Complainant was provided with fictitious advertising services. The tax authority concluded thereon based on the audit scheduled following tax notifications-decisions administrative appeal outcome. Taking the opportunity, we would like to note the previous tax audit was also the subject of the Council's investigation. The Council also upheld the Complainant's position in the previous case. Then, having accepted the Complainant's and the Council's position, the SFS canceled tax notifications-decisions, yet decided to arrange a repeated audit, which resulted for the Complainant in the same way.

In the second complaint, the Council dealt with the conclusions drawn during the "re-audit". Taxation based on the conclusions of business transactions fictitiousness is a fairly common practice among tax officers.

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### **ACTIONS TAKEN:**

After reviewing the case file, the Council found out despite the additional audit, tax officers did not find any new violations, which would not have been previously denied by the complainant. It should be pointed out the Audit Report of this “new” audit largely contained provisions of the previous one. During complaint investigation, the Council’s investigator in charge emphasized compliance with a good governance principle according to which government agencies’ decisions should be as consistent and predictable for business as possible. In addition, the Council asked the STS to take into account that in the administrative appeal procedure the burden of proof lies specifically on the supervisory authority rather than the taxpayer.

### **RESULT ACHIEVED:**

Following the case consideration outcome, the STS accepted the Complainant’s arguments and dropped additional payments worth about UAH 3 mn. The Complainant thanked the Council for assistance in resolving the case.

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#### **Subject:** Inclusion of taxpayers in “risky” lists

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**No-risk espresso: coffee retailer is no more a VAT risky taxpayer**

**Complainee:**

Main Department of STS in Kyiv City (MD STS)

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### **COMPLAINT IN BRIEF:**

The Council received a complaint from a coffee retailer from Kyiv. The company complained that it was included in the VAT “risky” taxpayers’ list. The experience of the Business Ombudsman Council shows that the tax authority often does not give proper explanation on the real reasons why the enterprise is recognized as a risky taxpayer. Nevertheless, in the case of the complainant, the MD STS clearly defined key reasons for the decision taken.

Hence, the tax authority ascertained that while trading in coffee, the company carried a markup on coffee roasted beans and sold a greater quantity of coffee than it had purchased. According to the position of the MD STS, this became possible due to formation of a significant amount of the VAT tax credit by the complainant as a result of importing fixed assets, i.e. motor vehicles and seating furniture. It should be noted that as per the Tax Code of Ukraine, when goods are imported to the customs territory of Ukraine, the enterprise gets the right to the VAT tax credit after completing a relevant customs declaration that confirms the fact of VAT payment to the budget. However, the MD STS was concerned that by importing vehicles and office chairs, the enterprise formed the VAT tax credit and accordingly minimised the amount of the VAT to be monthly paid to the budget when selling coffee.

In order to refute the decision on compliance with the taxpayers' risk criteria, the Complainant appealed to the MD STS on his own and provided the regional Commission with additional documents and explanations, though it did not help to settle the issue. Then the company appealed to the Council for help.

### **ACTIONS TAKEN:**

The investigator initiated immediate consideration of the complainant's case. The Council supported the company's position and asked the MD STS to objectively, comprehensively and thoroughly consider the information and documents that can speak for non-compliance of the enterprise with the taxpayers' risk criteria. Later the STS suggested that the complainant should submit the documents necessary for repeated consideration of the company's arguments by the regional Commission.

### **RESULT ACHIEVED:**

Due to effective communication of the Council with the controlling authorities and active interaction on the part of the complainant, the MD STS excluded the enterprise from the "risky" taxpayers' list. The case was closed a month and a half after the investigation began.

#### **Subject: "Classic" VAT invoice suspension**

**Over UAH 2 mn fines for a leading producer of sauces rescinded**

#### **Complainee:**

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

### **COMPLAINT IN BRIEF:**

The Business Ombudsman Council received a complaint from a leading Ukrainian producer of sauces and margarine. The complainant disagreed with the decision of the tax authority to impose a fine on the complainant due to the late registration of its VAT invoices. According to the company, it could not register tax documents on time because of the seizure of the company's account in the VAT electronic administration system. Once the court lifted the seizure, the company sent all the pending VAT invoices for registration. At that moment the number of stuck VAT invoices was close to 3,5 k of files.

However, following the tax audit results, the OLT imposed a fine on the company in the amount of more than UAH 2 mn. Disagreeing with such a decision, the company immediately appealed to the Council.

### **ACTIONS TAKEN:**

Having examined the complaint, the Council supported the position of the complainant. The Council recommended in writing to ensure a comprehensive and impartial consideration of the

case. The investigator ascertained that the late registration of the VAT invoices was not the fault of the company. Furthermore, the company did not avoid its tax duty and registered all the VAT invoices at its earliest opportunity.

The investigator participated in the case consideration. In view of quarantine restrictions, the discussion of the case files took place by trilateral audio conference.

### **RESULT ACHIEVED:**

the STS upheld the arguments of both the complainant and the Council, and satisfied the company's complaint. By such a decision the STS has demonstrated its consistency while considering similar complaints. Additional payments worth over UAH 2 mn. were dropped.

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

**Court decision enforced:  
registration limit of  
Luhansk energy company  
increased by UAH 212 mn**

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

### **COMPLAINT IN BRIEF:**

The Council received a complaint from an energy enterprise from Luhansk. The company complained about the fact that the STS did not enforce the court decision that had entered into force. It turned out that the tax authority did not automatically increase the company's registration limit in the amount of over UAH 200 mn in accordance with the submitted tax declaration for June 2015. The STS argued that such an increase was made by the controlling authorities only once until July 31, 2015, while the complainant submitted the VAT declaration for June 2015 only in September 2016. It should be noted that due to carrying out business on the territory of the ATO, the complainant was able to submit the declaration for June 2015 only in August 2016. This fact was confirmed by the respective certificate of the Ukrainian Chamber of Commerce and Industry.

Back in 2018, the enterprise asked the STS to voluntarily enforce the court decision, however the controlling authority did not give any response to the complainant. Even when the decision was sent to the Department of Compulsory Enforcement of Decisions of the State Enforcement Service Department of the Ministry of Justice, the tax service avoided complying with the decision. In this regard, the energy company also appealed to the police, but tax authorities had not enforced the court decision in the complainant's case for two years already. At this stage, the case consideration was commenced by the Business Ombudsman Council.

### **ACTIONS TAKEN:**

The investigator of the Council acknowledged the complaint was substantiated. The Council recommended the STS to ensure enforcement of the court decision in the complainant's case and increase the tax amount for which the energy company is entitled to register its tax invoices. Under the Memorandum of Partnership and Cooperation between the Business Ombudsman Council and the STS, the Council brought up the complaint for consideration at the expert group meeting with the participation of the STS administration.

### **RESULT ACHIEVED:**

Having upheld the Council's recommendations, the tax authority finally enforced the court decision. The STS increased the company's registration limit for the amount of over UAH 212 mn.

"We sincerely thank the Business Ombudsman Council for the assistance provided and a consistent and professional approach in resolving the disputed issue. We hope for further cooperation in settling problematic issues that may arise in the company's business activity in the future", thanked the complainant. The case was successfully closed.

#### **Subject: VAT electronic administration**

#### **UAH 10 mn returned to company's account**

##### **Complainee:**

The State Fiscal Service of Ukraine (SFS)

### **COMPLAINT IN BRIEF:**

A transport company complained against the SFS, which failed to comply with the court decision to renew the registration limit amounting to over UAH 10 mn.

The local tax authority cancelled the complainant's registration as a VAT payer, due to enterprise allegedly not being located at the specified address. At the time of the complainant's registration cancellation, there was over UAH 10 mn on his electronic account. These funds disappeared from the complainant's account in the VAT electronic administration system. A month later, the complainant's registration as the VAT payer was renewed by the tax authority, yet the funds were not returned to the account.

The complainant appealed to court. The administrative court obliged the SFS to return UAH 10 mn to the enterprise's electronic account — it was the tax amount the Complainant was entitled to register tax invoices for.

However, even after the court judgment entered into force and was subject to enforcement, the SFS was in no hurry. According

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to the complainant, the SFS ignored all the written appeals of the company for six months. The complainant even applied to the Department of the State Enforcement Service (SES) to enforce the court decision. The SES initiated enforcement proceedings based on the complainant's application, however to no avail. Feeling desperate about solving the problem on its own, the company sought the Council's assistance.

### **ACTIONS TAKEN:**

The Council recommended in writing that the SFS enforce the court decision — to return funds to the company's account. In reply thereto the response was: "The court decision will be enforced in accordance with the established procedure and its enforcement mechanism". However, no specific actions or payments in favor of the complainant were made. The Council's investigator had to bring the case file for consideration of the SFS Expert Group and the Council.

### **RESULT ACHIEVED:**

It worked, the SFS accepted the Council's arguments. The complainant informed the tax authority had finally enforced the court judgement. The funds were returned to the company's electronic account in full. The case was closed successfully.

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#### **Subject:** Tax criminal cases

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#### **No more pressure of law enforcement officials on natural products producer**

##### **Complaine:**

State Tax Service (STS),  
Investigations Department  
of Financial Investigations of  
the Main Department of the  
State Fiscal Service (ID FI)

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### **COMPLAINT IN BRIEF:**

The Council received a complaint from a natural products producer from Kharkiv region which complained about the pressure on the part of law enforcement officials. The enterprise appeared in the pre-trial investigation of circumstances of other company's bankruptcy due to takeover of the property by its employees. As a result, the part of assets and the staff of the company were transferred to the complainant — at this point turbulent times began for the enterprise: numerous interrogations of employees, requests for existing and non-existing business and financial documentation. The investigation lasted for three years, but the law enforcement officials did not take the final decision in the case. Furthermore, the investigation authority incidentally changed the classification of the criminal offence. The natural products producer itself appealed to all possible authorities and demanded to stop groundless pressure on its activity, but unsuccessfully. At this stage, the Council commenced the investigation.



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### **ACTIONS TAKEN:**

The investigator examined the case file and acknowledged the complaint was substantiated. The Council asked the STS and the ID FI to finally take a decision in the criminal proceeding. Therefore, law enforcement officials intensified the investigation.

### **RESULT ACHIEVED:**

The investigation authority decided to close the criminal proceeding in the case that touched upon the fate of our complainant. The natural products producer thanked the Council for help. The case was closed.

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### **Subject: VAT refund**

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#### **Company returned UAH 3 mn of VAT**

#### **Complainee:**

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

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### **COMPLAINT IN BRIEF:**

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

### **ACTIONS TAKEN:**

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

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## RESULT ACHIEVED:

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

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### Subject: Tax termination/renewal/refusal of VAT payers registration

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#### Tables of taxpayer data of shipping company accepted

##### Complainee:

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

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## COMPLAINT IN BRIEF:

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

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

## ACTIONS TAKEN:

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

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

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**Subject: Tax other**

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**Common sense victory:  
enterprise receives fuel  
trading license****Complainee:**  
The State Tax Service (STS)

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**RESULT ACHIEVED:**

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

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**COMPLAINT IN BRIEF:**

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

During the summer of 2020, the complainant applied to the STS for a license several times in a row, but received refusals every time as if due to an error in the submitted documents. It turned out that an incorrect address in the permit for operation of hazardous machinery, mechanisms and equipment (one of the documents submitted with the application) had been indicated. In particular, only the land plot postal code without the letter "A" was specified. The complainant corrected inaccuracy in the address almost immediately. However, it just so happened that at this very time the labor protection legislation got deregulated. In particular, a permitting procedure was replaced by a declarative one. The complainant approved a declaration of compliance of material and technical facilities with labor protection legislation requirements for corresponding equipment (Declaration). After that, the complainant applied to the STS for a license again and this time was denied once again. The STS still insisted that the applicant should have provided the permit rather than the Declaration as part of the application. The STS backed up its position by the fact that the law regulating the procedure for issuing licenses uses the term "permit", not "declaration". The Council helped clear up the situation.

**ACTIONS TAKEN:**

During investigation of the complaint and position preparation, the Council's investigator emphasized the inconsistency of legislation in the field of fuel trade licensing and use of hazardous equipment. Thus, positive changes and deregulation occurred in the use of hazardous equipment, were not properly taken into account in fuel trade licensing. This is quite a common problem of the so-called "quality of the law" arising from time to time when it comes to regulating complex areas. Such a conflict can

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be resolved by applying a systemic approach to interpretation of legislation as the Council's investigator in charge repeatedly stressed during the discussion of circumstances of the complaint. We also had to mention the presumption of legality of taxpayer's decisions, which means that in case of law ambiguity, the decision must be made in favor of a taxpayer.

### **RESULT ACHIEVED:**

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

## ACTIONS OF NATIONAL POLICE

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
National Police procedural abuse	19	6	14	39
National Police inactivity	8	13	10	31
National Police criminal case initiated	2	1	0	3
National Police other	1	1	0	2
<b>Total</b>	<b>30</b>	<b>21</b>	<b>24</b>	<b>75</b>

### Subject: National Police procedural abuse

#### BIIR Property finally becomes the legal owner of purchased real estate

#### Complainee:

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

#### COMPLAINT IN BRIEF:

BIIR Property, a subsidiary of BIIR Danish engineering company approached the Council. Due to active criminal proceedings, the complainant could not become the legal owner of the recently purchased real estate.

In order to expand business in Ukraine, in September 2019, the investor purchased a building in Odesa with an area of almost 2000 m<sup>2</sup>. The premises purchase agreement was concluded through "Prozorro" electronic bidding (procurement) system. In total, the building for the future office cost the company over UAH 9 mn.

However, the complainant was unable to register his legitimate right to his own real estate.

#### ACTIONS TAKEN:

As the Council's investigator found out, a part of the building (1/10) was arrested by the court after it had been purchased by the complainant. The reason for this was the appeal of citizen D. and, accordingly, criminal proceedings under the article "fraud" were initiated. According to the complainant, the criminal case had been opened absolutely groundlessly, and the information of citizen D. was untrue. According to the company, this indicated that the applicant had provided a deliberately false information to prevent the complainant from registering his ownership right of the acquired object.

Indeed, six weeks later the arrest was lifted. However, criminal proceedings against the part of the building was ongoing. Therefore, at the beginning of 2020, the company's lawyer turned to the National Police with a request to submit additional documents to the case file as evidence, as well as to conduct investigative actions, particularly questioning the citizen D.

The BOC asked the Prosecutor's Office in Odesa Oblast and the Main Department of the National Police in Odesa Oblast in writing to check the legality of the preliminary investigation. In particular, the investigator stressed the importance of compliance with the consideration terms of the attorney's motion on investigative actions.

The Council brought up the company's case for consideration at the meeting of the expert group set up pursuant to Memorandum of Cooperation between the BOC and the Prosecutor General's Office.

### **RESULT ACHIEVED:**

In February 2020, the Prosecutor's Office in Odesa Oblast rejected the complainant's attorney's petition, but instructed the investigator to intensify the pre-trial investigation.

Investigation intensification brought the anticipated desired result – at the end of March 2020, the criminal proceedings were closed. The case was successfully resolved.

### **Subject: National Police inactivity**

#### **Property returned after triple arrest cancellation**

##### **Complainee:**

The Main Investigations Directorate of the National Police of Ukraine (MID NP)

### **COMPLAINT IN BRIEF:**

The Council received a complaint against law enforcers' inaction from the capital city IT company. The company complained that MID NP officers did not return temporarily seized property to it for a long time.

Particularly, at the end of 2018, in the framework of the pre-trial investigation, law enforcers searched the office rented by the complainant. During the search, inter alia, the HR documentation and computer equipment were seized. Law enforcers did not have a relevant permit to do so, hence the Prosecutor General's Office of Ukraine (PGO) subsequently filed a petition for the property's arrest.

An investigative judge almost immediately arrested the company's property, but two months later the company managed to cancel this arrest in court. However, the investigating judge re-arrested the same property again already in a week. After filing an appeal for the second time, in June 2019 the complainant again succeeded in overturning such a decision.

Despite that fact the complainant couldn't return the property, the MID NP stated it did not receive the relevant appellate court

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ruling on arrest cancellation. Therefore, the company challenged inactivity of the MID NP to the investigating judge, who satisfied the complaint and obliged the MID NP investigators to return the property, which was temporarily seized from the owner more than six months ago.

Further on, the complainant submitted petitions to return the property, but only received refusals from the MID NP. The reason for that was non receipt of neither the appellate court's ruling on the arrest cancellation, nor the investigating judge's order to return the property. At the same time, responding to the complainant's attorney's letters of inquiry, the District Court confirmed the fact of sending copies of the rulings to the MID NP for their enforcement.

Seeking support, at this stage the company turned to the Council with this issue.

### **ACTIONS TAKEN:**

After examining the case files, the Council asked the MID NP and the PGO in writing to find out whether law enforcing officers complied with the court order. The PGO replied briefly: there were no legal grounds to return the property seized from the complainant. At the same time, the MID NP reported no court rulings for execution were received.

It is noticeable that after the Council's involvement in the fall of 2019, the complainant became aware that a few months ago his property had been arrested for the third time, although neither such investigating judge's decision was reported about anywhere nor was it available from the Unified State Register of Judgments. Following the complainant's appeal to the appellate court, the arrest was canceled for the third time before the New Year holiday season.

So, in January 2020, the Council's investigator brought up the company's issue for the Expert Group discussion with participation of the Council's and MID NP's representatives. The Council's experts emphasized that property that was not under arrest, could not be illegally kept by law enforcement agencies and must be immediately returned to the enterprise. As a result, the MID NP officers assured they would comply with the court ruling after the complainant applied to the investigator with the relevant application.

### **RESULT ACHIEVED:**

In February 2020, the PGO reported on the return of property to the enterprise. However, the story did not end there: the complainant informed the Council that during February of 2020, the MID NP indeed returned all the money and some of the equipment seized. This property, however, did not belong to the complainant but to third parties against whom a search and other

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procedural actions were also conducted in December 2018. The complainant's equipment, as was reported to its lawyers, was in the expert institution at that time, which meant that the MID NP had to take additional actions to return it to its owner.

The complainant reported on the successful return of its property in full only in March. Thus, thanks to mutual efforts of both the company's lawyers and the Council's team, after more than a year temporarily seized property and equipment were returned to the legitimate owner.

The company thanked the Council's team for their help: *"Highly professional Business Ombudsman experts [...] managed to successfully provide support of the Company's relationship with the representatives of the Prosecutor General's Office of Ukraine and the National Police of Ukraine that resulted in a full return of the property illegally seized from the Company"*.

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#### **Subject:** National Police criminal case initiated

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

**Complainee:**

Main Department of the National Police in Kyiv region (MD NP)

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#### **COMPLAINT IN BRIEF:**

The Council received a complaint from two manufacturers of building structures. The companies whose production was located in the same territory complained about a law enforcement agency pressure.

Following the PJSC Kyivoblgaz'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 Kyivoblgaz 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 Kyivoblgaz 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 Kyivoblgaz was refuted in court and debt existence was not confirmed either.



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Within the criminal proceeding, the pressure of law enforcement officers continued despite the court decision. The investigators conducted searches and seized the companies' property. For that reason, the enterprises could not properly function. There was also a risk of a complete cessation of gas supply to the enterprise. At this stage, the Business Ombudsman Council commenced the case consideration.

### **ACTIONS TAKEN:**

The investigator of the Council supported the complainants' position and acknowledged the complaint as substantiated. 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. Moreover, the Council drew the attention of police officers to the court's decision, which was also on the complainants' side. Under the Memorandum of Partnership and Cooperation between the Business Ombudsman Council and the Prosecutor General's Office, the Council raised the complaint at the meeting of relevant expert groups with participation of law enforcement agencies.

### **RESULT ACHIEVED:**

Thanks to effective communication of the Council, the MD NP terminated the criminal proceeding in the complainants' case. The enterprises resumed normal operation. The case was successfully closed.

## ACTIONS OF PROSECUTOR'S OFFICE

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
Prosecutor's Office procedural abuse	5	4	4	13
Prosecutor's Office inactivity	2	3	1	6
Prosecutor's Office criminal case initiated	1	1	2	4
Prosecutor's Office other	0	0	1	1
<b>Total</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>24</b>

### Subject: Prosecutor's Office criminal proceedings

#### Police closes criminal proceeding against salt supplier

#### Complainee:

Podil Police Department of the Main Department of the National Police in Kyiv (Police)

#### COMPLAINT IN BRIEF:

The Council received the complaint from the supplier of the technical salt. The company won in the tender for procurement of the technical salt for one of the utility companies of Kyiv to maintain roads of the capital in winter. However, after the victory in the tender, the Police started a criminal proceeding against the representatives of the complainant and the customer because of the allegedly "high" price for the salt. The law enforcement officers conducted search in the premises of the complainant, seized his money and documents that were later returned. The case was handed over to investigation departments of different regions. By that time the pre-trial investigation already lasted for two years failing to comply with the reasonable time limits. The salt supplier himself complained to the Prosecutor General's Office of Ukraine (PGO) and the National Police (NP). The inactivity of the law enforcement officers made the complainant appeal to the Council for help.

#### ACTIONS TAKEN:

Having analyzed the case documents, the investigator supported the position of the complainant. The Council in writing asked the PGO and the NP in writing to ensure a proper and impartial consideration of the company's complaint. In particular, the Council recommended to take a legal and grounded decision in the case of the salt supplier. The case did not go under way for a while. Then the Council raised the subject of the complaint for consideration by the expert group with the participation of the NP. The Council kept a close eye on the actions of the law enforcement bodies and stayed in touch with the complainant.

#### RESULT ACHIEVED:

With the facilitation of the Council the police closed the criminal proceeding against the technical salt supplier due to absence of a crime. The investigator successfully closed the case.

**Subject: Prosecutor's Office inactivity****Prosecutor's Office ceases foot-dragging of the property arrest appeal****Complainee:**

Prosecutor General's Office,  
Prosecutor's Office of Kyiv  
Region

**COMPLAINT IN BRIEF:**

The Council received a complaint from a private entrepreneur from Kyiv, who supplies food to hospitals, military units of the Armed Forces of Ukraine, boarding schools and other institutions of strategic importance. The businessman complained that law enforcement officers first initiated arrest of his property and then ignored hearings of the court of appeals upon the entrepreneur's appeal. It turned out, that when investigators suspected the complainant of being associated with fictitious companies, the prosecutor initiated arrest of the entrepreneur's bank accounts. To challenge the decision on arrest, the complainant appealed to Kyiv Court of Appeal. Later on, the criminal proceeding was closed. Meanwhile, the issue whether the complaint can freely dispose of his property that was arrested was unsolved. At the same time, prosecutors responsible for proceedings refused to attend hearings in person. The ruling's copy about the closure of the criminal proceeding was not sent either. The complainant's accounts were blocked for two months, while he was unable to pay salaries to his employees. The inaction of the Prosecutor's Office triggered the private entrepreneur to send an appeal to the BOC.

**ACTIONS TAKEN:**

The investigator examined the circumstances of the complaint and found the complaint substantiated. The Council recommended Kyiv Region Prosecutor's Office either to ensure attendance of authorized prosecutors at court hearings or to send the copy of resolution on closure of the criminal proceeding to the Court. The Council reminded that inaction of the pre-trial investigation bodies and their procedural managers, especially when it comes to interfering with property rights of entrepreneurs, violate the rule of law and can be treated as pressure on business.

**RESULT ACHIEVED:**

Kyiv Region Prosecutor's Office sent to Kyiv Court of Appeal information about closure of the criminal proceeding. The case was closed.

**Subject: Prosecutor's Office procedural abuse****Abuse of local Prosecutor's Office officials halted****Complainee:**

Prosecutor General's Office,  
Boryspil Local Prosecutor's  
Office

**COMPLAINT IN BRIEF:**

The Council received a complaint from a Kyiv-based construction company. The 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. 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 enforcement authorities 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 BOC for assistance.

**ACTIONS TAKEN:**

The investigator examined the circumstances of the case and found the complaint substantiated. The Council recommended that Kyiv Regional Prosecutor's Office check the Boryspil Local Prosecutor's Office officials' actions in relation to the complainant. The Council noted that, according to the Criminal Procedure Code of Ukraine, law enforcement officers must ensure a prompt, complete and impartial investigation so that due diligence to each participant in criminal proceedings is applied.

**RESULT ACHIEVED:**

Following the Council's facilitation, Kyiv Regional Prosecutor's Office closed the criminal proceedings in connection with the construction company case finding no signs of a crime in the complainant's actions. The case was closed.

## ACTIONS OF STATE SECURITY SERVICE

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
State Security Service procedural abuse	1	0	1	2
State Security Service criminal case initiated	0	1	0	1
State Security Service other	1	0	2	3
<b>Total</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>6</b>

### Subject: State Security Service procedural abuse

**SSS returns mistakenly seized property to owner**

**Complainee:**

State Security Service of Ukraine (SSS)

### COMPLAINT IN BRIEF:

Patriot.Legal law firm from Kyiv appealed to the Council for help as long as it could not return property that had been seized during a search.

The SSS investigators conducted the search in the premises, where the office of the law firm was situated. The law enforcers seized all computer equipment, work documents and seals of the company that were later attached as evidence to the criminal proceeding's materials. The Complainant urged the search was illicit and in fact conducted in premises, not sanctioned by the court.

After the law enforcers' raid the company suspended its business activity and suffered not only financial losses, but a huge reputational damage.

Due to illegality of the search and violation of procedural legislation, the complainant appealed against the seizure of property in court. The law firm in fact was not involved in crimes investigated within the criminal proceeding. Although the court made a decision in favor of the company, the SSS investigators did not execute the resolution for a long time. At that point the Council started consideration of the complaint.

### ACTIONS TAKEN:

Having examined the case file, the investigator acknowledged that the complaint was substantiated. The Council supported the law firm's position and recommended the State Security Service to execute the court's resolution and return the seized property to its legal owner — the complainant.

### RESULT ACHIEVED:

Due to the Council's interference the state body returned the seized property to the complainant in the shortest possible time. Currently the complainant is challenging the SSS actions that caused damage to him in court.

## ACTIONS OF STATE REGULATORS

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
State Architecture and Construction Inspectorate (DABI)	5	0	1	6
Antimonopoly Committee of Ukraine (AMCU)	1	0	3	4
StateGeoCadastre	0	1	3	4
National regulatory agencies NERCUS other	0	0	1	1
Other state regulators	14	5	24	43
<b>Total</b>	<b>20</b>	<b>6</b>	<b>32</b>	<b>58</b>

### Subject: State Architecture and Construction Inspectorate DABI

**Construction completed – the company receives a long-awaited certificate from DABI**

#### Complainee:

State Architectural and Construction Inspectorate (DABI)

### COMPLAINT IN BRIEF:

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

According to the DABI's position, the company did not provide necessary documentation on engineering facilities of the buildings. Nevertheless, the complainant submitted the respective application and the certificate of readiness of the construction object to the controlling authority in a form provided by the law. The company provided additional documents to the Chief Construction Supervision Officer. During the inspection he did not express any concern about the existing documentation. However, the DABI refused to issue the certificate to the company. After unsuccessful attempts to repeatedly submit the necessary documents for receiving the certificate, the company lodged a complaint to the Business Ombudsman Council.

### ACTIONS TAKEN:

The investigator examined case materials and acknowledged the complaint was substantiated. The Council appealed to the DABI and recommended to ensure a due and impartial consideration of the complainant's application, and issue the conformity certificate of the construction objects of Optymisto Housing Complex. As long as DABI representatives did not have any claims related to the complainant's documents during the construction inspection, non-issuance of the certificate was considered as violation of the company's rights and legitimate interests. It was also obvious that

the supervisory authority had delayed issuance of the certificate, which the complainant had to receive within ten working days from the date of registration of the application.

### **RESULT ACHIEVED:**

The DABI upheld the Council's recommendations and issued the conformity certificate of the constructed apartment buildings. The first three buildings were put into operation. The case was successfully closed.

### **Subject: AMCU**

#### **AMCU satisfies the complaint of luminaires producer**

#### **Complainee:**

The Antimonopoly Committee of Ukraine (AMCU)

### **COMPLAINT IN BRIEF:**

The LED lighting producer approached the Business Ombudsman Council. The company complained on being disqualified from the public auction held by the Velykooleksandrivska Village Council of Kyiv region. Purchasing of luminaires and lighting fixtures were held via Prozorro electronic public procurement platform. A tender bid was rejected because there was no lighting design in Dialux program among the documents. The customer chose the other company as a winner. The complainant disagreed with the customer's decision and asked to cancel the decision on winner selection. At this stage, the Council started investigating the company's complaint.

### **ACTIONS TAKEN:**

The investigator found the complaint substantiated. The Council recommended the AMCU to provide a full, comprehensive and impartial consideration on the complaint. In course of the investigation, it became clear that the company-winner's lighting design did not meet state construction regulations. In particular, in the selected supplier's there was no luminaire that had been tested according to the protocol.

### **RESULT ACHIEVED:**

The AMCU reviewed tender results and obliged the customer to cancel the decision on recognizing the previously selected company the tender winner. The case was successfully closed.

**Subject: Other state regulators****The training to be resumed:  
sports complex territory  
rescued with the Council's  
facilitation****Complainee:**

Ministry of Culture, Youth  
and Sports, State Property  
Fund of Ukraine

**COMPLAINT IN BRIEF:**

The children and youth sports school from Kyiv, as well as management of the sports complex appealed to the Council. It was a complaint in regard with possible illegal actions of the Ministry of Culture, Youth and Sports due to granting a lease of the sports complex to the other legal entity.

It turned out that a potential tenant planned to create a museum in one of the sports complex's premises where sports equipment was stored. For that reason, further renovation and construction of sports arena for training of young athletes became impossible.

Despite the fact that the school administration was against granting a lease of the premises of the sports complex, the tenant started authorisation procedure with the Ministry of Culture, Youth and Sports and the State Property Fund of Ukraine (SPFU). The sports complex administration did not have any information regarding conclusion of an agreement with the potential tenant.

Taking into account the risks of illegal seizure of the school territory, the administration forwarded the complaint to the Business Ombudsman Council.

**ACTIONS TAKEN:**

Having examined the case file, the investigator supported the complainant's position. The Council appealed to the Ministry of Culture, Youth and Sports, the SPFU and the Regional Department of the SPFU in Kyiv and asked to pay attention to obvious violations in the leasing procedure of the sports complex.

The Council learned that the potential tenant was originally one, but the lease document concerned a completely different tenant. In particular, it turned out that this document had been issued on the grounds of an application dated only two days before its issuance. According to the law, it is in fact impossible to complete the lease procedure within two days.

The most interesting thing was that the Ministry of Culture, Youth and Sports took part in the process of approving the lease. It should be noted that after the reorganization of the Ministry of Youth and Sports and the Ministry of Culture into the Ministry of Culture, Youth and Sports, a number of entities, including the sports complex of the complainant, came under control of the latter. However, the investigator ascertained that at that moment, the certificate of acceptance of such objects had not been signed yet. Therefore, the state body did not have the right to make any decisions regarding the sports complex.

The Council recommended to revoke the lease document and terminate the procedure for concluding an agreement with the potential tenant.



## RESULT ACHIEVED:

The State Property Fund upheld the arguments of the Council and terminated the procedure related to granting a lease of the building of the sports complex. The school parent committee thanked the Council for help: "We express our sincere gratitude to the Business Ombudsman Council for supporting our school in the fight against illegal actions of government agencies that tried to seize a part of the territory that is a facility of Olympic, Paralympic and Deaflympic training. Thanks to timely intervention of the Council, we managed to defend the territory of the sports complex and did not allow the authorities to commit illegal actions". The case was successfully closed.

## CUSTOMS ISSUES

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
Customs valuation	6	0	19	25
Customs clearance delay/refusal	8	0	10	18
Customs other	2	0	4	6
<b>Total</b>	<b>16</b>	<b>0</b>	<b>33</b>	<b>49</b>

### Subject: Customs valuation

**Odesa Customs approves customs value for fertilizer importer**

#### Complainee:

Odesa Customs of the State Fiscal Service (Odessa Customs)

## COMPLAINT IN BRIEF:

A company with German investments, importer and wholesaler of fertilizers in Ukraine, appealed to the Council. The Complainant disagreed with the customs value adjustment of imported goods by Odesa Customs.

In 2018-2019, the company imported fertilizers worth over UAH 70 mn and paid nearly UAH 500 in taxes and fees with respect to these transactions. Fertilizers supplies were made under a direct contract from a foreign producer, while a separate specification — an annex to the contract — was drawn up for each batch of goods. Specification texts varied only in delivery/payment terms and the price of goods. Identical packages of documents were provided for customs clearance during each delivery.

In cases when the price of imported goods went up, customs officers did not have any remarks on the documents. But when the price started to fall due to the appreciation of hryvnia, customs officials began finding "differences" in documents and adjusted prices increasing the cost of imports. In this case, the

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highest delivery cost according to the specification under the contract was considered a “standard”. Examples of “differences” provided by the Complainant were: visual difference of counterparty signatures on documents, paying for goods a few days later.

The company imported its goods through four different checkpoints, but the same problem occurred at every checkpoint. Customs officers did not recognize the price stated in the specification, and adjusted it to the higher side. The company noted that in all of those cases, customs did not have legitimate reasons for requiring additional documents other than those submitted by the company together with the Electronic Customs Declaration, since the documents fully confirmed numerical values declared by the importer.

### **ACTIONS TAKEN:**

After examining the appeals, the Council's investigator participated in a tripartite meeting with the tax and company representatives. The customs officers analyzed the documents submitted by the complainant before the customs clearance, articulated their remarks and clarified the points at issue. The company's representatives expressed their willingness to provide all the necessary documents. The reached agreements and arguments in favor of the Complainant were outlined by the Council in a letter to the SFS.

### **RESULT ACHIEVED:**

Odesa Customs accepted the Council's arguments and canceled the decision on customs value adjustment. The case was closed successfully.

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#### **Subject:** Customs clearance delay/refusal

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#### **Half a year customs delay defeated**

##### **Complainee:**

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

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#### **COMPLAINT IN BRIEF:**

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

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

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

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

### **ACTIONS TAKEN:**

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

### **RESULT ACHIEVED:**

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

**Subject:** other

**Fapomed Ukraine cargo successfully crosses the border**

**Complainee:**

Zakarpattia Customs of the State Customs Service of Ukraine

### **COMPLAINT IN BRIEF:**

A garment factory producing surgical gowns turned to the Business Ombudsman Council. The company's cargo was detained at the border.

Fapomed Ukraine LLC is a company with 100% foreign investment. It was established by Portuguese investors in 2007 by opening a factory in Rivne Oblast. As of now, the company employs over 260 employees.

According to the complainant, all garments, which were shipped according to the customs regime of “re-export”, had been made from the foreign raw materials. Fabric, lining, velcro fasteners, packaging paper and other accessories come from a foreign customer and cleared as “to be processed in the customs territory of Ukraine”. In March 2020, the goods made from raw materials which had been received for processing in 2019 were sent for re-export. It should be pointed out the medical gowns detained at customs were intended to be used by surgical team members in the operating room to prevent transmission of bacterial agents, not viruses. These medical products were not anti-epidemic and suitable for use against Covid-19.

However, after products having been detained at the border, the further company’s operations in Ukraine were under threat. The point is that provisions of the Cabinet of Ministers of Ukraine Resolution No.1109 dated December 24, 2019 (the “Resolution No. 1109”) relating to restrictions on export and import of certain products, did not give a clear idea of whether restrictions also applied to re-export of products.

### **ACTIONS TAKEN:**

The Council’s investigator carefully examined complaint materials and the legislation regulating it. In particular, according to the Customs Code of Ukraine, re-export and export are two different customs regimes. At the same time, the Law of Ukraine “On Foreign Economic Activity” defines re-export through the concept of export.

Upon the complaint receipt, the Council addressed the State Customs Service of Ukraine (“SCS”) and drew the attention to the existing inaccuracy in the text of the Resolution No.1109 and possibility of its double interpretation. The SCS confirmed that, in their opinion, the provisions of Resolution No.1109 should not apply to re-export. Afterwards, the SCS sent a corresponding letter to the Cabinet of Ministers of Ukraine (the “CMU”).

### **RESULT ACHIEVED:**

As a result, in early April, the CMU adopted the Resolution No.268, which amended the Resolution No.1109. It was clearly stated in the new document that restrictions in the Resolution No.1109 did not apply to re-export.

After the respective changes and clarifications of the SCS, the complainant sent a new truck with a batch of goods abroad. In early May, the complainant confirmed successful customs clearance and thanked the Council for assistance in resolving the issue: “This period of time was extremely tough for our company — we reduced our activities, broke delivery terms and risked losing customers and markets. In addition, Goshchanskyi District and Rivne Oblast budgets have already been underfunded by a substantial tax revenues amount, which will have an adverse effect in the periods to come, and all this is taking place in the background of a growing economic crisis. We thank the Council’s team for their support and assistance in resolving this case”.

## ACTIONS OF LOCAL GOVERNMENT AUTHORITIES

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
Local government authorities — rules and permits	3	1	7	11
Local government authorities — land plots	2	5	1	8
Local government authorities — investment disputes	0	1	0	1
Local government authorities — other	5	8	5	18
<b>Total</b>	<b>10</b>	<b>15</b>	<b>13</b>	<b>38</b>

### Subject: Local government authorities rules and permits

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

#### Complainee:

Dnipro City Council (DCC)

#### COMPLAINT IN BRIEF:

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

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

#### ACTIONS TAKEN:

After examining the complainant's background, the Council agreed with the Association's and the complainant's arguments. As part of the investigation, the Council began communicating with DCC management and respective DCC department officials. During correspondence and discussion of the complaint's circumstances, the Council's investigator in charge repeatedly stressed the need for the municipal body to adhere to a "good administration" principle. This principle is that a municipality should not only

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ensure making formally lawful decisions, but make them consistent, predictable and proportionate. Interaction of the municipal body with telecommunication providers should be as transparent as possible. Therefore, guided by this principle, DCC should have arranged the inventory process of possibly ownerless property in such a way to minimize errors and their negative consequences. Telecommunication service providers operating in the corresponding districts of Dnipro city are entitled to receive such information.

### **RESULT ACHIEVED:**

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

**Subject: Local government authorities land plots****Kyiv RSA approves land-use development project for construction company's lease****Complainee:**

Kyiv Region State  
Administration (Kyiv RSA)

**COMPLAINT IN BRIEF:**

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

**ACTIONS TAKEN:**

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

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

**RESULT ACHIEVED:**

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

## ACTIONS OF MINISTRY OF JUSTICE

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
Department of State Registration and Notary	7	1	6	14
Department of State Enforcement Service	5	0	5	10
<b>Total</b>	<b>12</b>	<b>1</b>	<b>11</b>	<b>24</b>

### Subject: Department of State Enforcement Service

**Raidership attempt failed: MinJust recovers true data on enterprise**

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

### COMPLAINT IN BRIEF:

The Council received a complaint from the sole owner and director of a private enterprise from Dnipropetrovsk region. The state registrar had updated the information about the founders and the director of the company in the official registry, which came to the real owner's knowledge by chance. The complainant immediately appealed to the MinJust Panel on consideration of complaints in the sphere of state registration seeking cancellation of illicit decisions. However, after two weeks of waiting the complaint had not been considered. In order to speed up the consideration of the complaint under administrative appeal procedure, the enterprise appealed to the Council.

### ACTIONS TAKEN:

It should be noted that the Council unlike the Panel of the MinJust, does not have direct access to the documents prepared or accepted by the state registrar during the registration procedure, therefore it cannot check itself the legitimacy of the new data about the company. However, as an independent mediator between the business and the state body, the Council is capable of drawing attention to the case and speed up its consideration that was later achieved.

Thus, in the letter to the Panel of the MinJust the Council asked to immediately consider the company's motion and provide a full, comprehensive and impartial consideration of the complaint. The Council also handed over case files to the expert group established by virtue of the Memorandum of Cooperation between the Ministry of Justice of Ukraine and the Council dated September 15, 2015.

### RESULT ACHIEVED:

Within three weeks after receipt of the complaint, the Council helped to restore justice: the MinJust Panel cancelled disputed registration actions, having recovered credible information about the owner and the director of the enterprise, and the relevant state registrars' access keys were temporarily suspended. The case was successfully closed.



**Subject:** Department of State Registration and Notary

**Raidership attack on international investment company fought back**

**Complainee:**

Ministry of Justice (MinJust)

## **COMPLAINT IN BRIEF:**

The company from Mongolia appealed to the Business Ombudsman Council due to illegal takeover of its Ukrainian enterprise. The complainant suddenly learned about the raidership attack: unknown persons forged documents and changed the information about the company in the Unified State Register (USR). As a result of illegal registration actions, the headquarters office lost control over the subsidiary company in Ukraine that could lead to loss of its assets. That was the time when the Council received a complaint from the company asking for help.

## **ACTIONS TAKEN:**

The investigator of the Council acknowledged the complaint was substantiated. The Council provided guidance to representatives of the Mongolian company about the mechanisms of protection against raidership and suggested appealing to the Collegium tasked with consideration of complaints against decisions, actions or inaction of the state registrar (MinJust Collegium). In the letter of support of the company's position, the Council recommended the Ministry of Justice to restore true data about the company in the USR as soon as possible.

Based on the Memorandum of Partnership and Cooperation between the Business Ombudsman Council and the Ministry of Justice, the Council asked to speed up consideration of the investment company's complaint as much as possible due to risk of losing its assets. The MinJust Collegium considered the company's complaint during a few days.

## **RESULT ACHIEVED:**

The MinJust upheld the Council's recommendations. "Thanks to prompt and professional help of the Business Ombudsman Council, the Ministry of Justice came to correct, and, most importantly, legal conclusions on the situation and revoked illegal registration actions that led to the company's seizure", the complainant personally told.

## ACTIONS OF STATE COMPANIES

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
State companies investment/ commercial disputes	0	2	3	5
State companies abuse of authority	1	0	3	4
State companies other	3	0	0	3
<b>Total</b>	<b>4</b>	<b>2</b>	<b>6</b>	<b>12</b>

### Subject: State companies other

**Minus UAH 3 mn —  
Kyivpastrans pays its debts**

#### Complainee:

Kyivpastrans Public Utility  
Company (Kyivpastrans)

### COMPLAINT IN BRIEF:

The Council received a complaint from a vehicle maintenance company. The company complained that its Kyivpastrans contractor had delayed debt payment for car lifts repair works. The complainant cooperated with Kyivpastrans under service agreements for two years. However, the company was dissatisfied with the fact the utility company's debt was 180 days overdue. Moreover, the debt amount itself reached UAH 3 mn. The company's CEO reported that he even attracted personal loan funds for timely delivery of services, payment terms of which he himself had to break. The complainant repeatedly appealed to the utility company and asked to repay the debt. However, the situation could not be resolved independently. The company turned to the Business Ombudsman Council for support.

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### **ACTIONS TAKEN:**

The investigator found the complaint substantiated. The Council recommended that Kyivpastrans pay the complainant a debt of over UAH 3 mn under agreements. The Council found out that according to Kyivpastrans, debt accumulation was caused by strict quarantine measures introduced throughout Ukraine from March 12, 2020 to May 22, 2020. As a result, the number of routes of the capital's passenger carrier and its proceeds decreased accordingly. The company promised that after resuming of its normal operations it would pay the debt to the complainant in full. However, it should be noted that Kyivpastrans debts to the company had arisen long before quarantine, so the justification for the introduced lockdown was not quite convincing. To speed up the complainant's problem resolving, the Council also raised the subject of complaint at the expert group meeting with the Kyiv City State Administration.

### **RESULT ACHIEVED:**

Thanks to effective communication on the part of the Council, Kyivpastrans followed its recommendations and developed a debt payment schedule to the complainant. On November 25, 2020, the company servicing vehicles confirmed repayment of the debt. The complainant so expressed his impressions of cooperation with the Council: "Our company expresses its gratitude and deep gratitude to the Business Ombudsman Council for the assistance rendered in organizing and taking actions on our complaint. Successful resolution of Kyivpastrans settlement issue with us for performed works would be completely impossible without your participation, because all our attempts to solve this issue on our own did not yield any results. The BOC investigator provided professional support for our relations, owing to which we received full repayment of the debt and this was a vital issue, for us in particular, during difficult times for all Ukrainian business!" The case was successfully closed.

## LEGISLATION DRAFTS/AMENDMENTS

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
Deficiencies in regulatory framework — state regulators	0	1	2	3
Legislation drafts/amendments	1	0	0	1
Deficiencies in regulatory framework — customs	0	1	1	1
Deficiencies in regulatory framework — tax	0	0	0	1
Deficiencies in regulatory framework — other	2	0	1	3
<b>Total</b>	<b>3</b>	<b>2</b>	<b>4</b>	<b>9</b>

### Subject: Deficiencies in regulatory framework other

**With the assistance of Council, MHU registers disinfectants**

**Complainee:**

Ministry of Health of Ukraine (MHU)

### COMPLAINT IN BRIEF:

In 2018, two companies that produce and sell disinfectants, approached the Council with the same problem — they were unable to register disinfectants.

It should be noted, that previously the respective issue was resolved in 2018 with amendments (CMU Regulation No.178 dated 14.03.2018) to the Procedure for state registration (re-registration) of disinfectants.

Nevertheless, after the adoption of the respective amendments Complainants still faced difficulties concerning the disinfectants registration procedure due to unclear legal regulations.

### ACTIONS TAKEN:

The Council arranged several phone calls with MHU's Public Health Department and Legal Affairs Department officials on the matter.

The Council's investigator also arranged the meeting with MHU's officials. As a result, it was established that the MHU's Public


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Health Department was responsible for the consideration of applications on disinfectants registration. However many delays have been caused by the uncertainty concerning the status of some disinfectants' health-hazardous components. The Public Health Department officials informed the Council that it was up to the Acting Minister of Health of Ukraine to decide on the matter. In this respect, the Council's investigator contacted the Acting Minister of Health of Ukraine asking for solving the case.

**RESULT ACHIEVED:**

Following this dialogue, the Acting Minister of Health of Ukraine informed the Council's investigator about the signing of the respective documents.

At the beginning of February 2019, both complaints informed the Council on the successful state registration of their disinfectants.



## PERMITS AND LICENSES

Subject	Case closed successfully	Case closed with recommendations	Case closed without success	2020 Total
Permits and licenses environment/subsoil	2	4	1	7
Permits and licenses construction	1	0	1	2
<b>Total</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>9</b>

### Subject: Permits and licenses construction

#### Construction company vs DABI: construction permit granted

##### Complainee:

The State Architectural and Construction Inspectorate (DABI)

#### COMPLAINT IN BRIEF:

The Council received a complaint from a construction company. The company complained that DABI did not grant it permits to build residential buildings. The court ruled that the inspectorate should issue permits to the company for construction works performance. However, once the court decision came into force, the supervisory authority did not issue a construction permit to the company. The DABI referred to the fact that it had submitted the complainant's documents to the respective department and was awaiting its approval. The company sent all the documents required by the inspectorate, but time did not receive a response from the government agency for a long time. Then the company turned to the Business Ombudsman Council for help.

#### ACTIONS TAKEN:

The investigator found the complaint substantiated. The Council recommended that the DABI enforce the court's decision and issue construction permits to the company. While working on the company's case file, the Council found inadequate coordination of actions between the inspectorate departments, which prevented the complainant from obtaining the necessary permits in a timely manner.

#### RESULT ACHIEVED:

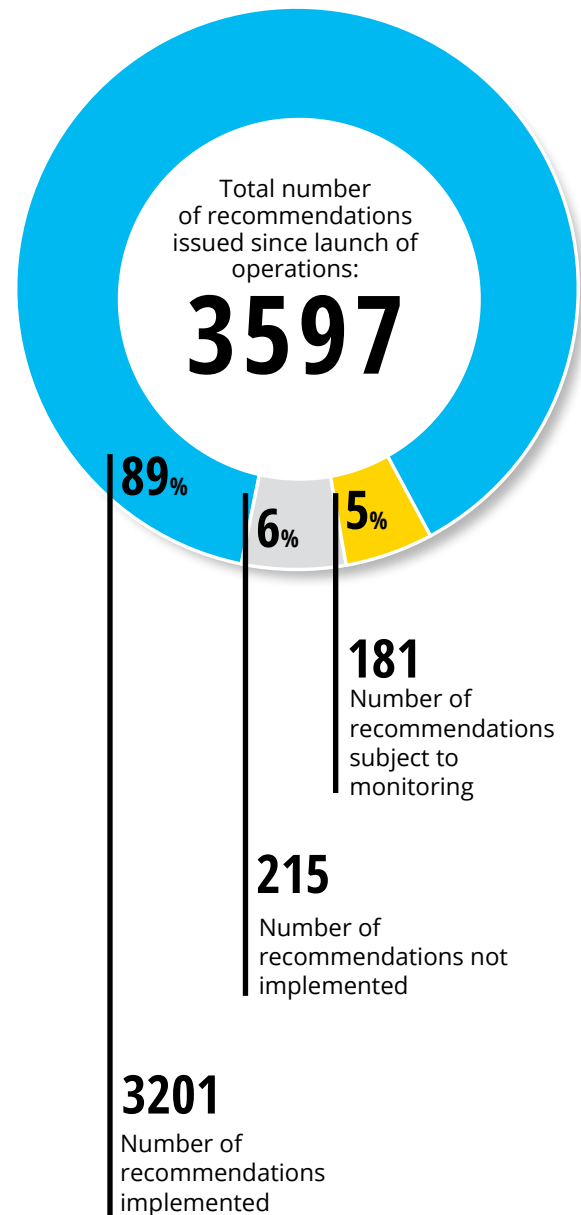
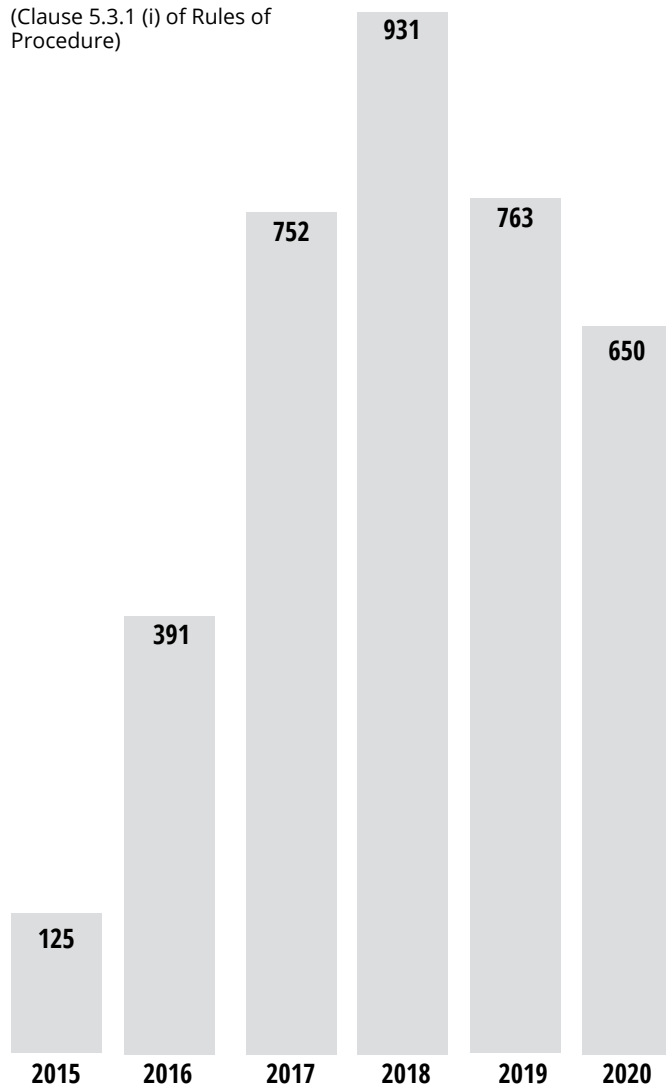
The DABI followed the Council's recommendations. The DABI Department in Odesa Oblast provided an excerpt from the register confirming registration of construction permits in favor of the complainant. The case was successfully closed.

# 3.SYSTEMIC AND INDIVIDUAL RECOMMENDATIONS IDENTIFIED AND SOLVED

Having investigated thousands of business cases, the Business Ombudsman Council all along flagged systemic issues, analyzed them thoroughly and suggested possible solutions to the government. We constantly describe such topics in quarterly reports, and plan to learn-by-doing more in 2021.

## 3.1. INDIVIDUAL RECOMMENDATIONS TO RELEVANT AUTHORITIES AND IMPLEMENTATION RATE

(Clause 5.3.1 (i) of Rules of Procedure)



## GOVERNMENT AGENCIES WHOM THE BOC ISSUED INDIVIDUAL RECOMMENDATIONS IN 2015-2020 AND RATIO OF IMPLEMENTATION

	Issued recommendations	Implemented recommendations	Ratio of implemented individual recommendations
State Tax Service, State Customs Service, State Fiscal Service	2482	2291	92%
National Police of Ukraine	206	154	75%
Prosecutor General's Office	149	118	79%
Local government authorities	144	98	68%
Ministry of Justice	118	110	93%
Ministry for Development of Economy and Trade of Ukraine	103	90	87%
State Security Service	57	55	96%
Ministry of Energy and Coal Industry	61	54	89%
State Enterprises	39	33	85%
Ministry of Social Policy	32	29	91%
Ministry for Communities and Territories Development of Ukraine	31	30	97%
Parliament, the Cabinet of Ministers, the President of Ukraine	33	28	85%
Ministry of Infrastructure of Ukraine	22	15	68%
Ministry of Finance of Ukraine	22	17	77%
Ministry of Health of Ukraine	15	14	93%
Ministry of Internal Affairs	14	11	79%
National Commission for State Regulation of Energy and Public Utilities	11	10	91%
Antimonopoly Committee of Ukraine	11	8	73%



	Issued recommendations	Implemented recommendations	Ratio of implemented individual recommendations
Commercial and other courts	7	7	100%
NABU	7	5	71%
State Funds	6	3	50%
National Bureau of Investigation of Ukraine	4	3	75%
National Bank of Ukraine	5	2	40%
State Emergency Service of Ukraine	1	1	100%
Ministry of Education and Science of Ukraine	1	1	100%
Communal Services of Ukraine	1	1	100%
Ministry of Digital Transformation	1	1	100%
State Border Guard Service of Ukraine	1	1	100%
National Council of Ukraine on Television and Radio Broadcasting	1	1	100%
Ministry of Defence of Ukraine	1	0	0%
Other	11	10	91%
<b>TOTAL</b>	<b>3597</b>	<b>3201</b>	<b>89%</b>

As of December 31, 2020, state bodies have implemented 89% of individual recommendations issued by the BOC. This reflects state bodies' willingness to improve their performance and cooperate in solving disputed issues of business.

Out of 2482 of the Council's individual recommendations that traditionally related to the block of the State Tax Service, the State Customs Service and the State Fiscal Service, 92% were fulfilled.

Among state bodies, to whom we issued 30+ recommendations, the following agencies also performed above or equaled the cumulative figure of 89%: the Ministry of Justice (93%), the State Security Service (96%), the Ministry of Energy and Coal Industry (89%), the Ministry of Social Policy (91%), the Ministry for Communities and Territories Development (97%).

The lowest ratio of implemented recommendations is recorded for the National Police (75%), the Prosecutor General's Office (79%), local government authorities (68%), the Ministry for Development of Economy, Trade and Agriculture (87%), state-owned enterprises (85%), as well the block of the Parliament, the Cabinet of Ministers, the President of Ukraine (85%).



WE EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR PROMPT, HIGH-QUALITY, THOROUGH AND PROFESSIONAL ASSISTANCE IN CONSIDERING THE COMPLAINT AGAINST THE ACTIONS OF THE REGIONAL COMMISSION OF THE STATE TAX SERVICE OF UKRAINE ON THE RESULTS OF THE TAX INVOICE SUSPENSION. DUE TO YOUR HELP, WE WERE ABLE TO PROTECT OUR LEGAL RIGHTS IN THE PRE-TRIAL BODY AND FOCUS ON DOING BUSINESS, INSTEAD OF WASTING TIME AND MONEY ON LITIGATION. WE ARE CONVINCED THAT THE BOC OPERATION IS AIMED AT COMBATING CORRUPTION IN UKRAINE, ENSURING TRANSPARENT BUSINESS ACTIVITY, AND ACTIVITIES OF THE BOC INVESTIGATORS INCREASE THE INVESTMENT ATTRACTIVENESS OF OUR STATE AND RAISE CONFIDENCE OF THE REAL SECTOR ENTERPRISES IN UKRAINE IN A WAY THAT THEIR INTERESTS IN STATE BODIES WOULD BE PROTECTED AND DEFENDED BY EXPERIENCED PROFESSIONALS.

ARTEM ROMANIUK  
DIRECTOR GENERAL

CHIEF ACCOUNTANT P. HRUSHKOVSKYI

## 3.2. SOLVED SYSTEMIC ISSUES FROM INDIVIDUAL CASES

### STATE BODY: ZAKARPATTIA CUSTOMS OF THE STATE CUSTOMS SERVICE OF UKRAINE

#### ISSUE ARISING FROM THE INVESTIGATION

The problem was that the Cabinet of Ministers of Ukraine restricted export of some goods due to quarantine and, as a result, customs officers detained goods of medical gowns manufacturers at the border.

The BOC found out that provisions of the Cabinet of Ministers of Ukraine Resolution No.1109 of 24.12.2019 (as amended by the Resolution of the Cabinet of Ministers of Ukraine of 11.03.2020), relating to restrictions on exports of certain products, did not give a clear understanding, whether restrictions applied to products re-export.

#### RESULT ACHIEVED WITH THE BOC FACILITATION

In early April 2020, the Cabinet of Ministers adopted Resolution No.268 amending Resolution No.1109. The new document already made it clear that restrictions in Regulation No.1109 did not apply to re-export. Thus, thanks to the Council's involvement and respective explanations of the State Customs Service of Ukraine as well as amendments to Resolution No.1109, new consignments of complainants' goods successfully crossed the border.

## STATE BODY: MINISTRY OF HEALTH OF UKRAINE

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### ISSUE ARISING FROM THE INVESTIGATION

Manufacturers of antiseptics could not re-register disinfectants, as since 2018 a procedure for state registration of disinfectants has changed. Instead of the State Sanitary and Epidemiological Service, registration of antiseptics became the responsibility of the Ministry of Health. Due to the lack of regulatory framework, the new procedure did not work.

### RESULT ACHIEVED WITH THE BOC FACILITATION

The Council identified deficiencies in the legal framework for registration of disinfectants by the Ministry of Health and recommended that preparation of regulations on of disinfectants registration be completed.

In March 2020, the Cabinet of Ministers of Ukraine adopted Resolution No.908, which simplified the mechanism of state registration (re-registration) of disinfectants. Antiseptics manufacturers successfully re-registered disinfectants, the preliminary registration of which expired last year.

## STATE BODY: STATE TAX SERVICE

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### ISSUE ARISING FROM THE INVESTIGATION

The Business Ombudsman's Council witnessed the inability of entrepreneurs to challenge the decision of the State Tax Service's tax audits due to expiration of a 10-day period specified in the Tax Code.

### RESULT ACHIEVED WITH THE BOC FACILITATION

On March 30, 2020, by law No. 540-IX, the 10-day period was extended for the whole quarantine duration term. However, no relevant technical changes were made to the State Tax Service system and complaints were rejected automatically.

The State Tax Service followed the Council's recommendations and updated the software. The term for appealing tax inspections results was extended upon the 10-day period expiration.

### 3.3. SYSTEMIC ISSUES FROM SYSTEMIC REPORTS SOLVED IN 2020



#### Systemic Report

October 2015

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

##### Issue

Increasing transparency in export-import operations with scrap metal

##### BOC's recommendation

- (1) To develop amendments to the Law of Ukraine "On Scrap Metal" on the regulation of exports and imports to modernize the legislation and improve economic and legal provisions related to operations with scrap metal
- (2) To study the requirements for classification of scrap metal, such as the Green List of waste materials for procedure simplification according to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

##### Actions taken by government agencies

###### Implemented

The Law on Amendments to Certain Legislative Acts (Concerning the De-Shading of the Market of Metallurgical Raw Materials and Operations with Scrap Metal) 776-IX was adopted on July 14, 2020

Entry into force will take place on 14.11.2020

The law implements recommendations of the BOC concerning modernization of the legislation and improves economic and legal provisions related to operations with scrap metal (including export-import operations).

###### Significant progress

On June 4, 2020, the Verkhovna Rada of Ukraine registered the draft Law of Ukraine No.2207-1-d "On Waste Management", which will regulate cross boundary transfer of hazardous waste

Adopted by the Verkhovna Rada on 21.07.2020 in the first reading.



## Systemic Report

July 2016

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

### Issue

Ensuring transparency and accountability of public procurement during construction of complex infrastructure projects

### BOC's recommendation

Develop amendments to the Law of Ukraine "On Public Procurement" regarding:

- A** Expansion of public procurement law terminology and including the term "consortium" to ensure the possibility of joint submission of bids by several participants without creating a separate legal entity;
- B** Reduction (and subsequent abolition) of mandatory minimum weight of the "low price" criterion from 70% to 50% for procurement of works

### Actions taken by government agencies

On April 19, 2020, a new edition of the Law of Ukraine "On Public Procurement" came into force, which was previously approved on September 19, 2019 by the Law of Ukraine № 114-IX:

- A** Provided legal enforcement of participation of a business entities group (consortia) as participants in public procurement;
- B** A life cycle criterion was introduced in the new edition of the Law "On Public Procurement" as an alternative solution of the problem to have mandatory minimum weight of the "low price" criterion.
  - The lifted restrictions concerning use of the non-price criteria of bids for subject matters of procurement that are of complex and specialized nature;
  - The list of assessment criteria of bids (price, life cycle cost or life cycle cost along with other assessment criteria) is extended;
  - In order to prevent dumping the Law foresees defining abnormally low bid price and the opportunity of its rejection by the customer

**Issue**

To ensure that the law on establishing harmonized conditions for placing building materials on the market is substantially modernized and brought in line with EU legislation and in compliance with Ukraine's obligations under the Association Agreement with the EU

**BOC's recommendation**

Draft a legal act approving the technical regulation of building materials in full compliance with EU Regulation #305/2011 passed by the European Parliament and Council on March 9, 2011 to establish harmonized conditions for placing building materials on the market and repealing the Council's Directive #89/106/EEC, in compliance with Ukraine's commitments under the Association Agreement

**Actions taken by government agencies****Implemented**

The Law of Ukraine "On Providing Construction Products on the Market" was adopted by the Verhovna Rada on 02.09.2020 and signed by the President of Ukraine

**Systemic Report****November 2016****CHALLENGES AND PROBLEMS  
IN THE SPHERE OF COMPETITION  
PROTECTION AND OVERSIGHT****Issue**

A full and objective consideration of appeals (including in public procurement sphere) depends on the ability of participants of the appeal procedure to submit necessary documents for proving violation of their rights or legitimate interests (if any).

However, in practice it is not uncommon for the Antimonopoly Committee of Ukraine (AMCU) to refuse accepting additional documents that leads to unsubstantiated violations of companies' rights.

**BOC's recommendation**

To enable a complaining bidder or any other participant of the appeal procedure to submit additional documents related to the merits of the complaint.

**Actions taken by government agencies**

On April 19, 2020 the Law of Ukraine "On Introducing Amendments to the Law of Ukraine "On Public Procurement and Other Certain Legislative Acts of Ukraine Aimed at Improving Public Procurements" No. 114-IX (the "Law") entered into force.

The Law introduced a number of changes to the legal framework governing public procurement, including, inter alia, the respective appeal procedure.

In particular, from now on, the complaining bidder and other participants of procurement procedure are entitled to add materials that they consider necessary for due appeal consideration (see para 16, Article 18 of the Law of Ukraine "On Public Procurement").

Participants of the appeal procedure shall submit such materials no later than three working days prior to the date of consideration of the appeal by the AMCU's Permanent Administrative Board (Boards) tasked to consider appeals alleging violations of legislation in public procurement sphere.



## Systemic Report

February 2020

### BIG CHALLENGES FOR SMALL BUSINESS

#### Issue

Provide SME's employee with the possibility to work part-time, work in shifts, work remotely, etc.

#### BOC's recommendation

Review and initiate amendments to the legislation, providing flexible forms of employment regime particularly in the context of part-time work, shifts, weekends and holidays, remote work etc.

#### Actions taken by government agencies

On April 2, 2020, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)" (No. 540-IX of March 30, 2020) entered into force.

In particular, this Law enforced a new edition of Article 60 of the Labor Code, which regulates the flexible forms of employment regime starting from 02.04.2020.

The Article 60 of the Law regulates a regime of flexible working hours. For instance, (i) fixed time, during which the employee has to be present at the work place; (ii) shift schedule, during which the employee on his own defines time for work under the established norm of the working hours, (iii) remote work

#### Issue

Provide comprehensive business information on funding opportunities

#### BOC's recommendation

Consider creation of a separate section on state web resources on SME access to finance. Ensure aggregation of relevant information on funding and educational programs for SMEs.

#### Actions taken by government agencies

Donor, banking and budget support programs are posted on the SME.DO platform [https://sme.gov.ua/support\\_programs/](https://sme.gov.ua/support_programs/)

The website of the Ministry of Economy contains a list of SMEs support programs <https://www.me.gov.ua/Documents/List?lang=uk-UA&id=5dee0c19-31f9-4a56-9f86-c05dc322cbb4&tag=ProgramiPidtrimkiPidprintsiv>

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**Issue**

In case of tax invoice suspension or inclusion of a taxpayer in the list of risky taxpayers the respective entrepreneur did not receive information about the actual reasons/ circumstances that led to such a decision.

**BOC's recommendation**

The BOC recommended to provide the entrepreneur with the information that should allow the taxpayer to understand which documents to submit or how to adjust his activity to achieve tax invoice registration or exclusion from the list of risky taxpayers.

**Actions taken by government agencies**

Starting from February 01, 2020, the CMU Resolution No. 1165 has become effective.

The said Resolution provides for that a taxpayer receives a decision on meeting the taxpayer's risk criteria via his e-cabinet on the day such a decision is made. The decision shall indicate a reason according to which the taxpayer has met the risk criteria.

However, based on the BOC's recent practice, tax authorities fail to explicitly indicate the reason of the inclusion to the list of risky taxpayers, limiting themselves only to stating "availability of riskiness features" "availability of tax information" or "VAT transit".

In view hereof, the practical implementation of the CMU Resolution requires further improvement.

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**Issue**

An enterprise was obliged to send a separate notification to the State Tax Service of Ukraine, wherewith informing on appointment of a CEO, whereas the tax authority had access to the Unified Register of Legal Entities, individual entrepreneurs and public organizations.

**BOC's recommendation**

The BOC issued a general recommendation, urging the Government to take appropriate steps to simplify the labour-related document flow and transform it into an electronic format.

**Actions taken by government agencies**

On February 12, 2020, the CMU adopted the Resolution No. 188, wherewith actually cancelled the obligation of enterprises to inform the tax authority of a newly appointed CEO.



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**Issue**

Relatively harsh fines in terms of employer's liability for violations of the labor legislation.

**BOC's recommendation**

As regards the aspect of the proportionality, the Council recommended to review amounts of fines, taking into account the nature, degree of offenses committed and an employer's degree of guilt, and to provide for the possibility of applying warnings for minor or first-time offenses and/or granting employers a grace period for their elimination without an obligation to pay respective fines.

**Actions taken by government agencies**

Starting from February 02, 2020, the Law No. 378-IX amended Art. 265 of the Labor Code of Ukraine, in particular:

- significantly decreased fines related to informal employment and granting access to inspection;
- simple notices for employers, who use simplified taxation (1-3 groups);
- introduced a criterion on re-iterative violations;
- 50% discount on fines if paid within 10 days;
- in certain cases fines shall not be paid if an employer eliminates violations voluntarily.

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**Issue**

Approximation of technical regulation, standards, and conformity assessment.

**BOC's recommendation**

In terms of the implementation of the Innovation Strategy for the period up to 2030, the BOC recommended to ensure conforming the technical regulation, standards, and conformity assessment with the relevant EU standards.

**Actions taken by government agencies**

On February 12, 2020, the CMU adopted a number of amendments to its Resolutions (No.No. 459, 1170, 937, 1057), which put the Ukrainian technical regulation in conformity with the Agreement on Conformity Assessment and Acceptance of Industrial Products.



## Systemic Report

### ADMINISTERING TAXES PAID BY BUSINESS

JULY 2020

#### Issue

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

#### BOC's recommendation

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

To ensure implementation of the foregoing recommendation, the Council

recommended the Ministry of Finance of Ukraine and the State Tax Service of Ukraine to develop and submit to the Cabinet of Ministers of Ukraine and the Cabinet of Ministers of Ukraine — to approve draft amendments to the Procedure for electronic administration of VAT (No.569) and/or other related legislative acts.

#### Actions taken by government agencies

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

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**Issue**

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

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

**BOC’s recommendation**

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

**Actions taken by government agencies**

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

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

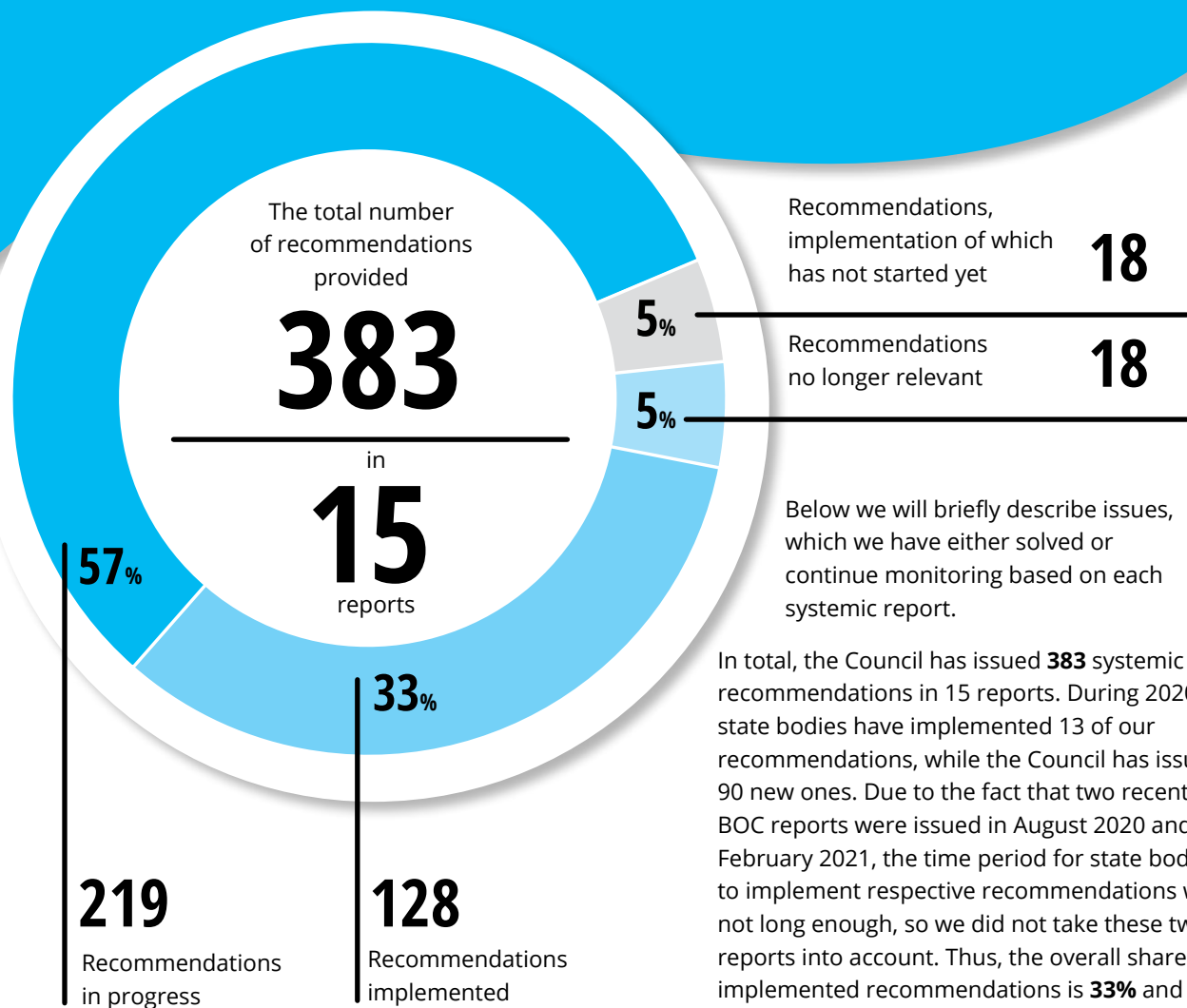
On December 23, 2020, the Expert Council voted for the approval, and on January 5, 2021 the Ministry of Finance approved the GTC — the first enacted in Ukraine since August, 2019.

### 3.4. REPORT FOCUS: IMPLEMENTATION OVERVIEW OF RECOMMENDATIONS ISSUED IN SYSTEMIC REPORTS

The Business Ombudsman Council's mandate implies not only helping businesses in terms of individual complaints, but also identifying and solving systemic issues affecting quality of business environment in Ukraine. We believe, that the BOC is uniquely positioned to identify systemic problems and suggest possible solutions based on over 8500 complaints lodged by businesses to challenge various malpractices on the part of state bodies, local government authorities including entities controlled by them.

In this respect, since 2015 we have been gradually selecting areas, which we thoroughly analyzed, combining both a comprehensive legal analysis and real-life cases of our complainants. Having considered these problems, we developed their possible solutions and framed them into specific recommendations set forth in respective systemic reports. After that, we introduced systemic recommendations to state bodies and began monitoring their implementation.

#### RECOMMENDATIONS ISSUED TO STATE BODIES AND RATIO OF THEIR IMPLEMENTATION AS OF MARCH 2021



In total, the Council has issued **383** systemic recommendations in 15 reports. During 2020, state bodies have implemented 13 of our recommendations, while the Council has issued 90 new ones. Due to the fact that two recent BOC reports were issued in August 2020 and February 2021, the time period for state bodies to implement respective recommendations was not long enough, so we did not take these two reports into account. Thus, the overall share of implemented recommendations is **33%** and **57%** more are in the progress of implementation. We haven't commenced implementation of 5% of recommendations yet, while **5%** of them lost its relevance over time.

## Systemic Report

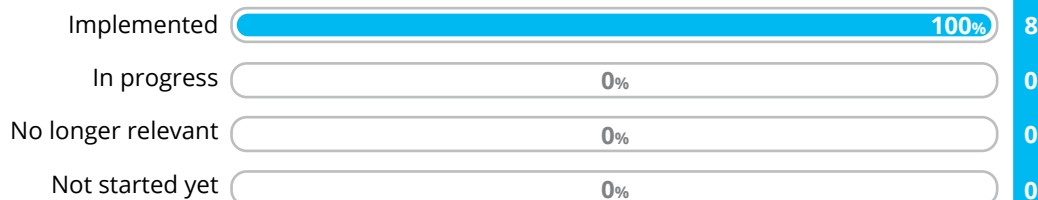
# PROBLEMS FOR BUSINESSES AS A RESULT OF THE MILITARY SITUATION IN THE EAST OF UKRAINE AND THE ANNEXATION OF CRIMEA

JULY 2015






## IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

8



## MAJOR IMPLEMENTED RECOMMENDATIONS:

-  To fulfil all financial commitments to businesses whose employees were mobilized for a “specified term” of the ATO
-  To improve a special permits system for transporting goods to the ATO zone using a “one-stop-shop” approach
-  To take back Ukrainian-owned waggons which were blocked in annexed territory of Crimea

## Systemic Report

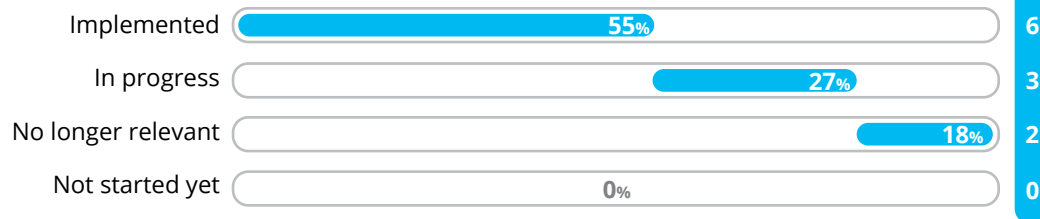
### GETTING ACCESS TO ELECTRICITY

JULY 2015



#### IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

11



#### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ To introduce a fixed rate for getting hooked-up
- ✓ To ensure that design documentation is prepared by power utility company
- ✓ To simplify approval of design documentation by establishing fixed timeframes



#### MAJOR PENDING RECOMMENDATIONS:

- ✗ To improve procedure for land plot's allotment through expanded use of servitudes
- ✗ To prepare new and streamline existing zoning/territorial plans
- ✗ To improve procurement through wider use of framework contracts by power utilities

## Systemic Report

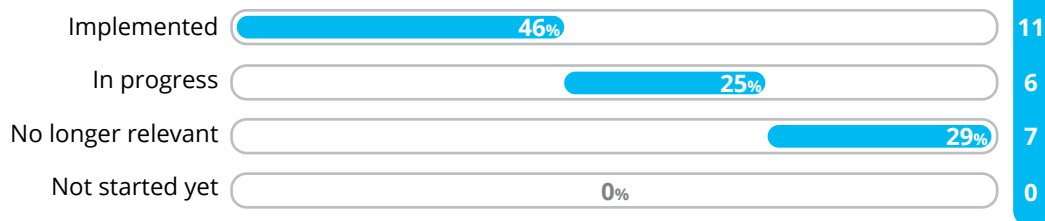
### PROBLEMS WITH CROSS-BORDER TRADING IN UKRAINE

OCTOBER 2015



#### IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

24



#### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ Abolish special sanctions for exporters and importers (individual licensing regime for foreign economic activity)
- ✓ Improve the economic and legal provisions of scrap metal operations
- ✓ Regulate procedures related to state export control by creating a Single List of Dual-Use Goods and a Single Export Web Portal (EXBS)



#### MAJOR PENDING RECOMMENDATIONS:

- ✗ To simplify procedures required to obtain permits related to international trade
- ✗ To amend the Customs Code and implement post-clearance control procedures

## Systemic Report

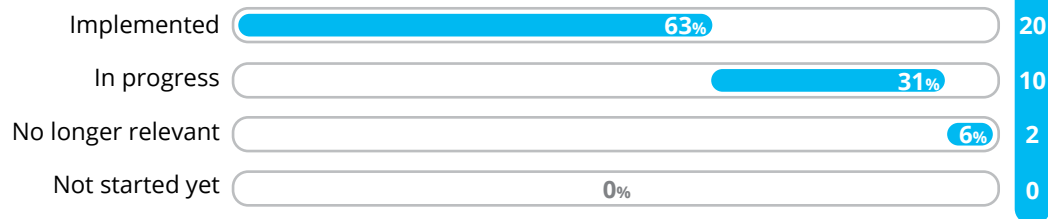
# NATURAL MONOPOLIES VS. COMPETITIVE BUSINESS: HOW TO IMPROVE RELATIONS

JANUARY 2016



## IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

32



### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ To improve engineering network access (implemented partly for electricity and gas)
- ✓ To provide access of the consumers to key information on energy and utilities
- ✓ To introduce quality indicators in the utilities sphere
- ✓ To establish the requirements for service providers to disclosure key indicators of their operations on their websites



### MAJOR PENDING RECOMMENDATIONS:

- ✗ To improve handling of customer complaints
- ✗ To implement the concept of switching from "cost plus" tariff method to the regulatory-asset based methodology in the field of electricity and gas supply
- ✗ To take all necessary measures for the implementation of incentive-based rate methodologies in the field of heating, water supply and waste management



## Systemic Report

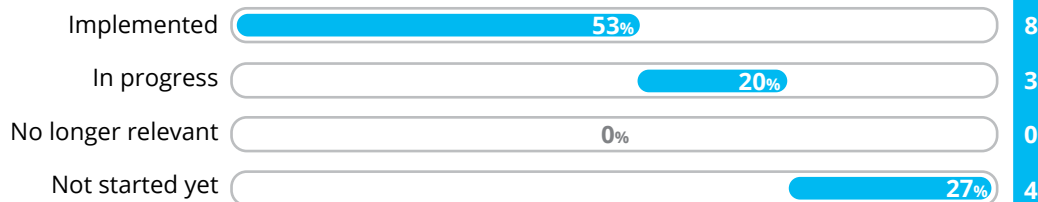
# ABUSE OF POWERS BY THE LAW ENFORCEMENT AUTHORITIES IN THEIR RELATIONS WITH BUSINESS

JANUARY 2016



## IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

15



### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ To prescribe maximum time limits for conducting pre-trial investigation of criminal proceedings until suspicion notice is furnished
- ✓ To tackle various types of abuses at the pre-trial investigation stage
- ✓ To improve a mechanism of personal liability of law enforcers



### MAJOR PENDING RECOMMENDATIONS:

- ✗ To prohibit criminal prosecution for tax evasion until tax debt is "approved/acknowledged"
- ✗ To develop methodological recommendations for persons lodging notices about a committed criminal offence
- ✗ To prescribe maximum time limits for conducting an examination

## Systemic Report

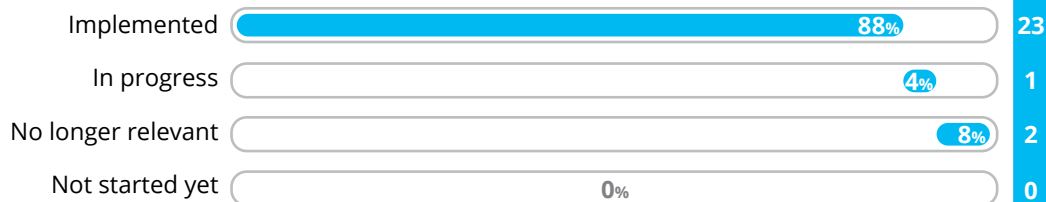
# REDUCING THE RISK OF CORRUPTION AND ATTRACTING INVESTMENT TO THE CONSTRUCTION INDUSTRY

JULY 2016



## IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

26



### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ To simplify obtaining of construction permits
- ✓ To harmonize conditions for placing building materials on the market in line with EU norms and standards
- ✓ To provide access to information on urban development, architecture and territorial planning
- ✓ To improve the procedure or to cancel the current procedure for obligatory local development contribution
- ✓ To improve public procurement procedures in construction



### MAJOR PENDING RECOMMENDATIONS:

- ✗ Elimination of gaps of land legislation governing the land use rights

## Systemic Report

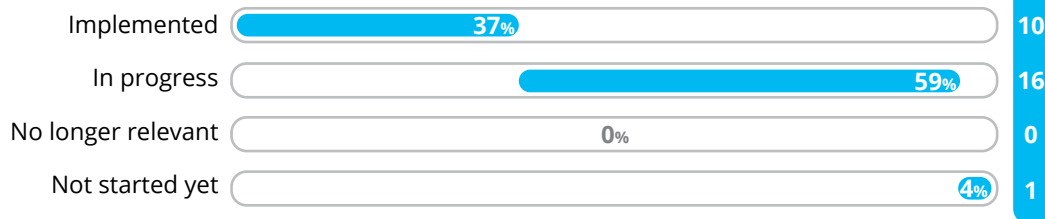
# CHALLENGES AND PROBLEMS IN THE SPHERE OF COMPETITION PROTECTION AND OVERSIGHT

NOVEMBER 2016



## IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

27



### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ To adopt the National Competition Development Program
- ✓ To publish substance of AMCU's individual recommendations
- ✓ To adopt legislation in the sphere of state aid



### MAJOR PENDING RECOMMENDATIONS:

- ✗ To set time limits for investigation of cases alleging breach of competition
- ✗ To ensure split of the AMCU's investigatory and decision-making authority
- ✗ To ensure existence of Methodology for Calculating the Amount of Fines in the form of proper legislative act

## Systemic Report

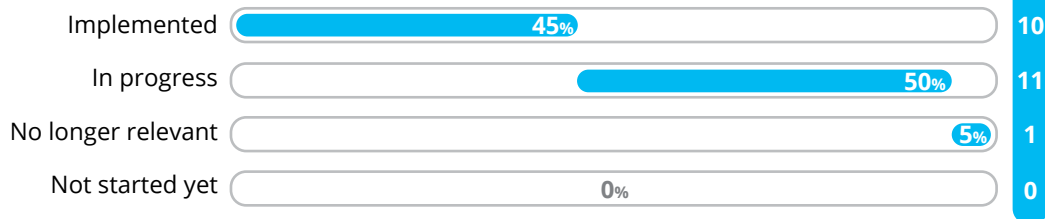
# CHALLENGES FOR GOVERNMENT AND BUSINESS IN DEALING WITH LOCAL GOVERNMENT

FEBRUARY 2017



## IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

22



### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ To remove legal gaps and foster voluntary unification of territorial communities
- ✓ To improve land lease procedures
- ✓ To improve the quality and level of administrative services provision



### MAJOR PENDING RECOMMENDATIONS:

- ✗ To introduce transparent and competitive selection procedures for local government officials
- ✗ To finish drafting regulations governing the decentralization of government powers in all areas and spheres providing administrative and social services
- ✗ To establish a constitutional basis for regulating the abuse of power by LGAs

## Systemic Report

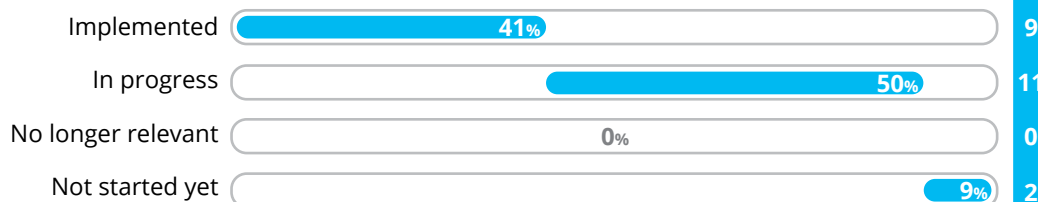
### COMBATTING RAIDERSHIP: CURRENT STATE AND RECOMMENDATIONS

JULY 2017



#### IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

22



#### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ To ensure full synchronization of data with the Registry of Real Rights and the State Land Cadastre
- ✓ To publicize results of off-site documentary audits of state registrars
- ✓ To remove jurisdictional conflicts in court disputes pertaining to the sphere of state registration



#### MAJOR PENDING RECOMMENDATIONS:

- ✗ To introduce the system of notification of owners of corporate rights about pending registration actions
- ✗ To develop methodological recommendations for law enforcers focused on investigation of the most common instances of raidership
- ✗ To ensure full technical interaction between the Registry of Real Rights and the Unified State Registry of Court Decisions

## Systemic Report

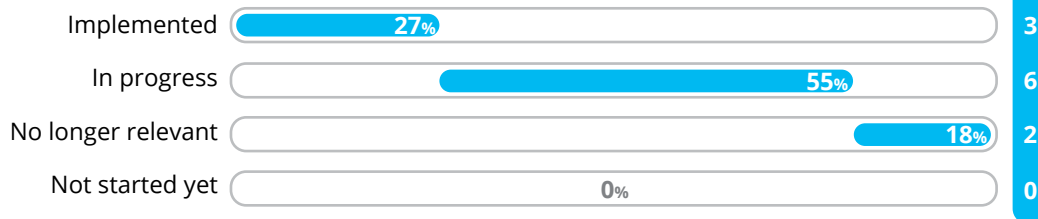
# CONTROL OVER CONTROLLERS: STATUS OF CONTROL BODIES REFORM IMPLEMENTATION

JANUARY 2018



## IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

11



### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ To approve the Methodology for developing criteria for assessing the degree of risk from conducting business activities and determining the frequency of planned state supervision measures (control)
- ✓ To introduce a risk-based approach to control (monitoring)



### MAJOR PENDING RECOMMENDATIONS:

- ✗ To develop an Integrated Automated System (IAS) on state supervision (control) measures and ensure its functioning
- ✗ To consider standardization of documents that the State Regulatory Service issues in cases of violations by control bodies, licensing and permitting authorities

## Systemic Report

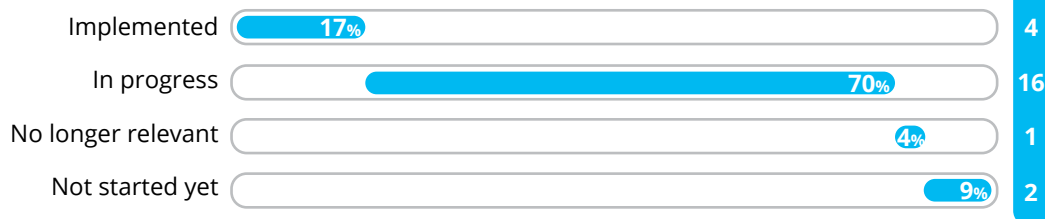
### MAIN PROBLEMS FACED BY BUSINESS IN CUSTOMS SPHERE

JULY 2018



### IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

23



#### MAJOR IMPLEMENTED RECOMMENDATIONS:

- ✓ To streamline a refund of excessively paid customs duties and fees
- ✓ To adopt legal framework on authorized economic operators
- ✓ To enable customs authorities and declarants to exchange documents issued in electronic form



#### MAJOR PENDING RECOMMENDATIONS:

- ✗ To create public register of decisions on classification of goods
- ✗ To reform the area of administrative liability for infringing customs rules
- ✗ To switch to post-clearance audit as a primary form of customs control

## Systemic Report

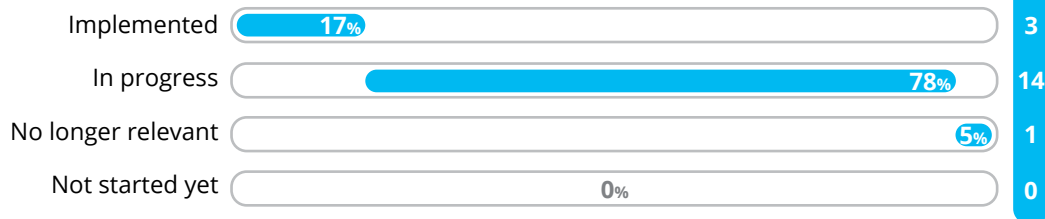
### BUSINESS FOCUS ON LABOR-RELATED ISSUES

JANUARY 2019



#### IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

18



#### MAJOR IMPLEMENTED RECOMMENDATIONS:

✓ To approve Criteria for assessing a risk degree from conducting business activities

✓ To amend Procedure No.1107 dated October 26, 2011 to clearly specify that violation of labor safety shall entail refusal to extend the validity period of that specific permit, requirements of which were breached due to a labor safety accident



#### MAJOR PENDING RECOMMENDATIONS:

✗ To provide the territorial bodies with a guidance for compliance with the process of approval of mining operations development plans

✗ To develop and submit for respective approval the procedure for interaction between the SLS, the Labor commissions under local governance, and the National Police of Ukraine, when carrying out state supervision in the labor relations sphere

✗ To redesign the process of the occupational safety education, amend Model Regulation on the Procedure for Training and Knowledge Assessment on Occupational Safety Issues



## Systemic Report

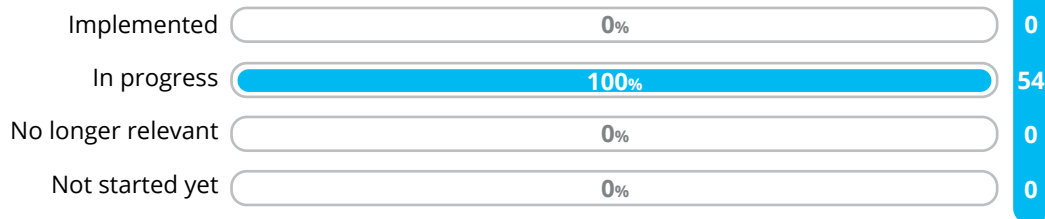
### ADMINISTRATIVE APPEAL: CURRENT STATE AND RECOMMENDATIONS

JULY 2019



#### IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

54



#### MAJOR PENDING RECOMMENDATIONS:

To ensure final adoption of the Draft Law of Ukraine "On the Administrative Procedure" No. 3475 (adopted by the Verkhovna Rada in the 1st reading on September 2, 2020) providing, inter alia, as follows:

- To enable use of administrative appeal mechanism to challenge not only any decision but also actions and inactions of public authorities
- To set forth the rules governing delegation of powers to resolve administrative cases
- To vest the appeal authority with the right to renew the missed deadline for lodging an appeal at the appellant's request subject to existence of valid reasons
- To foresee mandatory application of such a KPI as "ratio of confirmation by the courts of decisions made according to the administrative appeal procedure"

## Systemic Report

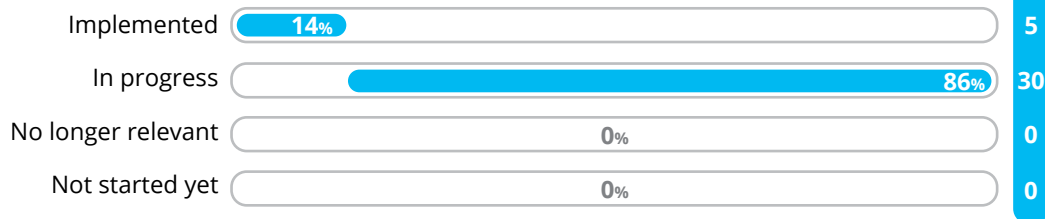
### BIG CHALLENGES FOR SMALL BUSINESSES

FEBRUARY 2020



#### IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

35



#### MAJOR IMPLEMENTED RECOMMENDATIONS:



To launch SME informing campaign about the main changes in the legislation implemented through the SME Development Office and on a respective Facebook page  
<https://sme.gov.ua/sme-development-office/>  
<https://www.facebook.com/SME.GOV.UA>



#### MAJOR PENDING RECOMMENDATIONS:



Approve a realistic SME Development Action Plan. The SME Development Action The Plan should address all SME's (micro, small and medium-sized businesses) and be accompanied by allocation of the necessary financial resources

## Systemic Report

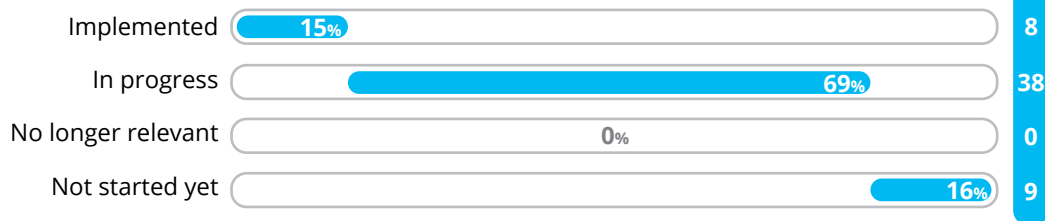
### ADMINISTERING TAXES PAID BY BUSINESS

AUGUST 2020



#### IMPLEMENTATION OF RECOMMENDATIONS ISSUED TO STATE BODIES:

55



#### MAJOR IMPLEMENTED RECOMMENDATIONS:



To ensure a prompt payment of a budgetary refund authorized by court decision following it entering into force and despite it being challenged in cassation



To ensure renewal of data with SEA VAT for taxpayers whose registration as VAT payers was cancelled and subsequently reinstated



To intensify work of the Expert Council on the Issuance of Generalized Tax Consultations set up under the auspices of the Ministry of Finance of Ukraine



#### MAJOR PENDING RECOMMENDATIONS:



To ensure timely enforcement of court decisions obliging registration of tax invoices and adjustment calculations



To establish additional criteria for substantiating decisions on VAT's payer falling under the category of "risky" ones and implement a proper mechanism enabling administrative appeal of such decisions



To retain data with SEA VAT in case of taxpayer's corporate reorganization

## MAJOR IMPLEMENTED RECOMMENDATIONS IN JULY 2015-MARCH 2021:



In 2015, we persuaded the Government to refund a state debt worth UAH 2 billion to companies that basically implied a compensation of average monthly salaries to employees mobilized to the ATO. With our facilitation, in 2015 the Cabinet of Ministers improved coordination and a special permits system for transporting goods in and out of the ATO zone using a "one-stop-shop" approach. This improvement was especially in time because its implementation coincided with active hostilities and the need to evacuate business assets to the territory controlled by Ukraine.



The BOC efforts led to the elimination of one of the largest corruption schemes, which for many years blocked free foreign trade and exports. In particular, special sanctions in foreign trade were cancelled with the adoption of the law "On Currency and Currency Operations". The individual licensing regime, which used to be applied to businesses for minor violations paralyzing their import/export operations, was finally abolished.



In 2015, we recommended to create a system that would ensure transparent VAT refunds and prevent the accumulation of large VAT debts in future periods. As a result of cooperation with the Ministry of Finance, an open and transparent VAT refund register was introduced. The BOC also addressed the issue of paying off significant VAT debts that have been accumulated since 2007 and have not been paid as of 2015. After the BOC issued systemic recommendations in this respect to the Government, and conducted a series of business meetings organized by the BOC and chaired by the Prime Minister of Ukraine, all VAT debts were paid. The amount of VAT refunded to the BOC complainants is over UAH 4 billion, while in total, according to the SFS, in 2016, 94 billion of VAT was reimbursed.



We also recommended to establish an effective operation of SMKOR, which allows to track the VAT chain and combat tax fraud refunds, the so-called "scheme" VAT. Thus, on July 1, 2017, the risk assessment monitoring system became fully operational, which made it possible to suspend the registration of "risky" tax invoices.

In general, the fight of the Tax Service against fictitious VAT is an eternal problem. The issue is common not only to Ukraine, but in all countries that administer VAT. And in order to overcome these illegal schemes, tax authorities are constantly developing new tools. Previously, this was "status 09", then the termination of agreements on recognition of electronic reporting. In 2017, SMKOR was launched, which has been working effectively since 2018. However, still, fictitious enterprises find new ways to bypass the system and break the rules.

In addition to active work on improving processes and solving systemic issues, we also do not leave the business that has encountered individual problems related to blocking of tax invoices. Unlike business associations, which usually support large companies, we consider appeals of entrepreneurs and help small businesses.



In 2015, the Council also raised the issue of refunding to business overpayments of customs duties arising from the adjustment of customs value. Such overpayments were not systematically returned by customs authorities, based on the alleged lack of a return procedure. After the BOC submitted this issue to the Government as one of the priorities, all overpayments were returned. Only UAH 9 million were returned to the complainants. Hence, experts estimate that the total effect of solving the systemic issue amounts to hundreds of millions of hryvnias. In addition, appropriate procedures for repaying overpayments have been regulated to prevent similar issues in the future.



The famous laws MaskShowStop-1 and MaskShowStop-2 were adopted on the basis of our systemic recommendations. These laws helped to eliminate the most brutal attacks on businesses by law enforcement bodies. Now companies barely deal with law enforcers breaking into companies with machine guns and wearing balaclavas. Based on our recommendations actions of law enforcement officers during searches became settled — searches and court hearings are now subject to mandatory video and audio recording and an advocate is entitled to be present at any stage of this procedural action.



Back in 2016, it was also recommended to separate investigation of economic and tax crimes from the competence of the State Security Service and the National Police, liquidate Tax Police and create a separate effective body based on the analytical approach in its work, without the power bloc and "mask show" elements. Eventually at the beginning of 2021, our joint efforts with other stakeholders were paid off — the law on the Bureau of Economic Security was adopted.



The threshold amount for opening a criminal case was increased from UAH 960 500 to 2 881 500. We believe that this will reduce unreasonable pressure on businesses.



Until February 2021, new property owners could not automatically obtain the right to use the land and had to go through the procedure of allocating the land for use and concluding a lease agreement, which took a long time. To overcome the problem, the BOC recommended the Ministry of Regional Development, Construction and Housing and the Ministry of Justice to amend the land legislation and establish an automatic transfer of land use rights when the building is transferred from a land user to a new owner.



In the systemic report related to the construction industry anti-corruption measures, BOC highlighted the need to implement the EU Regulation quality standard for construction materials (because of the expiration of national rules and further implementation of the EU-Ukraine Association Agreement). In 2020, the VRU adopted the Law "On Placement of Construction Products on the Market". A full implementation of the new legislation will allow domestic manufacturers to mark their products with the CE mark and sell them freely on the EU market without additional certification.



Following our recommendations developed jointly with the BRDO, approaches to licensing systems in the construction sector have been completely changed, in particular, a risk-based approach has been implemented, the procedure for obtaining building permits has been simplified. The Ministry of Regional Development jointly with the State Architectural and Construction Inspectorate provided access to information on urban development and territorial planning. Now developers can see the whole construction process from the initial application, to commissioning the object in their e-cabinets.



The State Registry on Corporate Rights to Real Estate and Their Encumbrances (Registry) and the State Land Cadastre (SLC) were fully synchronized. Data of the Registry is from now on available for cadastral registrars. Thus, discrepancies between the Registry and the SLC will no more disadvantage business activity of legitimate owners following cancellation of “raiding” registration actions.

Currently, an applicant who intends to register his property right (for example, land ownership or lease) in the Registry, does not receive an extract from the SLC. As of now, the state registrar has direct access to the SLC data — one can check the availability of land (its cadastral number), information about the land owners/users. One can independently verify the accuracy of the data specified in the application for registration of property rights.

Apart from that, all the updates in the register are also synchronized with the SLC. This applies to cases, when unlawful interference was appealed as well.

For instance, after an administrative appeal against a registration action taken as a result of unlawful interference with the Register, it restores, for example, the right of ownership to the land owner's land, these changes are automatically synchronized with the SLC.



We succeeded in ensuring implementation of the following systemic recommendations set forth in the systemic report focused on administering taxes issued in 2020:

- To ensure prompt payment of a budgetary refund authorized by court decision following it entering into force and despite it being challenged in cassation.
- To ensure renewal of data with SEA VAT for taxpayers whose registration as VAT payers was cancelled and subsequently reinstated.
- To intensify work of the Expert Council on Issuance of Generalized Tax Consultations set up under the auspices of the Ministry of Finance of Ukraine.

## MAJOR PENDING SYSTEMIC RECOMMENDATIONS:

- 

With respect to malpractice of law enforcement bodies, we recommended to prohibit criminal prosecution for tax evasion until a tax debt is “approved/acknowledged”.
- 

As for natural monopolies, responsible state bodies have not yet implemented the concept of switching from cost plus tariff method to the regulatory asset-based methodology in the field of electricity and gas supply and haven’t provided all necessary measures for the implementation of incentive-based rate methodologies in the field of heating, water supply and waste management.
- 

In order to address issues in the sphere of competition, we suggested setting a deadline for investigation of cases alleging breach of competition. We also recommended splitting the AMCU’s investigatory and decision-making competencies.
- 

With respect to dealing with local government authorities we encourage finalization of the decentralization reform. The Parliament should establish a constitutional balance of powers of local authorities and the Presidential vertical, strengthen the accountability of local authorities, and address the issue of United Territorial Communities’ boundaries.
- 

With respect to combatting raidership we suggested introducing the system of notification of owners of corporate rights about pending registration actions; The owner will immediately receive a notification (SMS) of any registration action taken on the property belonging to him (purchase, sale, division, mortgage, etc.) and will be able to respond without delay — for example, to appeal the relevant registration action. In other words, there will be no need to constantly check the status of one’s property in the Register, any changes will be promptly notified of.
- 

It was recommended to ensure full technical interaction between the Registry of Real Rights and the Unified State Registry of Court Decisions  
Currently, in order to carry out a registration action in the Register on the basis of a court decision (for example, on recognition of ownership of a building or a land plot), it is necessary to submit an application and a court decision in paper form to the state registrar. As soon as the State Judicial Administration provides technical interaction between the Register and the Unified Register of Court Decisions, such registration actions (in fact, execution of court decisions) will be carried out automatically, without participation of the of the person concerned. Although such interaction has already been introduced at the legislative



level, it does not work in practice.

In order to solve customs issues, faced by companies, we recommended to create a public register of decisions on classification of goods; to switch to post-clearance audit as a primary form of customs control.



With respect to the SMEs, we recommended to approve a realistic SME Development Action Plan, which should address all SME's (micro, small and medium-sized businesses) and be provided with necessary funding.



With respect to labor issues we suggested introducing an electronic platform in the field of labor supervision in order to stimulate state officials more to preventive work rather than inspections. Another recommendation concerning labor issues was issued: encourage companies to legalize employees and switch to "white payments"; which can be reached through setting up effective cooperation between the State Fiscal Service, the State Labor Service and the National Police.



In our recent report on administering taxes we recommended to:

- ensure timely enforcement of court decisions obliging registration of tax invoices and adjustment calculations
- establish additional criteria for substantiating decisions on VAT's payer falling under the category of "risky" ones and implement a proper mechanism enabling administrative appeal of such decisions
- retain data with SEA VAT in case of taxpayer's corporate reorganization



In the report on the administrative appeal procedure, we recommended to adopt a Law "On the Administrative Procedure", which will, inter alia:  
1) enable applying an administrative appeal mechanism to challenge not only any decision but also actions and omission of public authorities; 2) set forth the rules governing delegation of powers to resolve administrative cases. The eventual adoption of this Law is expected in 2021.



# 4. COOPERATION WITH STAKEHOLDERS

One of the key commitments of the Business Ombudsman Council is furthering progress towards transparency among state, regional and local authorities, and among state-owned ones. Apart from it, the Council facilitates an ongoing, system-wide dialogue between business and the government.

## 4.1 COOPERATION WITH STATE BODIES

In order to maximize the effectiveness of its operations, the BOC signs Memoranda of Cooperation and Partnership with state bodies.

In total, the BOC has

# 12

### MEMORANDA OF COOPERATION WITH STATE BODIES:

the State Tax Service

the State Customs Service

the State Fiscal Service

the Prosecutor General's Office of Ukraine

the National Police

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 Agency on Corruption Prevention

All these Memoranda imply regular meetings of expert groups, which are a platform to review particular complaints openly and transparently as well as to improve legislation governing business activities and remove barriers that inhibit doing business in Ukraine.

In 2020, we held

# 68



### EXPERT GROUP MEETINGS WITH THE FOLLOWING STATE BODIES:

	Number of expert group meetings	Number of cases addressed
State Tax Service	41	421
Prosecutor's Office	4	100
National Police	5	63
Ministry of Ecology and Natural Sources	3	19
State Security Service	1	5
Ministry of Justice	2	4
Tax Police	2	4
State Customs Service	9	32
State Service of Geology and Subsoil	1	2
<b>TOTAL</b>	<b>68</b>	<b>650</b>

## MEETINGS WITH STATE BODIES

**13.01.2020**

Meeting of the Coordination Council for the Development of micro and small business

**Organized by**

Ministry for Development of Economy, Trade and Agriculture of Ukraine

**07.02.2020**



Meeting with the Prosecutor General Ruslan Riaboshapka

**Organized by**

American Chamber of Commerce in Ukraine

**13.02.2020**



Meeting of the President of Ukraine with Ukrainian business

**Organized by**

Presidential Office

**04.06.2020**



Meeting with the Head of the State Tax Service Oleksiy Liubchenko

**Organized by**

the State Tax Service

**19.06.2020**



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

**Organized by**

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

**04.07.2020**



Meeting with the Deputy Prosecutor General Ihor Mustetsia

**Organized by**

Prosecutor General's Office

**08.07.2020**

Meeting with Roman Leshchenko, Head of the State Service of Ukraine for Geodesy, Cartography and Cadaster of Ukraine

**Organized by**

State Service of Ukraine for Geodesy, Cartography and Cadaster of Ukraine

**14.08.2020**



Meeting of the State Tax Service Board

**Organized by**

State Tax Service

**07.09.2020**



Expert Group Meeting

**Organized by**

Prosecutor General's Office

**10.09.2020**

Meeting with the Prosecutor General Iryna Venediktova  
**Organized by**  
 Prosecutor General's Office

**28.09.2020**

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

**23.10.2020**

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

**05.11.2020**

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

**27.11.2020**

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

**30.11.2020**

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

## IN 2020, THE BUSINESS OMBUDSMAN PARTICIPATED IN THE FOLLOWING INITIATIVES:

- Business Protection Commission under the Cabinet of Ministers of Ukraine
- The National Anti-Corruption Policy Council under the President of Ukraine
- The Collegium under the State Tax Service of Ukraine
- The Committee on the Appointment of Managers of Particularly Important Enterprises for the Economy (Nomination Committee)

## **4.2. STATUS OF THE DRAFT LAW "ON THE BUSINESS OMBUDSMAN INSTITUTION"**

### **THE BOC OPERATES ON THE BASIS OF 2014 RESOLUTION OF THE CABINET OF MINISTERS OF UKRAINE. THE LEGAL BASIS OF THE BOC SHOULD BE STRENGTHENED BY LAW ADOPTED IN PARLIAMENT IN ORDER TO:**

---

oblige bodies outside the supervision of the Cabinet of Ministers (prosecutors, local self-governments, Security Service) to cooperate with the Business Ombudsman (BO);

---

grant BOC investigators access to information with restricted access for investigation purposes (subject to keeping its confidentiality);

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systematize eligibility criteria for lodging and rejecting complaints, determine a clear procedure for their review;

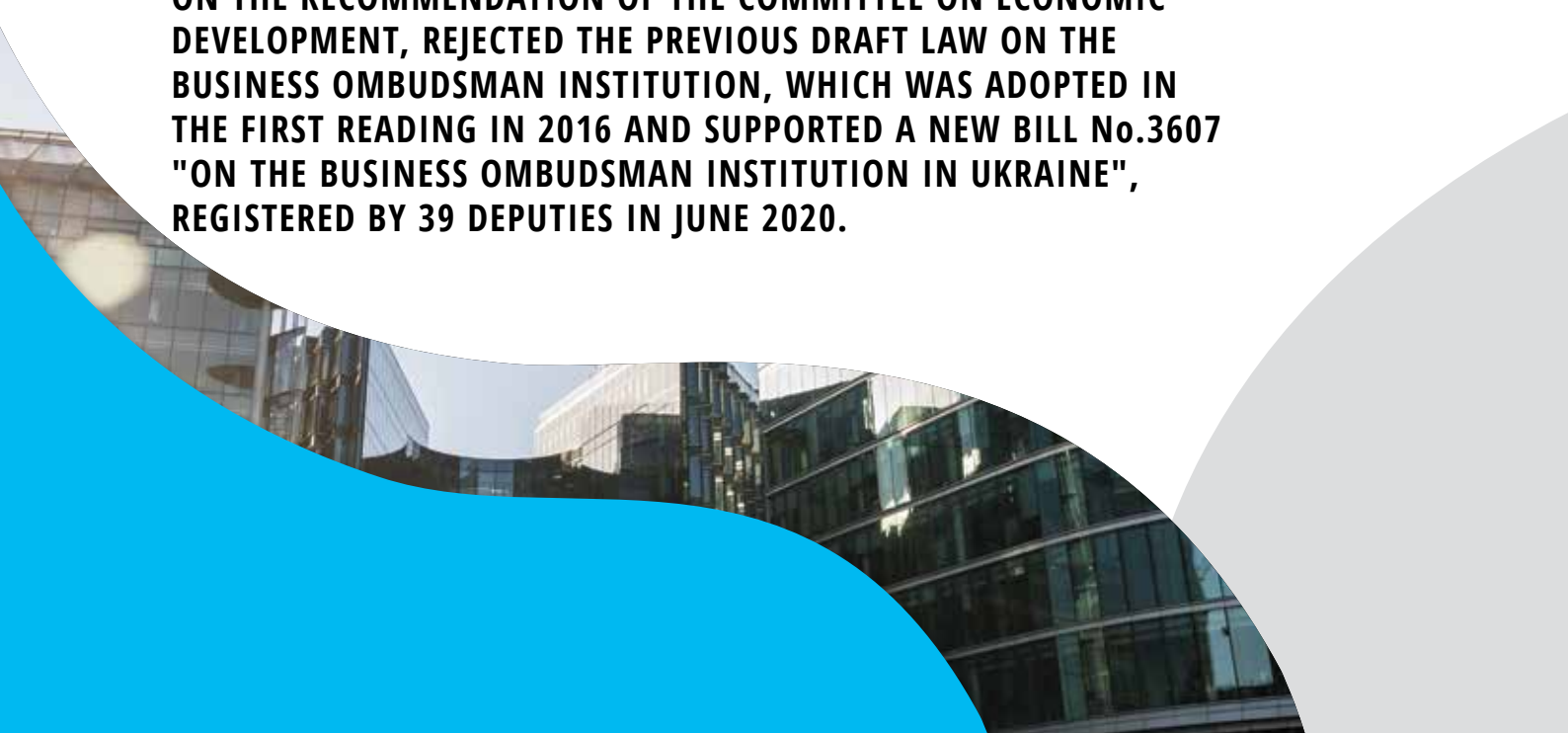
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formalize the right of the BO to meet with civil servants, to be received by the Prime Minister and to present findings and systemic recommendations at the meetings of the Cabinet, Verkhovna Rada of Ukraine (VRU), and VRU Committees

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comply with Principles on the Protection and Promotion of the Ombudsman Institution developed by the Venice Commission and adopted by the Council of Europe in May 2019 and with the OECD Istanbul Anti-Corruption Action Plan that recommended the Government of Ukraine to strengthen the BOC by adopting the law providing the BOC with necessary powers for effective work.

**IN 2020, THE NEED TO ADOPT A LAW THAT WOULD CONSOLIDATE THE STATUS OF THE BOC RECEIVED A NEW IMPETUS. THE VRU, ON THE RECOMMENDATION OF THE COMMITTEE ON ECONOMIC DEVELOPMENT, REJECTED THE PREVIOUS DRAFT LAW ON THE BUSINESS OMBUDSMAN INSTITUTION, WHICH WAS ADOPTED IN THE FIRST READING IN 2016 AND SUPPORTED A NEW BILL No.3607 "ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE", REGISTERED BY 39 DEPUTIES IN JUNE 2020.**



## BOC DEVELOPED AND DISTRIBUTED INFORMATION BROCHURES AND MATERIALS REGARDING THE DRAFT LAW AMONG DEPUTIES, INCLUDING THE FOLLOWING:

### 1. WHY WE NEED THE BOI LAW



### 3. DRAFT LAW ON BOI. KEY MESSAGES



The Business Ombudsman met several MPs representing all VRU factions and several other stakeholders in order to promote the draft law.

The Business Ombudsman also met with all Diplomatic Missions representing 13 donor countries and the EU to mobilize their further support for the Law on BOI as an institution improving business climate in Ukraine.

The document received the support of the Cabinet of Ministers, three VRU Committees: the Committee on Economic Development, the Committee on Anti-Corruption Policy and the Committee on Ukraine's Integration into the European Union.

However, the "atypicality" of the bill provoked a number of questions and comments from the VRU Main Research and Expertise Department and some MPs. Therefore, the following request from the Deputies-authors of the draft law, BOC prepared a revised version of the 3607 draft law for their consideration taking into account the above-mentioned comments. At the beginning of 2021 Plenary sitting of the VRU returned an original version of 3607 draft law to the dedicated Committee for enhancement. At the time of

### 2. FREQUENTLY ASKED QUESTIONS ABOUT THE LAW ON BOI



### 4. TRANSLATION OF THE VENICE COMMISSION PRINCIPLES ON OMBUDSMAN INSTITUTION INTO UKRAINIAN



### 5. COMPLIANCE OF THE DRAFT LAW ON THE BOC WITH VENICE PRINCIPLES ON THE OMBUDSMAN INSTITUTION

№	ЗАСТ ПРИНЦИПУ	ВИКОНАННЯ ПРІНЦИПУ У ЗАКОНОПРОЕКТІ ЗАКОНУ
1.	Інститут Омбудсмена повинен бути незалежним, незалежним від виконавчої влади, незалежним від законодавчої влади, незалежним від судової влади, незалежним від інших органів державної влади.	Стаття 10 Закону «Про установу Бізнес-Омбудсмена в Україні» передбачає незалежність Бізнес-Омбудсмена від інших органів державної влади, незалежність від виконавчої, законодавчої та судової влади, незалежність від інших органів державної влади.
2.	Інститут Омбудсмена повинен бути незалежним від виконавчої влади, незалежним від законодавчої влади, незалежним від судової влади, незалежним від інших органів державної влади.	Стаття 10 Закону «Про установу Бізнес-Омбудсмена в Україні» передбачає незалежність Бізнес-Омбудсмена від інших органів державної влади, незалежність від виконавчої, законодавчої та судової влади, незалежність від інших органів державної влади.
3.	Інститут Омбудсмена повинен бути незалежним від виконавчої влади, незалежним від законодавчої влади, незалежним від судової влади, незалежним від інших органів державної влади.	Стаття 10 Закону «Про установу Бізнес-Омбудсмена в Україні» передбачає незалежність Бізнес-Омбудсмена від інших органів державної влади, незалежність від виконавчої, законодавчої та судової влади, незалежність від інших органів державної влади.

drafting this report, the revised version of the draft law on the Business Ombudsman Institution in Ukraine, prepared in the meantime, is waiting for registration and the first reading.

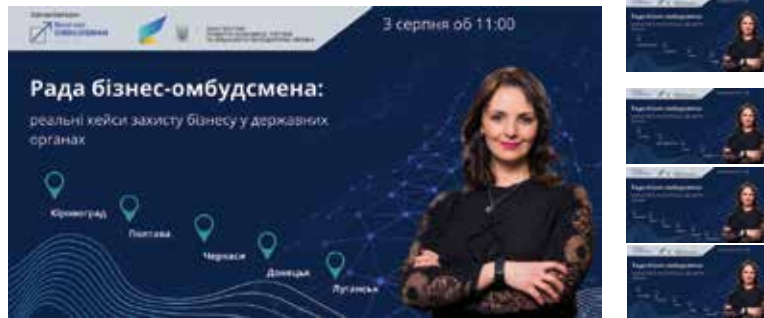
Adoption of the Law will be a good signal for Ukrainian and international investors that Ukraine uses all the tools to protect business interests against possible malpractice of state bodies.

### 4.3 REGIONAL EVENTS

Although 2020 activities were challenged with the emerged global pandemic, the Business Ombudsman Council found a way to interact with state bodies via online tools of communication. Raising awareness about the BOC among regional business and local government authorities remain a priority for keeping the public informed about the Council's services and results in business cases' investigations.

In July-August 2020, the Business Ombudsman Council conducted a series

**5 REGIONAL WEBINARS**



### BUSINESS OMBUDSMAN COUNCIL: REAL CASES OF BUSINESS PROTECTION IN STATE BODIES

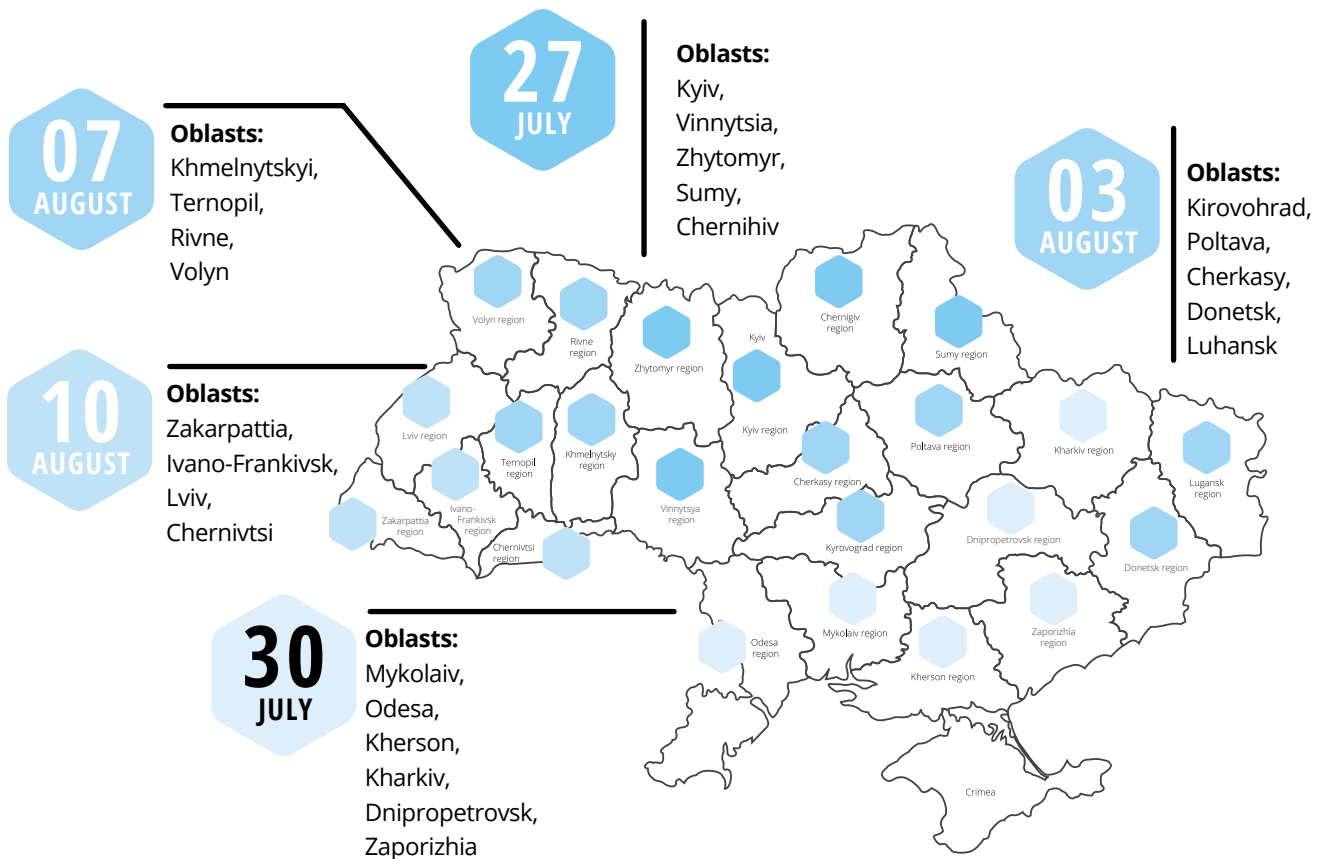
**in partnership with**  
the Ministry for Development of Economy, Trade and Agriculture

**a speaker**  
the Deputy Business Ombudsman Tetyana Korotka

Such online meetings engaged around

**500 PARTICIPANTS**

and became an open platform for discussion of existing business issues in the regional dimension and helped the BOC to establish closer contacts with potential complainants and local government authorities' representatives.



#### 4.4. PRACTICAL WEBINARS WITH ACC AND UNBA

For the Business Ombudsman Council 2020 was largely a year of practical webinars held online jointly with its partners. The events were traditionally focused on sharing practical expertise of the BOC in solving systemic issues of business and were tailored for both entrepreneurs, lawyers and advocates who approach the Council to protect business rights violated by state bodies.

Last year the BOC mutually conducted a wide range of knowledge seminars on different topics in partnership with the American Chamber of Commerce in Ukraine and the Ukrainian National Bar Association (UNBA).

#### PRACTICAL SEMINARS WITH ACC

26.02.2020

**"COMBATTING  
RAIDERSHIP  
IN UKRAINE:  
ROLE OF THE BUSINESS  
OMBUDSMAN COUNCIL**



10.03.2020

**"STATE OF ENFORCEMENT  
OF COURT DECISIONS  
AGAINST PUBLIC  
AUTHORITIES"**



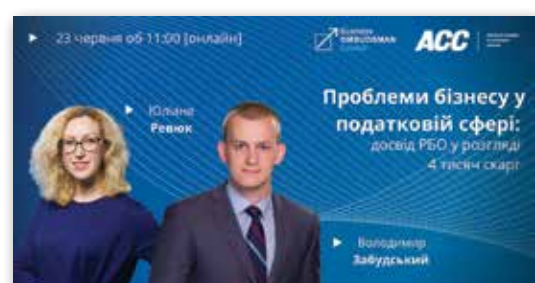
29.05.2020

**"EFFECTIVE INTERACTION WITH  
STATE BODIES: HOW TO GAIN THEIR  
APPROVAL"**



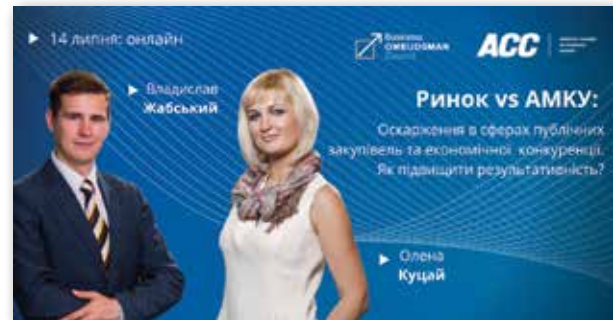
23.06.2020

**"PROBLEMS OF BUSINESS IN THE TAX  
SPHERE: THE BOC EXPERIENCE IN  
REVIEWING 4,000 COMPLAINTS"**



14.07.2020

## "MARKET VS AMCU. APPEALS IN PUBLIC PROCUREMENT AND ECONOMIC COMPETITION AREAS. HOW TO INCREASE EFFICIENCY?"



04.08.2020

## "BUSINESS ISSUES AT THE CUSTOMS: HOW TO ACT"



## WEBINARS WITH THE UKRAINIAN NATIONAL BAR ASSOCIATION

The UNBA, as a professional organization uniting 58,000 barristers of Ukraine, is interested in continuous training of its members, and the BOC, as a unique institution for business protection can share such practical knowledge. Moreover, lawyers often represent entrepreneurs who seek help from the BOC, so it is especially important for them to understand the specifics of our work and the set of tools we can offer to increase chances for clients to successfully resolve cases.

05.03.2020

## "BUSINESS COMPLAINTS ABOUT LAW ENFORCEMENT ACTIONS AND OMISSION: HOW CAN THE BOC HELP?"



10.07.2020

## "ACTUAL BUSINESS ISSUES IN THE TAX SPHERE: EXPERIENCE OF THE BOC IN CONSIDERING FOUR THOUSAND COMPLAINTS"





**28.07.2020**

**"ACTIVITIES OF THE TAX POLICE  
FINANCIAL INVESTIGATION BODIES  
IN THE CONTEXT OF REFORMING"**



**20.08.2020**

**"NON-ENFORCEMENT OF COURT  
DECISIONS. EXPERTISE OF THE  
BUSINESS OMBUDSMAN COUNCIL"**



**06.10.2020**

**"RAIDERSHIP IN STATE REGISTERS:  
EFFECTIVE COUNTERACTION"**



**20.10.2020**

**"ADMINISTRATIVE APPEAL IN THE  
SPHERE OF PUBLIC PROCUREMENT  
AND ECONOMIC COMPETITION:  
PRACTICAL RECOMMENDATIONS"**



**03.11.2020**

**"BUSINESS ISSUES AT THE CUSTOMS:  
HOW TO ACT"**



17.11.2020

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



01.12.2020

## "EFFECTIVE INTERACTION WITH STATE BODIES: BOC EXPERTISE"



10.12.2020

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



At one of the recent webinars there were

# 800

**PARTICIPANTS**

from different regions of Ukraine

According to the procedure of the Bar Council of Ukraine, each lawyer must annually improve his / her professional level: study for 10-16 hours, depending on work experience, and receive credit points. One credit score for advanced training of lawyers is equal to one hour of training. The general organization of lawyers' professional development in Ukraine is carried out by the Bar Council of Ukraine. The process is carried out by UNBA, regional bar councils, UNBA Higher School of Advocacy and other accredited operators. The Expert Council on Accreditation and Certification has accredited the speakers of the BOC and webinar programs with their participation as those at which credit points can be obtained. Thanks to this, we managed to increase interest to online events, which we organized together with UNBA, and to attract a large number participants during events.

## 4.5. COOPERATION WITH UNIC



In 2020, the Ukrainian Network of Compliance and Integrity (UNIC) that was established with the support of the Business Ombudsman Council and international donors the EBRD and the OECD, celebrated its third anniversary. The UNIC continued to promote compliance and integrity principles of doing business and extending the network of responsible members that amounted to 50 companies in 2020. At the same time, the past year was marked with changes in terms of its organizational development and diversity of activities delivered.

On July 24, 2020,

### **ANTONINA PRUDKO**

became the Head of the UNIC Secretariat, replacing Gayane Karakashyan in this position.

In addition, as per the Memorandum of Partnership of the UNIC that envisages renovation of the composition of the UNIC Executive Committee, on September 29, 2020, the new members were announced.

Thus, the Deputy Business Ombudsman

### **TETYANA KOROTKA**

was selected a member of the Executive Committee.



With the BOC active involvement and moderation, on November 12, the UNIC held a high-level discussion on

### **"REFORMING THE STATE TAX SERVICE THROUGH THE PRISM OF TAX OFFICERS AND TAX PAYERS INTEGRITY"**

**Among the participants of the event were** the Head of the State Tax Service, his deputies and representatives of the IMF, the OECD, the METS and the UNIC respectively.

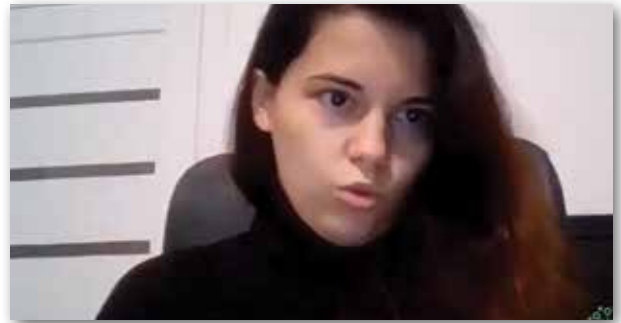
From November 15 till December 15 the UNIC conducted a series of webinars within the Business Integrity Month 2020.

The Business Integrity Month 2020 became a platform for a dialogue between business and state bodies' representatives aimed at finding common opportunities and understanding on how to establish and implement compliance practices, discuss ways of fighting corruption and solve business issues by using compliance techniques.

## **THE BOC INVESTIGATORS ACTIVELY PARTICIPATED IN THE EVENTS AS SPEAKERS:**

**04.12.2020**

**"CORRUPTION WHISTLEBLOWERS PROTECTION — SUPPORTING ALLIES IN BUILDING A FAIR BUSINESS"**



**08.12.2020**

**"INTERNAL INVESTIGATION: PRACTICAL ASPECTS AND MAIN TRENDS 2020"**



**11.12.2020**

**"TRANSPARENT AND COMPETITIVE PROCUREMENT — COMPANY'S SECURITY"**



**11.12.2020**

**"THIRD PARTY VERIFICATION AS A COMPLIANCE OUTPOST"**



## 4.6. PUBLIC OUTREACH AND COMMUNICATION

Communication with the public is essential to the Business Ombudsman's role. Our Office uses media and technology wherever possible to engage and inform Ukrainians — and to ensure public appearances by the Ombudsman and his team reach a wide audience.

### THE MEDIA

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

Since launch of operations, the Business Ombudsman Council mentioned in the media

**26 500+**

times

(according to ECOSAP media monitoring agency)

with  
**99.9%**  
mentions being  
positive or  
neutral

In 2020, we were cited circa

**2000** times

secured

**66**

tailored publications in media (interviews, op-eds, comments)

**+61%**  
compared to 2019

secured

**55**

appearances on TV and radio

**+77%**  
compared to 2019

The estimated advertising value of the BOC publications based on newspaper advertising rates, circulation and page displays, according to ECOSAP, was in 2020

UAH  
**8.9** MN  
**+25%** compared to 2019

since launch of operations this figure now exceeds

UAH  
**32** MN

We organize roundtables on a quarterly basis and invite journalists to learn how the Business Ombudsman works.

IN 2020, WE ARRANGED APPEARANCES OF OUR SPEAKERS ON TV:



AND RADIO:



OUR INTERVIEWS AND ARTICLES WERE PUBLISHED IN THE LEADING UKRAINIAN MEDIA

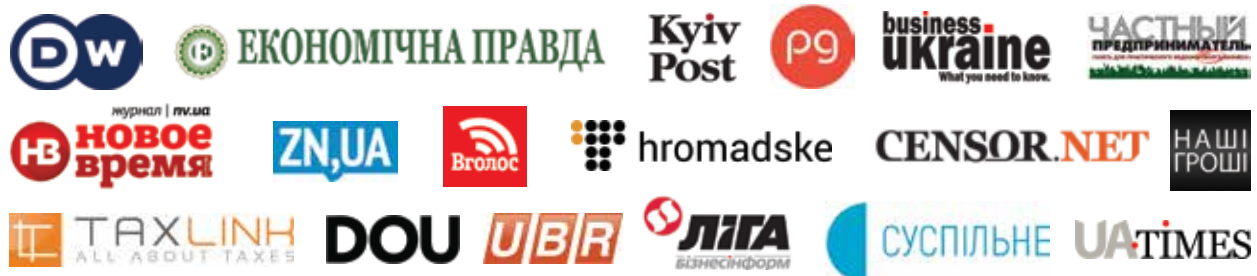
INFORMATION AGENCIES:



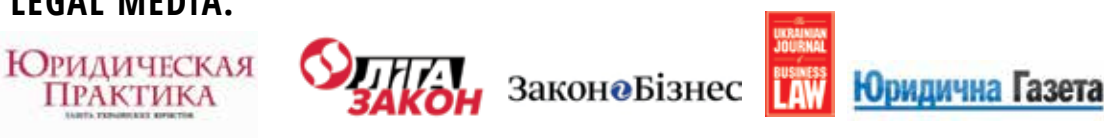
INTERNATIONAL ORGANIZATIONS PLATFORMS:



BUSINESS MEDIA:



LEGAL MEDIA:



LIFE-STYLE PLATFORM:

WOMO.

## GUIDES ON ACTUAL BUSINESS ISSUES

In 2020, we prepared two practical leaflets for entrepreneurs:

### 1. ON REPORTING EPISODES OF CORRUPTION



We prepared a special guide about new government guaranties introduced for victims of corruption, with details of confidential communications channels. These tools are designed to protect whistleblowers and secure their legitimate rights.

### 2. ON ADDRESSING RAIDERSHIP



We also developed guidelines for businesses on how to protect themselves from raidership and what to do when the raiders attack. We encourage companies to remain vigilant with respect to their assets and lodge complaints on state registrar's malpractice to the MinJust "AntiRaidership Collegium" alongside with the Business Ombudsman Council.

## OUTREACH

The Business Ombudsman, his Deputies and other BOC's employees speak at various conferences, forums, online events and business meetings on a regular basis.

In general, our team attended more than

# 130

**BUSINESS  
EVENTS**

in 2020, where we:

presented the activities of the BOC to the business community of different countries, particularly diplomatic missions

participated in topical discussions on tax issues, non-enforcement of court decisions, compliance policies and other subjects important for complainants

attended specific events of international organizations and stakeholders on improving business climate in Ukraine and exchanging best practices with other ombudsman institutions

conducted dozens of online knowledge seminars for businesses, state bodies, lawyers and accountants informing about the BOC operation, successful case studies and discussing pressing issues of entrepreneurs

**ON A SEPARATE  
NOTE, WE  
WOULD LIKE TO  
HIGHLIGHT SOME  
INTERNATIONAL  
AND IMPORTANT  
UKRAINIAN  
BUSINESS EVENTS  
IN WHICH WE TOOK  
PART THIS YEAR**

## MEETINGS WITH OTHER OMBUDSMAN INSTITUTIONS

Last year the Business Ombudsman and his Deputies had meetings with Ombudsman Institutions in other countries to establish closer contacts and exchange best practices of business protection:

**04/02**

Meeting with Mr. Adam Abramowicz, SME Business Ombudsman of Poland

**17/02**

Meeting with Ms. Nino Chekvetadze, Deputy Business Ombudsman of Georgia



**20/02**

Meeting with Mr. Jaume Saura — Deputy Ombudsman of Catalonia (Síndic de Greuges de Catalunya)



**20/02**

Meeting with the leadership of the Ombuds Office of Barcelona (Síndica de Greuges de BCN) — Mrs. Maria Assumpció Vilà, the Ombudsman and Mrs. Natàlia Ferré Giró, the Deputy Ombudsman





## INTERNATIONAL EVENTS

**04-05.02.2020**



XIII Forum Europa-Ukraina in Rzeszow organized by the Warsaw based Institute for Eastern Studies  
**Organized by**  
 Warsaw Institute for Eastern Studies

**19.02.2020**



Regional seminar “Enhancing Integrity for Sustainable Investment” held under the auspices of the European Union  
**Organized by**  
 OECD Joint Program On Promoting Investment in the Mediterranean; Barcelona, Spain

**07-09.10.2020**

Yearly EBRD Meeting 2020  
**Organized by**  
 EBRD

**28.02.2020**

Anticorruption Donors Meeting  
**Organized by**  
 EU Delegation to Ukraine

**02.06.2020**

Virtual Conference of the Investment Council of the EBRD  
**Organized by**  
 EBRD

**04.06.2020**

Webinar “Double-Edged Sword in Post-Covid Period: How Can We Reshape Risks for PPPs?”  
**Organized by**  
 DEIK Iletishim

**18.06.2020**



Eurasia Competitiveness Roundtable  
**Organized by**  
 OECD

**12.11.2020**



Meeting of the BOs Institutions in Eastern Europe and Central Asia  
**Organized by**  
 OECD

**11.12.2020**



International Conference “Ukraine — Investment Harbor in the Time of Change”  
**Organized by**  
 Ukraine Invest

## OTHER SELECTED EVENTS

**29.01.2020**



CEO Breakfast with the Business Ombudsman  
**Organized by**  
 German-Ukrainian Chamber of Commerce and Industry

**30.01.2020**



Meeting with business associations  
**Organized by**  
 Ukrainian Business Council

**12.02.2020**

Breakfast with Lithuanian businessmen  
**Organized by**  
 Embassy of Lithuania in Ukraine

**05.02.2020**



Meeting of the Ukrainian Real Estate Club Law Committee  
**Organized by**  
 Ukrainian Real Estate Club Law Committee

**28.02.2020**



GET Business Festival  
**Organized by**  
 Ekonomika+

**05.03.2020**



Presentation of "Administrative Justice Monitoring in Ukraine" Report  
**Organized by**  
 the EU-funded Project "PRAVO-Justice"

**13.03.2020**



Interview of Iaroslav Gregirchak in Veresen +1 TV show  
**Organized by**  
 Pryamyy TV channel

**03.09.2020**



Round table "Anti-Raidership Interdepartmental Council on Business Protection under the President of Ukraine: Proposals on Mechanism and Rules of Procedure"  
**Organized by**  
 Media Centre "StopCor"

**08.09.2020**



VI Ukrainian Antitrust Forum  
**Organized by**  
 Yuridicheskaya Praktika publishing office

**09.09.2020**



V International Business  
Protection Forum  
**Organized by**  
Yuridicheskaya Praktika publishing  
office

**10.09.2020**



Kyiv Invest Forum 2020  
**Organized by**  
Kyiv City State Administration

**11.09.2020**



Law & Trade Forum  
**Organized by**  
Ukrainian Advocates' Association

**16.09.2020**



International Compliance Forum  
**Organized by**  
Yuridicheskaya Praktika publishing  
office

**17.09.2020**



Online meeting with the Business  
Ombudsman Council "Business  
Moving Forward Fighting  
Corruption Effectively"  
**Organized by**  
US-Ukraine Business Council

**22.09.2020**



LBS TAX TALKS # 2  
**Organized by**  
Ukrainian Advocates' Association  
and Law & Business Studio

**21.10.2020**



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

23.10.2020



Business Protection Forum

**Organized by**Ukrainian Advocates' Association  
and Law&Business Studio

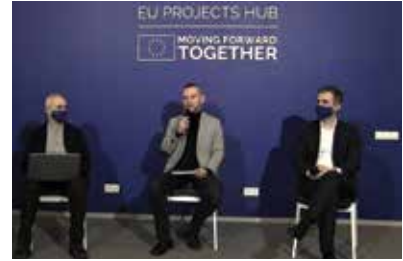
19.11.2020



Tax&amp;Business Talks

**Organized by**Ukrainian Advocates' Association  
and Law&Business Studio

25.11.2020

Discussion "New Start: Strategies  
and Resources for Overcoming the  
Consequences of the Coronacrisis  
for SMEs"**Organized by**EU Delegation to Ukraine  
and Liga.net

11.11.2020

Ukrainian Arbitration  
Forum**Organized by**Yuridicheskaya Praktika  
publishing office

25.11.2020

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

22.10.2020



Swiss Business Meeting

**Organized by**Embassy of Switzerland  
in Ukraine

## WEBSITE

The BOC's website is

**WWW.BOI.ORG.UA**

It ensures the easiest and fastest way to lodge an appeal with us.

Apart from it, on this platform you can access BOC's reports, read articles, watch videos, learn news and information about our office.

In 2020, Google Analytics recorded

**133 000**

page views of our website

**+4%**

compared to 2019

**27 000**

of them were new users

There were

**47 561**

sessions conducted

**+8%**

compared to 2019

The majority of visitors

**62%**

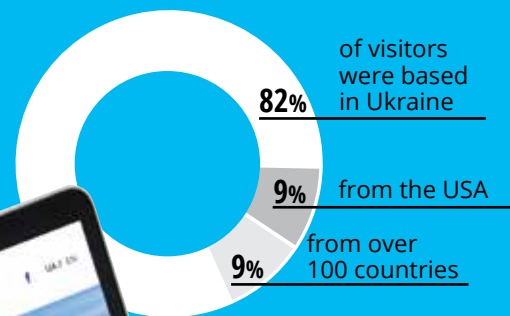
found us through the web-search

**20%**

had direct links to the web-site

**11%**

came from social media (96% of them or over 3000 — from Facebook)





## THE BOC IS ALL OVER SOCIAL MEDIA:



**Facebook**  
(@BusinessOmbudsmanUkraine)



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



**LinkedIn**  
(@Business Ombudsman Council)



**Instagram**  
(@business\_ombudsman\_council)



**Twitter**  
(@bus\_ombudsman)

## SOCIAL MEDIA

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

Tells about successfully closed cases and complex cases of entrepreneurs

Informs about actual events with participation of the BOC employees. Streams them live

Highlights systemic issues of business and suggests ways to solve them

Shares own publications about important issues for entrepreneurs

Reports about results of its operation quarterly

Publishes feedbacks of complainants

Shares videos with the BOC employees appearance on TV and at public events

Communicates with followers and replies to private messages

Creates own content. Makes videos

**If you wish to be the first receive news about work of the investigators' team, learn about useful pieces of advice that the BOC gives to entrepreneurs, read recent publications with analysis and expert views on systemic business issues and always be in touch with us, please follow us on the Business Ombudsman Council social media pages.**



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

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