



ANNUAL REPORT 2019



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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 you results of the Business Ombudsman Council operations in 2019.

This year we received 1646 complaints from businesses concerning malpractice of state bodies and closed 1139 cases. We helped companies to recover UAH 4.6 bn – the record annual financial impact since launch of operations in 2015.

Small and medium-sized Ukrainian business remains our main client. In 2019, 68% of complaints were lodged by SMEs while 32% – by large companies. 84% of complaints originated from Ukrainian local enterprises, while 16% – from companies with foreign investment.

Since its inception, the BOC has received 6528 complaints from business units and investigated in detail 2/3 of them. Out of all closed cases more than a half were solved successfully. We assisted in recovering almost UAH 18 bn imposed on business unlawfully. 97% of complainants, who replied to our request for feedback, were satisfied with our service.

Among the most pressing issues addressed to us by businesses in 2019, we can highlight the following:

- Tax inspections (371 complaints) were the major subject of complaints, which moreover performed a sharp increase as compared to previous years. In 2019, we participated in every 67th tax audit findings appeal in the country. Although we observe that the administrative appeal procedure in the State Tax Service of Ukraine is becoming increasingly popular and effective remedy with taxpayers, there is still some room for improvement which can be achieved by implementing our systemic recommendations.
- Actions of law enforcement bodies (204 complaints) were the second most widespread subject of appeals. As compared to the previous year, companies submitted fewer appeals regarding actions and inactions of all law enforcers without exception. However, the systemic issue we observe in this block concerns ungrounded criminal proceedings under the Article 212 of the Criminal Code of Ukraine. In 2019, the prevailing majority (97%) of 852 opened proceedings with searches and blocking accounts were mostly unsubstantiated. As a result, business was unable to operate properly.
- Failure to comply with court decisions, when the state body does not execute a court decision is another serious issue that we continued to monitor in 2019. Since launch of operations, we have received over 400 appeals on this matter, primarily related to tax issues and law enforcers actions.
- The problem of property rights protection (35 complaints) also remains a pressing issue for businesses in Ukraine. In 2019, we received 18% more appeals on malpractice of state registrars as compared to 2018. In total, since May 2015, business lodged 114 complaints with us on this subject.

We are pleased to underline some systemic achievements of 2019:

- The threshold amount of actual sums unpaid to the budget triggering treatment of such action on the part of a taxpayer as a criminal offence was increased. Such change should reduce the pressure on business by decreasing the number of criminal proceedings under Article 212 of the Criminal Code of Ukraine.
- The obligatory payments of 4% contribution for the

development of the locality's infrastructure from the cost of housing construction and 10% from the cost of non-residential construction were cancelled.

- The Verkhovna Rada adopted the law, which envisages the introduction of a new form of customs control – post clearance audit. This means that customs procedures can be applicable not at the checkpoint, but after the completion of customs clearance and release of goods into free circulation.
- The Cabinet of Ministers adopted a comprehensive regulation, which defines a required procedure of assigning postal addresses to new real estate objects. We hope that this will help to eliminate abuses and speed up the procedure on the whole.
- The Verkhovna Rada introduced amendments to the Customs Code of Ukraine aimed to ensure protection of intellectual property rights while moving goods across the Ukrainian border.
- The Verkhovna Rada introduced the law known as the Anti-Raidership Law 2, which effectively reinstated territoriality as one of the principles of state registration of rights.

In 2019, the BOC employees participated in about 200 meetings with Ukrainian business community sharing our expertise on how to protect legitimate business interests. I would like to particularly mention 6 regional seminars co-organized with USAID at which business could learn how to protect itself from unlawful

inspection practices. On the other hand, we learned about main obstacles to conducting business in Ukraine as seen from the perspective of small business.

In 2019, the BOC produced two new systemic reports:

- Report on “Administrative Appeal: Current State and Recommendations” is focused at improving the existing state of administrative procedures. It is vital both, for business and state, to streamline procedures allowing to eliminate defects created by state apparatus promptly and without excessive costs.
- The second systemic report, on “Big Challenges for Small Business”, evaluates implementation of the government SME Development Strategy 2020 and provides several updated policy recommendations.

In order to improve effectiveness of our operations, in 2019 I signed Memoranda of Cooperation with three more state bodies: the Prosecutor General's Office of Ukraine, the State Tax Service and the State Customs Service. This is how so far we have 12 similar formalized agreements with state bodies, which imply regular communications and bilateral data exchange, and most importantly – meetings of expert groups with representative of the BOC and a respective public authority to review certain particularly demanding cases.

After 5 years of his dedicated service, the first Business Ombudsmen of Ukraine Algirdas Šemeta concluded his duties on October 11th, 2019. Prior to his departure he was able to transfer his responsibilities smoothly

to me thanks to four weeks of my presence in the office as his “advisor”.

As we move ahead into 2020, when all society fights with coronavirus and its consequences, the Business Ombudsman Council stays committed to protecting legitimate rights of entrepreneurs and eventually facilitates improving the business climate in Ukraine in the most difficult, challenging, and unpredictable times ahead.



Marcin Świącicki,

Business Ombudsman

Marcin Świącicki

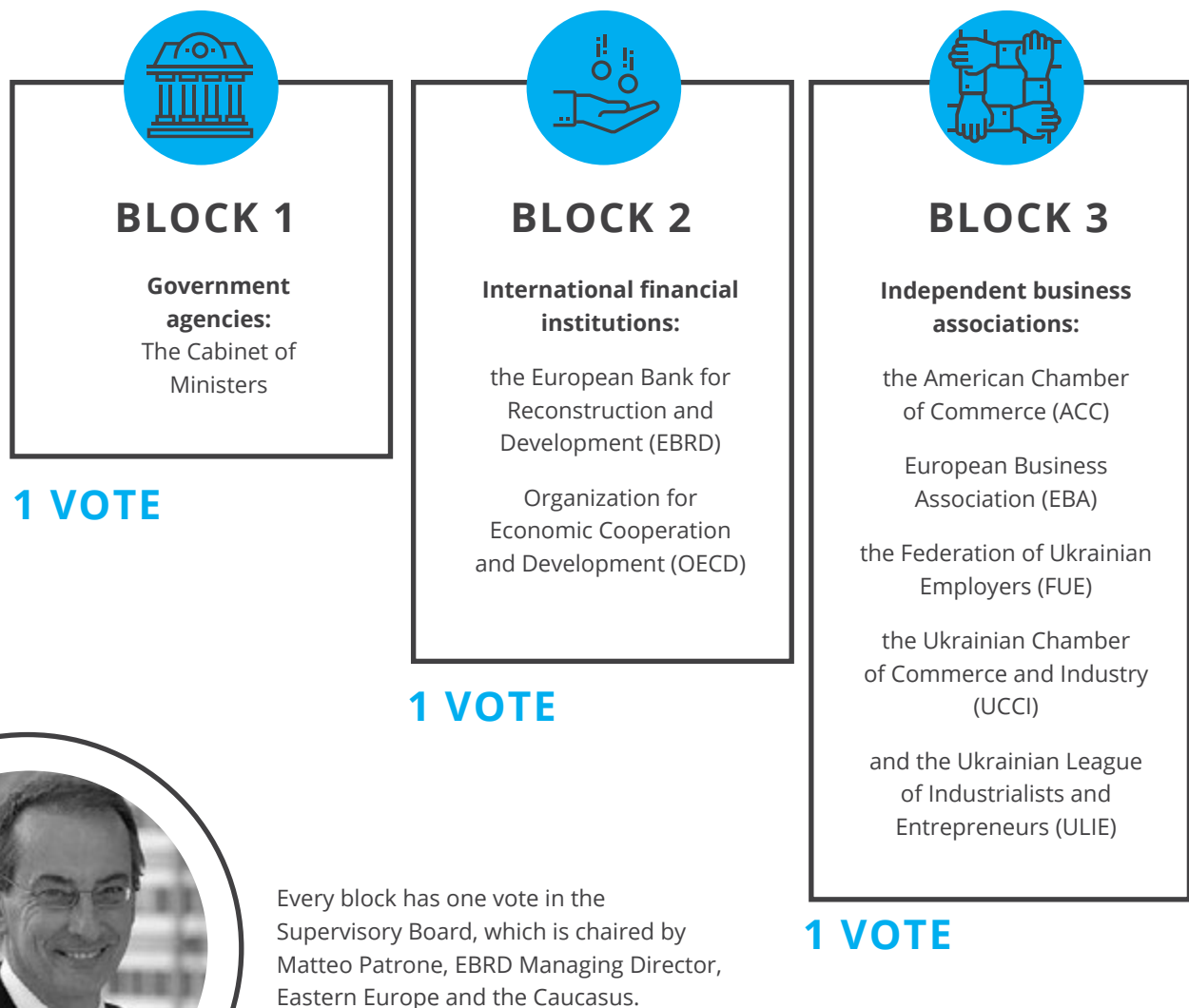
ABOUT OUR OFFICE

WHO WE ARE

The Business Ombudsman Council is an independent permanent advisory body of the Cabinet of Ministers of Ukraine with a mandate to help establish a transparent business environment and prevent corruption in state bodies, local government authorities and in state-owned enterprises. The Council is meant to be the initial point of contact for companies seeking redress against unjust treatment. The Business Ombudsman Council officially launched its operations on May 20, 2015.

THE SUPERVISORY BOARD

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

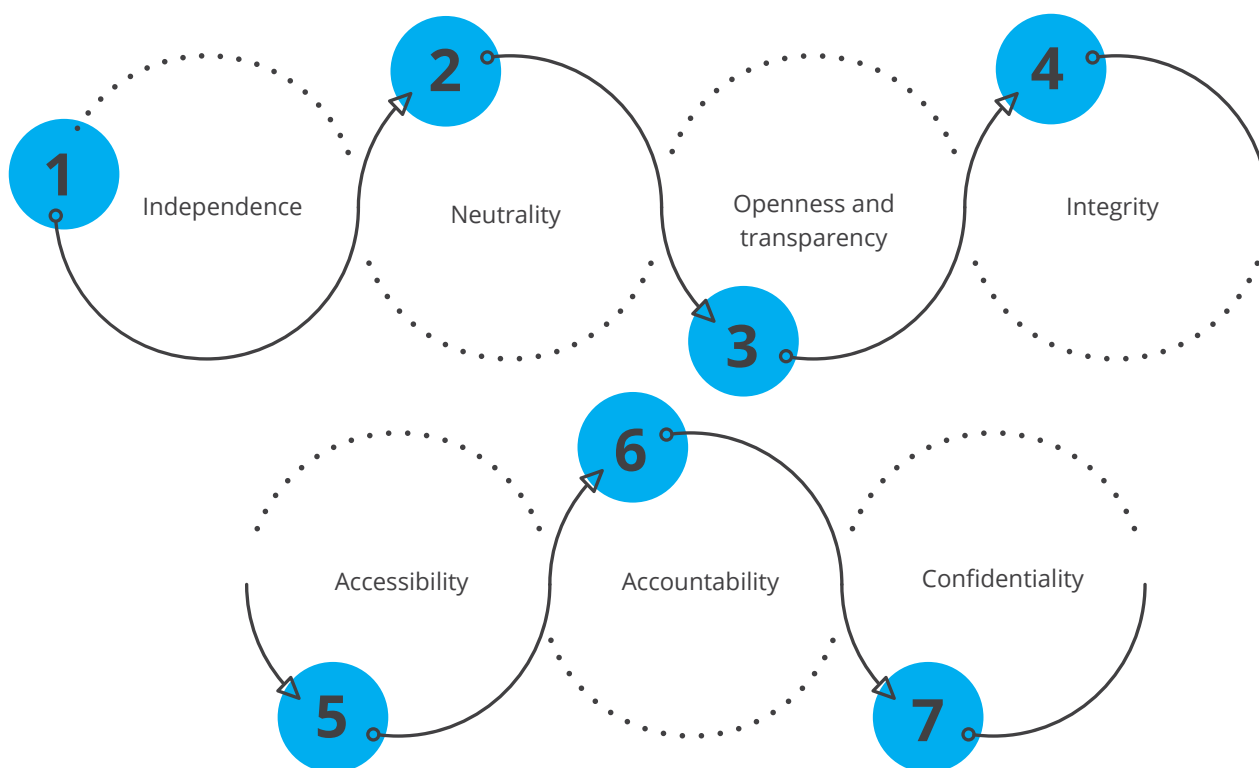


GOALS AND PRINCIPLES

OUR GOALS



OUR GUIDING PRINCIPLES



WHAT WE DO

We deal with complaints from businesses regarding malpractice by state bodies, local government authorities and state-owned companies. In case the entrepreneur has not yet attempted to resolve his business issues using available appeal procedure tools, we will refer him to the appropriate body. However, if he has followed this path, but didn't succeed, we will commence the case investigation in order to protect his legal rights. We do not treat complaints formally and help complainants find their way out as promptly and efficiently as possible. However, sometimes issues raised in complaints exceed the Business Ombudsman's mandate.



WHAT WE CAN DO:

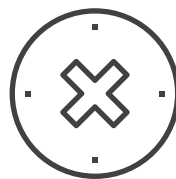
1 Navigate the bureaucracy to find a solution, if your efforts to do so have failed

2 Help resolve your issue through liaising with relevant public authorities

3 Determine whether the complainant's and government agency's actions were fair

4 Refer you to others who can help, if the matter exceeds the scope of our mandate

5 Flag trends in complaints to government officials and Deputies of the Verkhovna Rada and recommend systemic changes to the legislation affecting business as a whole



WHAT WE CAN'T DO:

1 Overturn decisions of courts

2 Change the public policy

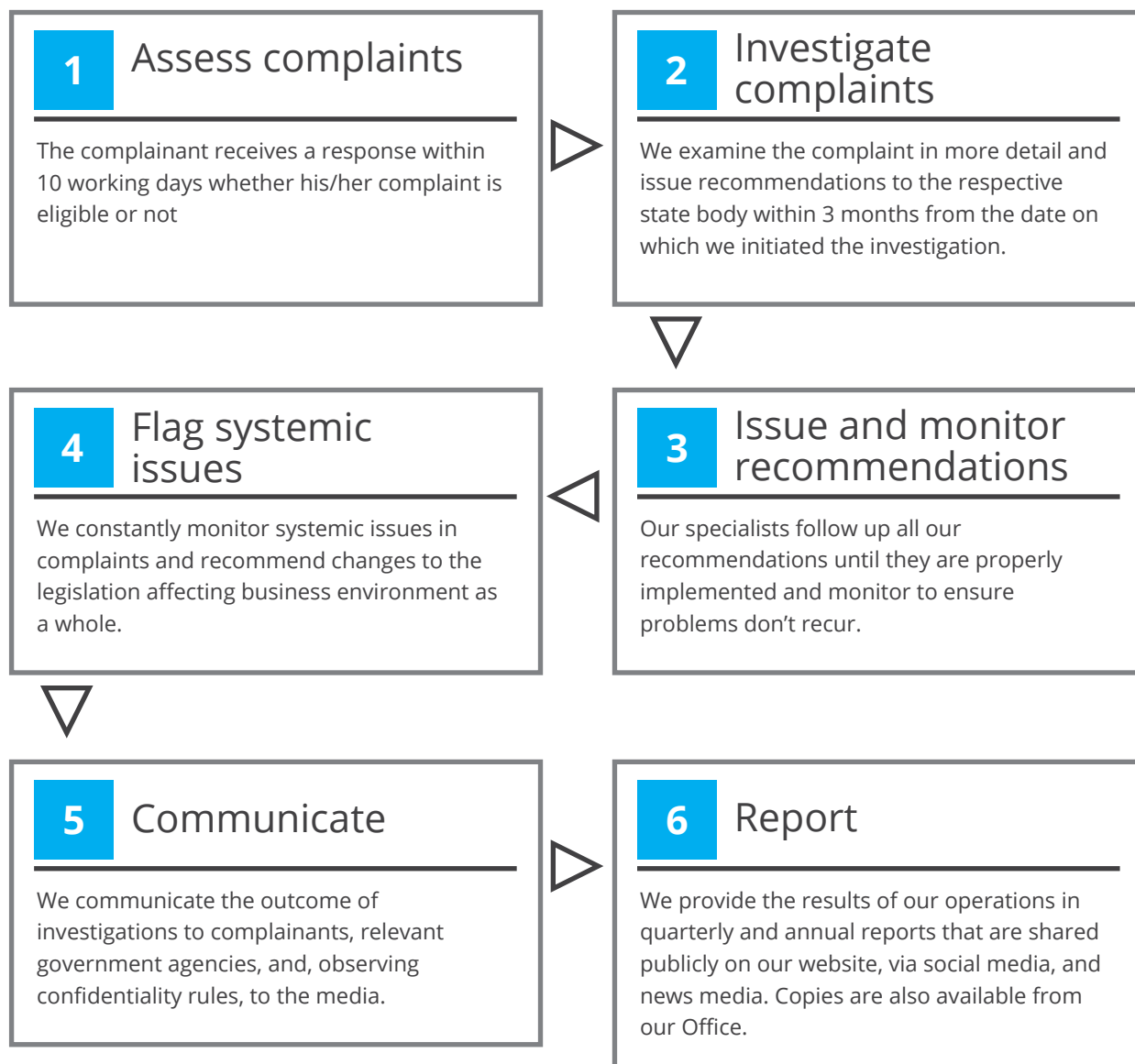
3 Process complaints about private business, judges or court decisions

4 Review complaints if over one year has passed since last occurrence of malpractice

5 Take inquiries if the complainant hasn't exhausted at least one instance of administrative appeal process



HOW WE WORK



METRO Cash & Carry Ukraine highly appreciates your professionalism when considering our complaint. We believe that the active support of the Business Ombudsman Council allowed us to get a positive decision of the SFS during the administrative appeal procedure. We thank you for your help and hope for further cooperation!"

Olesya Olenytska
GR and PR Director

TEAM



Business Ombudsman
Marcin Swiecicki



Algirdas Semeta
served until
October 11, 2019



Tetyana Korotka



Iaroslav Gregirchak

Two Deputies



Secretariat

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

30 people

distinguished experts with mostly western education

practical experience in law, strategic management, economics, auditing, and risk management.



Andriy Bodnarchuk
Investigator



Oleh Dykky
Junior Investigator



Yuri Gaidai
Investigator



Andriy Hradov
Junior Investigator



Ivanna Gumenna
Junior Investigator



Iryna Galanina
Assistant to the Business Ombudsman



Vladislav Zhabskiy
Investigator





Volodymyr Zabudskyi
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



Yuliana Revyuk
Investigator



Kyril Slastunov
Investigator



Oleksiy Spivak
Investigator



Iryna Stanislavska
Communications
Coordinator



Vasyl Sukhovyi
Junior Investigator



Tetyana Kheruvimova
Investigator



Oleksandr Khomenko
Investigator



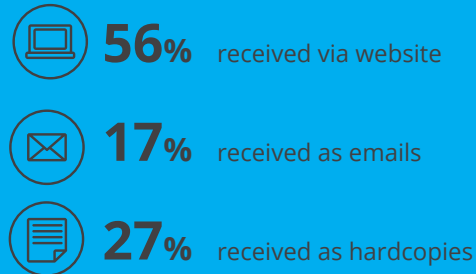
Alla Cherniak
Administrative Manager



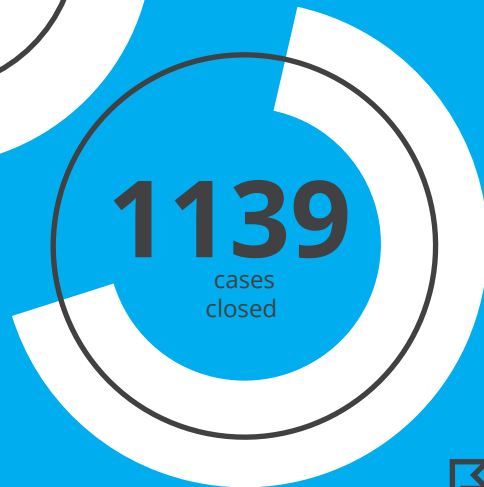
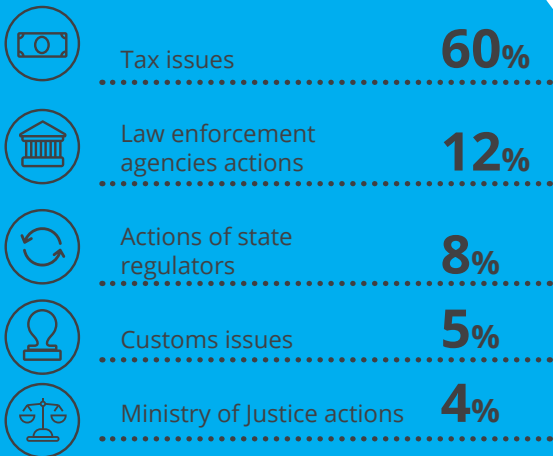
Olena Chorna
Investigator

2019

at a glance



TOP-5 blocks of complaints:



2 SYSTEMIC REPORTS

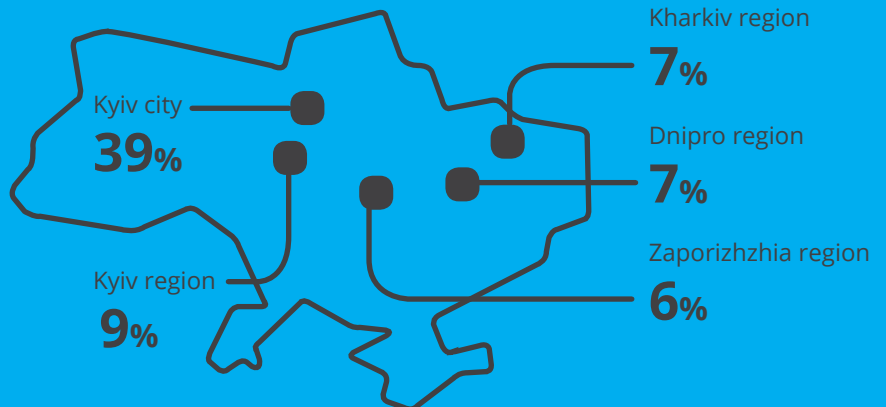
Administrative Appeal: Current State and Recommendations

Big Challenges for Small Business



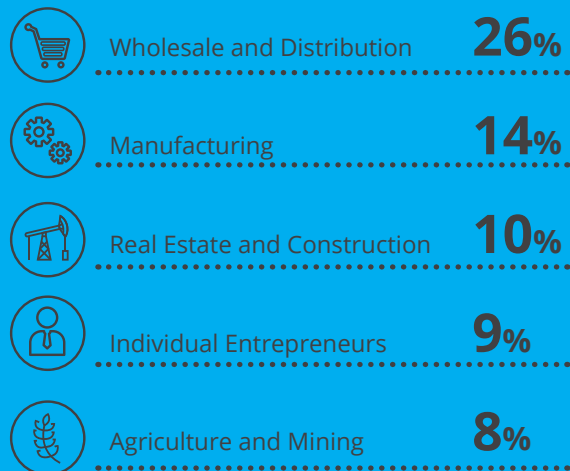
of recommendations concerning individual complaints were implemented by state bodies

TOP-5 most active regions

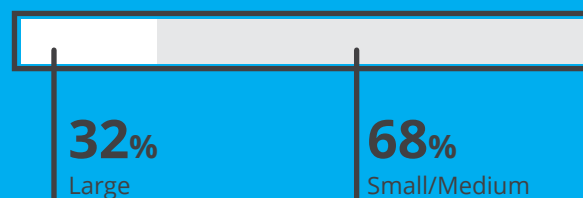


COMPLAINANTS' PORTRAIT

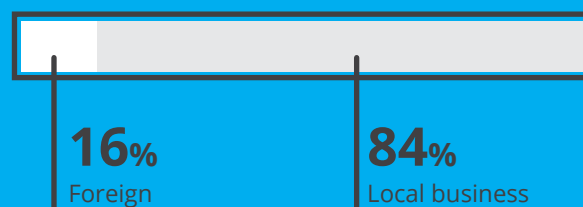
TOP-5 industries



Size of business



Origin of investment

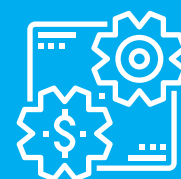


IMPLEMENTATION OF THE BUSINESS OMBUDSMAN COUNCIL

KPIs

As of December 31, 2019

	Target value	Result in 2019
Standard investigation duration of 90 days is met in XX of cases	80%	84%
Share of satisfied complainants	75%	97%
Ratio of recommendations implemented by relevant government authorities within 6 months of receipt	50%	82%



Financial impact in 2019:

UAH

4.6
billion

Total financial impact in 2015-2019

UAH

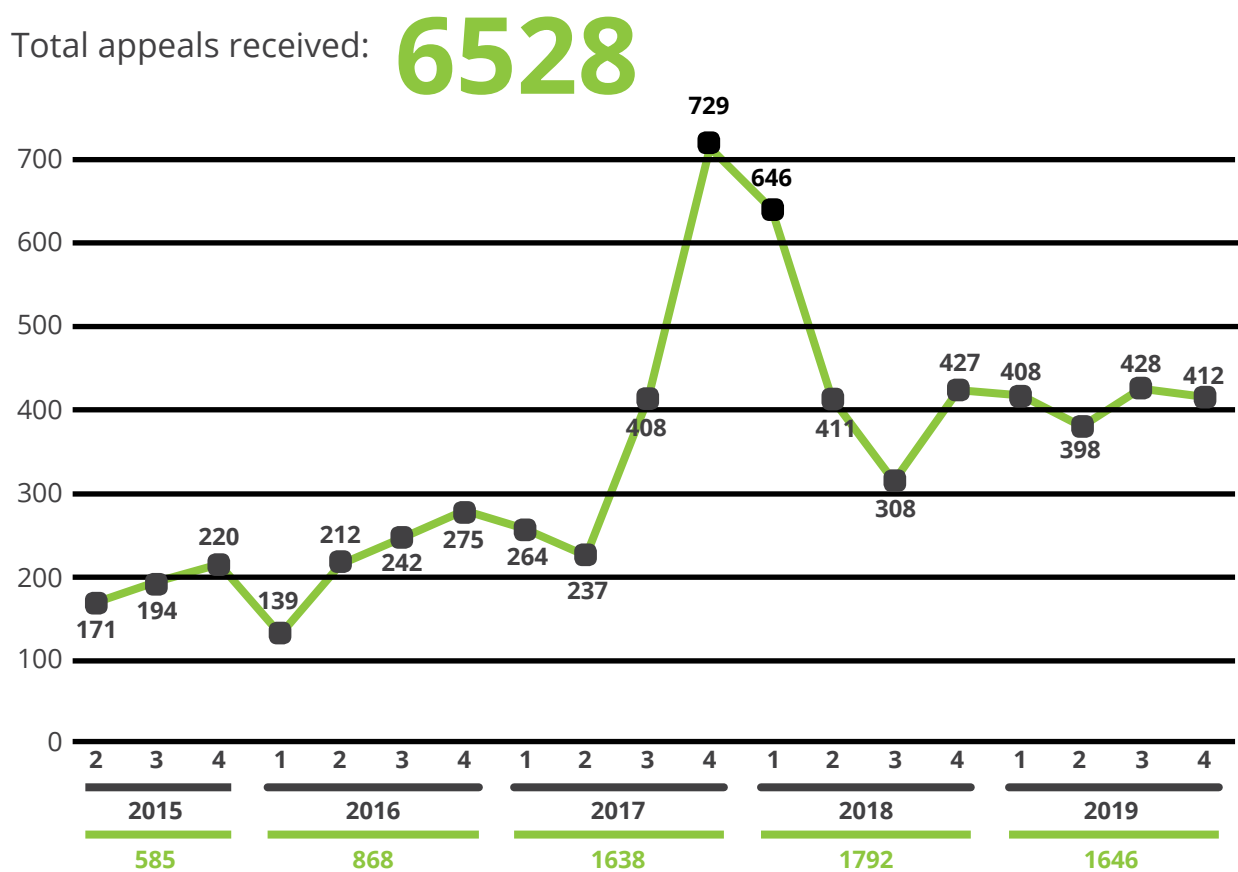
17.9
billion

1. YEAR IN REVIEW

1.1. Volume of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

Number of complaints received in 2015-2019 by quarters



Analyzing statistics of 2015-2019, we observe a sharp increase of appeals in 2017, when the number of complaints from businesses almost doubled as compared to the previous year.

This growth was mainly driven by a new matter of appeals — suspension of tax invoices — which we started to receive in Q3 2017 immediately upon the launch of automatic system of tax invoices registration. The number of such matters peaked in 2018 and remained uncommonly high for several quarters in a row. In Q2 2018, when considerable improvements into the system operations were introduced, the number of appeals on tax invoice suspension started to go down.

1.2. Government agencies subject to the most complaints

TOP-10	2019	2018	2017	2016
State Tax Service, State Customs Service, State Fiscal Service*	1073	1153	1059	481
National Police of Ukraine	107	116	75	35
Prosecutor's Office of Ukraine	80	107	70	33
Local government authorities	63	61	85	83
Ministry of Justice	63	56	45	25
Ministry of Social Policy and Labour of Ukraine	25	31	33	20
Ministry of Ecology and Natural Resources of Ukraine	23	38	28	12
Ministry of Regional Development	23	20	10	6
State Security Service	17	19	36	17
Parliament, the Cabinet of Ministers, the President of Ukraine	17	19	30	18
Other	155	172	167	138
Total	1646	1792	1638	868

* By the end of 2019, the State Fiscal Service was finally reorganized into the State Tax Service and the State Customs Service

In 2019, the number of appeals from businesses regarding malpractice of state bodies went down by 8% as compared to 2018.



Companies submitted 7% less complaints concerning the ex-State Fiscal Service, functions of which are currently performed by the State Tax Service, State Customs Service and the State Fiscal Service (Tax Police functions). The number of appeals regarding law enforcement bodies also decreased with respect to all the state bodies in this block: the National Police (-8%), the Prosecutor's Office (-25%) and the State Security Service (-45%).

On the contrary, companies lodged more complaints concerning local government authorities (+3%), the Ministry of Justice (+13%), the Ministry of Social Policy and Labor of Ukraine (+25%), the Ministry of Ecology and Natural Resources of Ukraine (5%), the Ministry of Regional Development (+21%).

”

We express our gratitude to the Business Ombudsman Council's team for help with our issues”

Olena Storchak

Director of UKRAFLORA LLC

OTHER COMPLAINERS INCLUDE (2019)

State Enterprises	14
Ministry of Finance of Ukraine	14
Ministry of Infrastructure of Ukraine	14
Antimonopoly Committee of Ukraine	11
National Bureau of Investigation of Ukraine	9
NABU	8
Commercial and other courts	8
Ministry of Health of Ukraine	4
Communal Services of Ukraine	4
State Emergency Service of Ukraine	4

Ministry of Internal Affairs	3
National Commission for State Regulation of Energy and Public Utilities	3
State Funds	2
National Bank of Ukraine	1
Ministry of Defense of Ukraine	1
State Border Guard Service of Ukraine	1
State Regulatory Service of Ukraine	1
Other	19

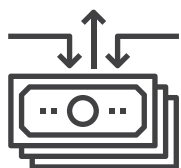
1.3. Nature of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

Analysis of complaints received in 2019 demonstrates that Ukrainian businesses most frequently faced the following problems:

Number of complaints received	2019	2018	2017	2016
Tax issues	981	1098	1001	423
Tax inspections	371	243	153	84
VAT invoice suspension	314	575	536	0
Tax criminal cases	56	63	41	60
VAT electronic administration	51	55	72	37
VAT refund	15	26	55	74
Tax termination of agreement on recognition of electronic reporting	12	17	57	62
Tax termination/renewal/refusal of VAT payers registration	4	6	9	7
Tax other	158	113	78	96
Actions of State Regulators	132	134	147	78
Other state regulators	92	106	103	57
StateGeoCadastre	13	9	17	6
State Architectural and Construction Inspectorate (DABI)	13	8	19	4
Antimonopoly Committee of Ukraine (AMCU)	11	4	7	5
National regulatory agencies NEURC other	3	7	1	6
National Police actions	107	116	76	35
National Police procedural abuse	50	47	33	17
National Police inactivity	37	41	21	9
National Police criminal case initiated	8	9	14	7
National Police corruption allegations	1	4	2	1
National Police other	11	15	6	1
Customs issues	85	42	53	43
Customs valuation	32	9	11	15
Customs clearance delay/refusal	30	16	19	11
Overpaid customs duties refund	6	6	7	2
Customs other	17	11	16	15

Number of complaints received	2019	2018	2017	2016
Prosecutor's Office Actions	80	107	70	33
Prosecutor's office procedural abuse	47	58	21	11
Prosecutor's office criminal case initiated	13	24	19	5
Prosecutor's office inactivity	10	12	23	9
Prosecutor's office corruption allegations	2	1	2	0
Prosecutor's office other	8	12	5	8
Ministry of Justice actions	61	49	43	25
MinJustice registration department	36	28	20	12
MinJustice enforcement service	25	21	23	13
Actions of local government authorities	60	60	76	62
Local government authorities land plots	14	16	15	20
Local government authorities rules and permits	11	12	13	9
Local government authorities investment disputes	1	1	1	6
Local government authorities other	34	31	47	27
Actions of state-owned companies	21	18	24	25
State-owned companies abuse of authority	9	0	0	5
State-owned companies other	12	18	24	20
State Security Service Actions	17	31	41	19
State Security Service procedural abuse	7	15	17	11
State Security Service criminal case initiated	3	7	7	2
State Security Service other	7	9	17	6
Legislation drafts/amendments	12	45	47	73
Deficiencies in regulatory framework other	5	12	12	54
Deficiencies in regulatory framework state regulators	4	17	21	4
Deficiencies in regulatory framework tax	2	15	14	15
Deficiencies in regulatory framework customs	1	1	0	0
Other	90	92	60	52
Total	1646	1792	1638	868



Tax issues.

In general, we observe a trend of companies submitting less appeals on the majority of tax subjects. At the same time, the most pressing (a quarter of total appeals in 2019) issue of businesses – tax inspections – were on a high rise: +53% as compared to 2018 and +142% as compared to 2017.

The suspension of tax invoices was the second most widespread subject in 2019. Although this matter seems to be gradually decreasing, it is still rather high — it amounts to 19%

of total appeals received by the Council. Besides, we witnessed some interesting manifestations of this subject:

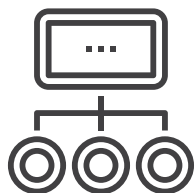
- 1) non-enforcement of court decisions on registration of tax invoices that came into force;
- 2) inclusion of companies in the lists of high-risk taxpayers and consequently suspension of their tax invoices. We will describe these issues in detail further in the report.



Actions of law enforcement bodies.

In 2019, companies submitted fewer appeals regarding actions and inactions of all law enforcers without exception. Business complained less on the inactivity of the National Police, corruptions allegations and

ungrounded criminal cases initiated by this state body. The highest drop (-45% to 2018 and -59% to 2017) is observed for the State Security Service — we only received 17 complaints on this state body in 2019.

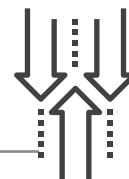


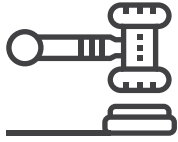
Actions of state regulators.

The total number of appeals regarding state regulators remained almost flat as compared to 2018. However, companies lodged more complaints concerning actions of the AMCU (+175%), DABI (+63%) and StateGeoCadastre (+44%). The number of appeals with respect to the NEURC went down by 57% — only 3 complaints in 2019.

Customs issues.

In comparison with 2018, in the reporting year we received twice more appeals concerning customs issues. This was driven by all the subjects of complaints: customs valuation (+256%), delays in customs clearance (+88%), as well as other customs issues (+55%).





Actions of the Ministry of Justice.

In 2019, businesses complained more about actions of the Ministry of Justice as compared to 2018 (+24%), 2017 (+42%) and 2016 (144%).

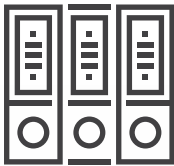
An upwards trend of appeals related to both the registration department (usually concerning raidership) (+29%) and the enforcement service (+19%) in comparison with the previous year.



Actions of local government authorities.

Companies lodged 60 appeals on malpractice of local government authorities — almost unchanged since 2018. While the number of complaints regarding allocation of land plots, issuing rules and permits went down, other matters involving local councils and municipalities were on a rise.

Other issues.



In the reporting year we received 17% more complaints from businesses regarding actions of state companies. On the contrary, companies suggested much less amendments to the legislations for the fourth year in a row — we only received 12 appeals on this subject in 2019. This obviously proves that the key problem of businesses is not in deficiencies of legislation but in its accurate implementation.

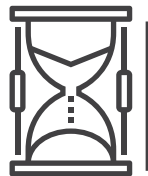


1.4. Time frames of the preliminary review of complaints

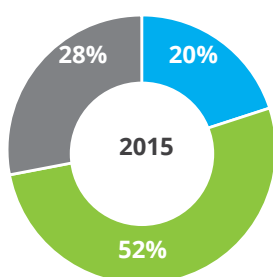
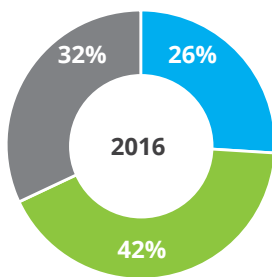
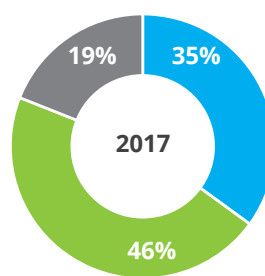
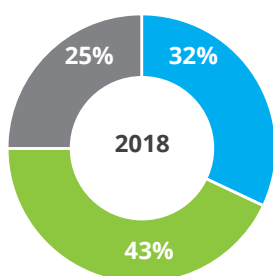
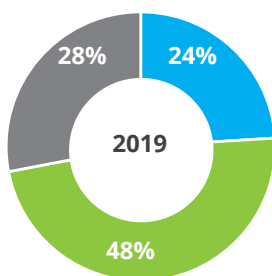
(Clause 5.3.1 (b) of Rules of Procedure)

The average time for preliminary review of a complaint in 2019 was

9.4 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

Almost three quarters of appeals from businesses were preliminary processed within 10 days, as envisaged by the BOC regulations.



We express our respect and gratitude for invaluable assistance provided by employees of your institution in the fight for justice.”

Stepan Grod

General Director of Matimex-Ukraine LLC

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

567

Cases closed with result

1139

Cases closed

69

Cases closed with recommendations

503

Cases discontinued

In 2019, the BOC initiated 1368 investigations.

Among them, by the end of the year, **229** investigations were still in progress

1139 cases were closed

A half of all closed cases was finished with a successful result for the complainant.

Dismissed complaints

2019	530
2018	502
2017	373
2016	246
2015	240

We had to dismiss 530 complaints as not fitting our criteria, stipulated by the Rules of Procedure.

The most common (43%) and growing (+42% as compared to 2018) reason for dismissal — the subject of appeal was outside our competence. Active court proceedings (20%) and absence of substance (11%) were also typical in 2019.

Reasons for complaints dismissal

TOP-10

	2019	2018	2017	2016	2016
Complaints outside Business Ombudsman's competence	230	162	105	73	44
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	107	81	70	43	48
The complaint had no substance, or other agencies or institutions were already investigating such matter	56	76	63	11	20
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	38	55	36	29	36
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	22	19	15	16	8
Complaints arising in the context of private-to-private business relations	12	16	17	17	18
The party affected by the alleged business malpractice had not exhausted at least one instance of an administrative appeal process	10	20	13	10	30
A complaint filed repeatedly	10	11	7	1	3
Complaints resolved before BOC's actions	8	10	15	6	3
Investigation by the Business Ombudsman in a similar case is pending or otherwise on-going	7	5	2	2	1

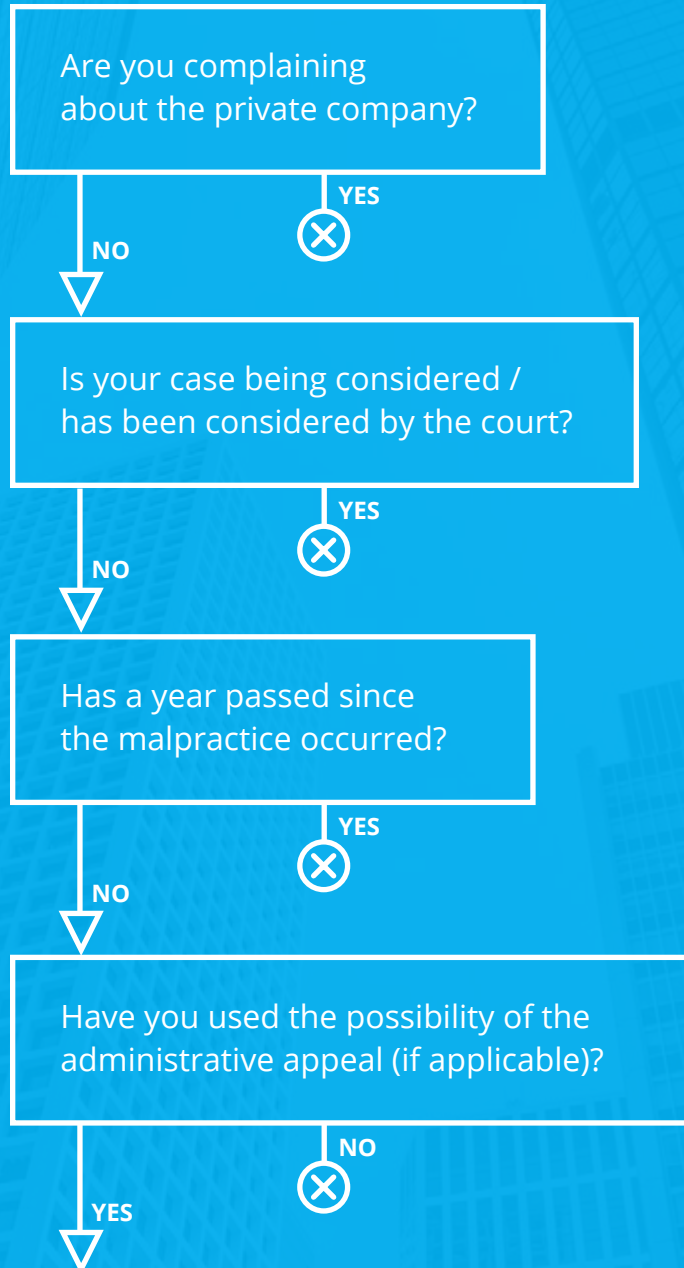
“Appealing to the Business Ombudsman Council was that effective tool for building a constructive dialogue with authorities, protecting legal rights and interests of legal sector representatives of the country's economy.”

Artem Filipyev

General Counsel of PJSC ArcelorMittal Kryviy Rih

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

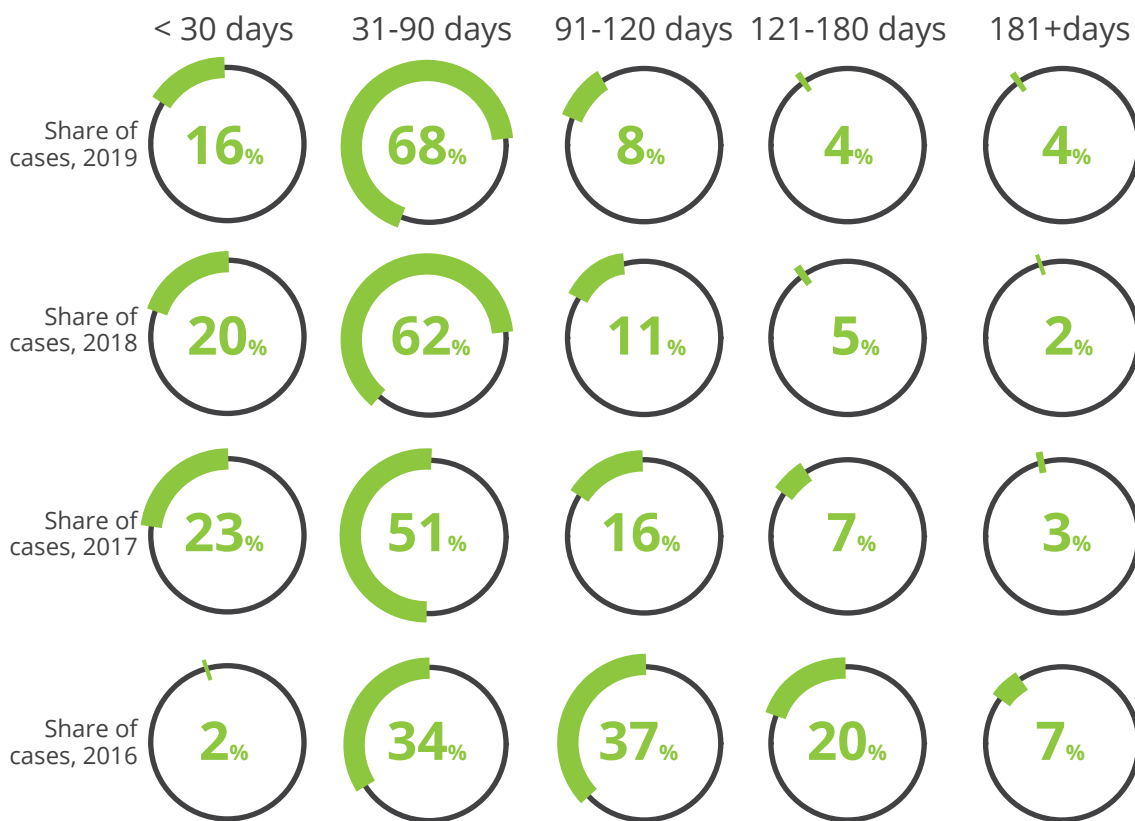
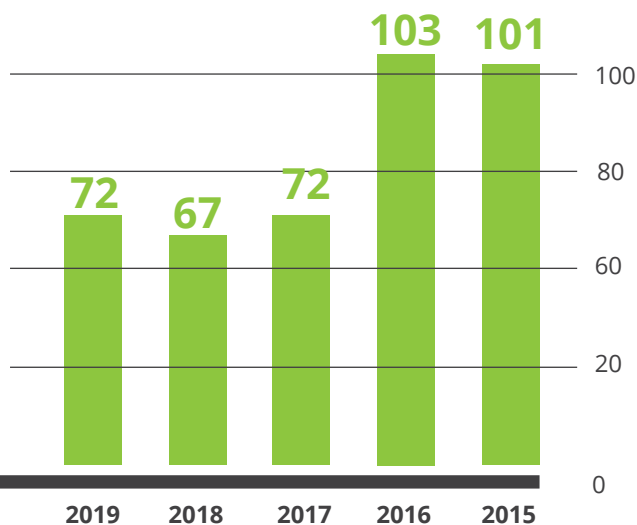
1.6. Time frames of conducting investigations

(Clause 5.3.1 (d) of Rules of Procedure)

Average time
for conducting
investigations
in 2015-2019, days:

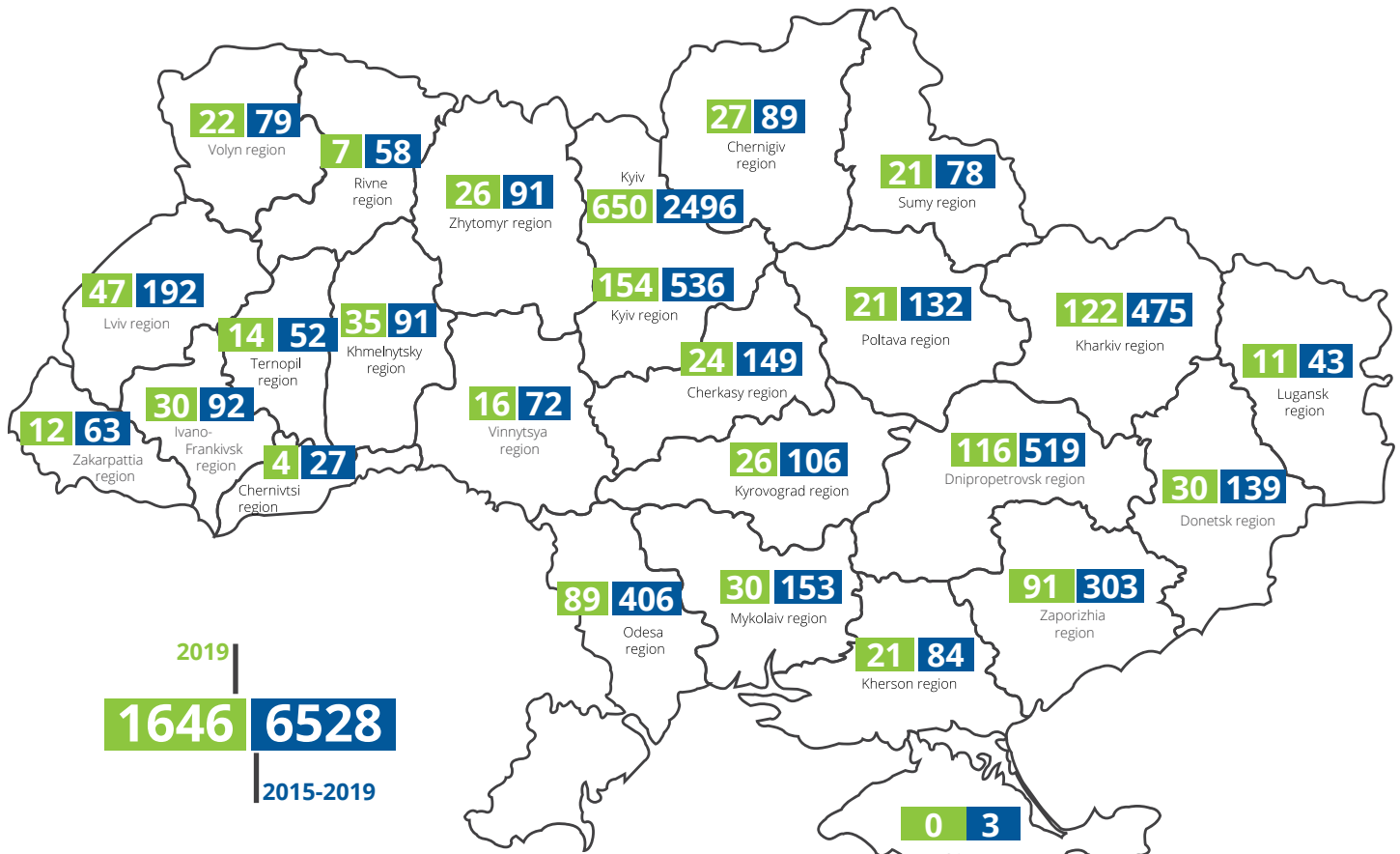
In the reporting year, the BOC
closed 1139 cases. Average
time for conducting these
1139 investigations:

72 days



The average duration of investigation in 2019 was 72 days, which is 18 days faster than envisaged by our Rules of Procedure. The majority of cases (84%) was closed within 90 days.

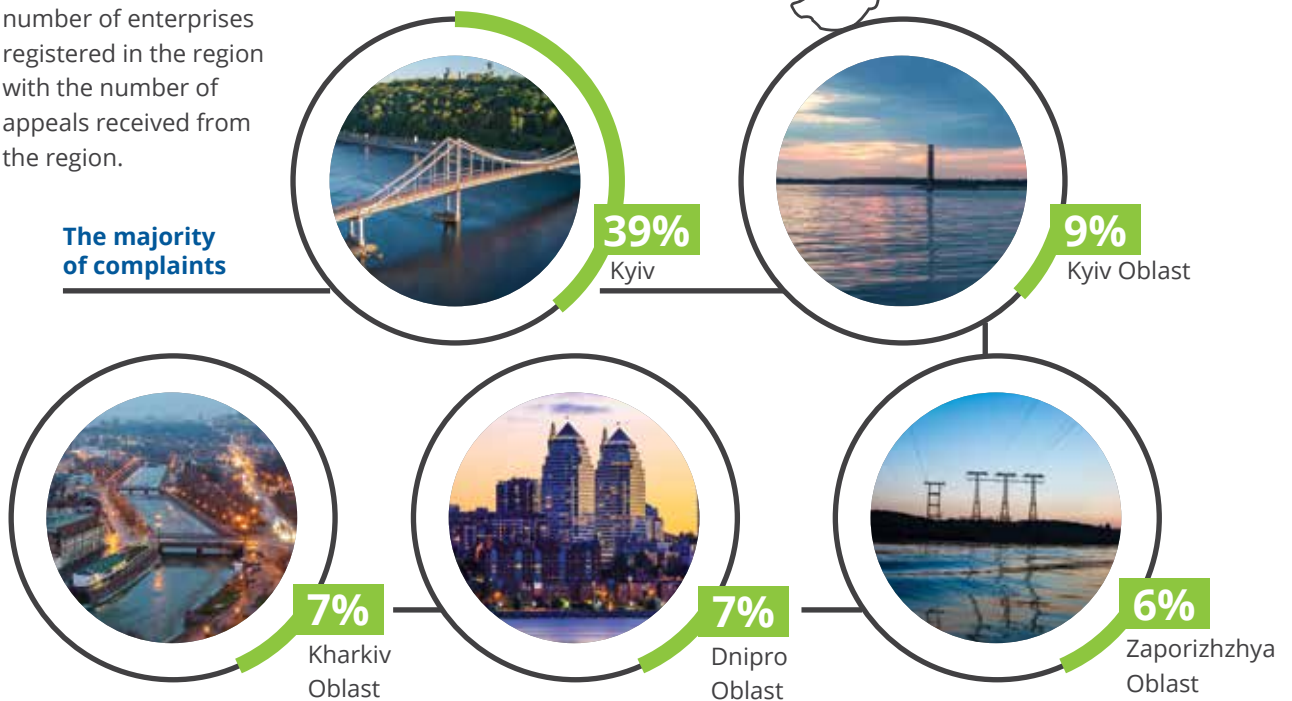
1.7. Geographical distribution of complaints received



2019
1646 **6528**
2015-2019

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

The majority of complaints



Kyiv	650
Tax issues	394
Actions of law enforcement bodies	86
Actions of state regulators	52
Customs issues	31
Ministry of Justice of Ukraine	29

Kyiv region	154
Tax issues	97
Actions of law enforcement bodies	20
Actions of state regulators	20
Actions of local government authorities	6
Ministry of Justice of Ukraine	4

Kharkiv region	122
Tax issues	81
Actions of law enforcement bodies	14
Actions of state regulators	12
Ministry of Justice of Ukraine	4
Actions of state companies	3

Dnipropetrovsk region	116
Tax issues	74
Actions of law enforcement bodies	17
Customs issues	6
Actions of local government authorities	5
Ministry of Justice of Ukraine	4

Zaporizhzhya region	91
Tax issues	64
Actions of state regulators	8
Actions of law enforcement bodies	7
Actions of local government authorities	4
Customs issues	3

Odesa region	89
Tax issues	56
Actions of state regulators	9
Actions of law enforcement bodies	7
Customs issues	6
Ministry of Justice of Ukraine	4

Lviv region	47
Tax issues	25
Actions of law enforcement bodies	5
Actions of state regulators	4
Actions of state companies	3
Legislation drafts/amendments	2

Khmelnyskyi region	35
Tax issues	28
Actions of local government authorities	3
Ministry of Justice of Ukraine	2

Donetsk region	30
Tax issues	17
Actions of law enforcement bodies	4
Actions of state companies	2
Actions of state regulators	2
Legislation drafts/amendments	1

Mykolaiv region	30
Tax issues	16
Customs issues	6
Actions of local government authorities	2
Actions of law enforcement bodies	1
Actions of state regulators	1

Zhytomyr region	26
Actions of law enforcement bodies	6
Tax issues	5
Customs issues	3
Ministry of Justice of Ukraine	3
Actions of state regulators	2

Cherkasy region	24
Tax issues	13
Actions of law enforcement bodies	4
Actions of state regulators	2
Legislation drafts/amendments	1
Customs issues	1

Ivano-Frankivsk region	30
Tax issues	18
Actions of law enforcement bodies	5
Actions of state regulators	2
Actions of local government authorities	2
Customs issues	1

Chernihiv region	27
Tax issues	12
Actions of local government authorities	10
Actions of state regulators	2
Actions of law enforcement bodies	3

Kirovograd region	26
Tax issues	13
Actions of state regulators	3
Ministry of Justice of Ukraine	3
Legislation drafts/amendments	1
Customs issues	1

Volyn region	22
Tax issues	11
Customs issues	6
Actions of state regulators	3
Actions of law enforcement bodies	1
Actions of local government authorities	1



Sumy region 21

Tax issues	13
Actions of law enforcement bodies	3
Actions of local government authorities	2
Actions of state regulators	1
Customs issues	1

Poltava region 21

Tax issues	10
Actions of law enforcement bodies	6
Actions of local government authorities	2
Actions of state regulators	1
Ministry of Justice of Ukraine	1

Kherson region 21

Tax issues	11
Actions of law enforcement bodies	5
Customs issues	4
Actions of local government authorities	1

Vinnitsya region 16

Tax issues	4
Permits and licenses	3
Actions of law enforcement bodies	2
Actions of state regulators	1
Customs issues	1

Ternopil region 14

Tax issues	9
Actions of state regulators	1
Customs issues	1
Actions of law enforcement bodies	1
Ministry of Justice of Ukraine	1

Zakarpattia region 12

Tax issues	3
Customs issues	5
Actions of law enforcement bodies	2
Actions of state regulators	1
Actions of local government authorities	1

Lugansk region 11

Actions of law enforcement bodies	4
Actions of local government authorities	3
Tax issues	1
Actions of state companies	1
Actions of state regulators	1

Rivne region 7

Tax issues	4
Actions of law enforcement bodies	1
Customs issues	1
Ministry of Justice of Ukraine	1

Chernivtsi region 4

Tax issues	2
Customs issues	1
Other	1



1.8. Summary of key matters and results of important investigations

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

TOP-10

subject matters of BOC's investigations* in 2016-2019:

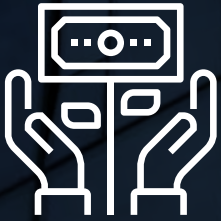
	2019	2018	2017	2016
Tax inspections	312	68	35	38
VAT invoice suspension	250	493	225	
Tax other	102	43	52	39
Other state regulators	51	45	41	27
VAT electronic administration	41	45	30	24
Tax criminal cases	27	24	36	25
Customs clearance delay/refusal	25	7	10	10
National Police inactivity	24	17	13	5
National Police procedural abuse	22	11	15	7
Customs valuation	21	5	12	11

In 2019, we conducted almost five times more investigations on tax inspections than in 2018. In the meantime, the number of cases regarding suspension of tax invoices decreased almost twice as compared to the previous year. We also conducted more investigations regarding actions of stare regulators (+13%), ungrounded tax criminal cases (+13%). The biggest relative increase in the number of investigations is recorded for delays in customs clearance (+257%: from 7 appeals in 2018 to 25 in 2019) and customs valuation (320%: from 5 appeals in 2018 to 21 in 2019). Among actions of law enforcers which hit the TOP-10 of subjects of investigations at once are two matters concerning the National Police: inactivity (+41%) and procedural abuse (+100%).

* Breakdown is based on all investigations undertaken by the BOC. Dismissed complaints and cases that were in preliminary assessment as of 31 December 2019, are not included.

FINANCIAL IMPACT

Cumulative financial result
for our complainants, UAH





OVERALL FINANCIAL IMPACT

IN 2015-2019:

17.9

**BILLION
HRYVNAS**

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

TOTAL

2019	2018	2017	2016	2015	Grand Total
3,641,247,973	1,587,528,030	909,009,155	885,256,737	114,444,653	7,137,486,547
84,337,402	51,511,424	1,456,822,589	4,188,649,975	396,401,395	6,177,722,785
0	0	0	0	2,094,325,977	2,094,325,977
68,000	0	0	643,560,043	0	643,628,043
709,931,462	109,697,738	117,458,691	16,814,050	7,769,322	961,671,264
66,567,059	189,767,982	44,458,762	0	0	300,793,803
0	0	0	114,699,575	77,082,709	191,782,284
40,863,317	32,202,104	73,028,446	38,946,909	13,502,600	198,543,376
2,856,877	25,804,552	0	56,088,069	12,302	84,761,800
27,415,229	0	0	0	0	27,415,229
0	0	16,771,374	0	0	16,771,374
16,109	497,195	12,949,800	2,235,173	0	15,698,277
15,020,963		0	3,666,304	10,705,458	29,392,725
227,898	7,307,785	675,375	791,344	0	9,002,402
0	0	0	7,093,563	0	7,093,563
1,952,450	5,650,304	1,251,158	80,135	0	8,934,047
0	0	0	0	2,128,801	2,128,801
2,629,932	672,000	440,123	813,141	0	4,555,196
6,553,488	1,710,000	0	0	0	8,263,488
626,795	1,408,420	0	0	0	2,035,215
772,049	0	0	0	0	772,049
0	46,553	571,000	0	0	617,553
500,000	0	0	0	0	500,000
0	0	321,500	0	0	321,500
0	0	275,135	0	0	275,135
5,919,511	0	101,639	0	0	6,021,150
	0	39,171	0	0	39,171
4,607,506,514	2,013,804,090	2,634,173,919	5,958,695,018	2,716,373,217	17,930,552,756



The key to effective work of the Business Ombudsman Council is its team's professionalism, objectivity, impartiality, deep expertise and high standards of work. We also express our high hopes for further work of the BOC in Ukraine."

Olga Gonchar

Representative of VENECHI
HOLDING LIMITED

Oleksandr Kosyak

General Director of Institute of Oil
Transport, PJSC

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

Non-financial impact

	2019	2018	2017	2016	2016
Malpractice ceased by complaine	195	152	147	36	7
Criminal case against the Complainant closed; property/accounts released from under arrest	23	36	39	21	4
Tax records reconciled, tax reporting accepted	20	54	65	28	3
Legislation amended/enacted; procedure improved	14	17	19	14	3
Permit/license/conclusion/registration obtained	14	27	41	3	10
Claims and penalties against the Complainant revoked Sanction lifted	6	2	12	2	2
Criminal case initiated against state official/3rd party	5	4	8	1	2
State official fired/penalized	5	6	13	8	1
Contract with state body signed/executed	4	2	29	13	2

Ceased malpractice of state officials remains the key non-financial impact for our complainants. Apart from it, in 2019, we helped to close ungrounded criminal cases, submit tax reporting and improve procedures in dozens of cases.

1.9. Complainants' portrait

TOP-5 Complainants' Industries



The existence of the Business Ombudsman Council in Ukraine greatly contributes to improving conditions for conducting business activities, preventing corruption and violation of other legitimate interests of business entities.”

Nataliia Florynska

Acting Head Kupyansk MCF, PJSC

”

Complaints on state bodies' malpractice were coming predominantly from wholesalers (26%), manufacturers (14%), real estate (10%), individual entrepreneurs (9%), as well as agribusiness and mining (8%).

For the fourth year in a row, we observe a steadily increasing number of appeals from individual entrepreneurs. This obviously points to the increasing awareness about the BOC mandate among small businesses.

Other industries in 2019 included:

Retail	103
Physical Person	41
Auto transport	39
Repair and Maintenance Services	23
Financial Services	22
Health, Pharmaceuticals, and Biotech	19
Supply of electricity, gas, hot water, steam and air conditioning	19
Consulting	14
Engineering, geology and geodesy areas activity	14
Hire, rental and leasing	14
Farming	13
Electric installation works	13
Computer and Electronics	11
Wastes collection and disposal	10
Transportation and Storage	9
Warehousing	9
Energy and Utilities	9
Education	9
Processing Industry	9
Advertising	8

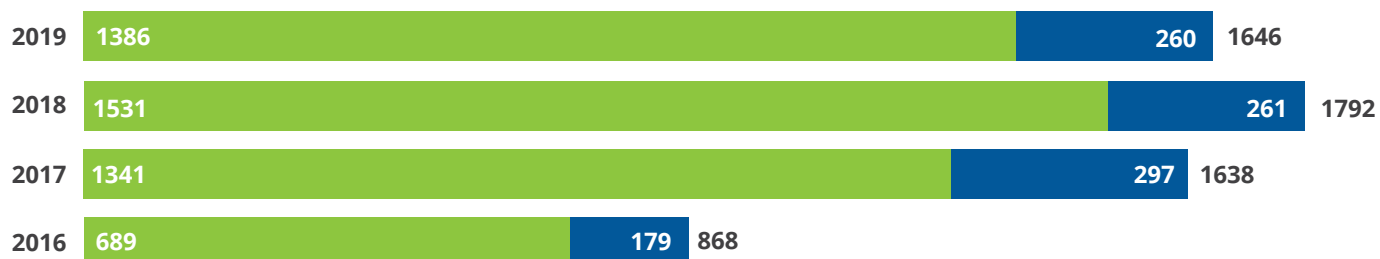
Public Organizations	7
Oil and Gas	7
Ground and pipeline transport	7
Information and Telecommunications	7
Forestry and logging	6
Technical testing and research	6
Maintenance of buildings and territories	6
Scientific research and development	5
Restaurant business	5
Delivery services	5
Printing and reproduction activity	5
Activities in the field of culture and sports, recreation and entertainment	4
Freight maritime transport	4
Private security firms activity	4
Tourism and travel-related services	3
Software and Internet	3
Activity in the field of architecture	3

Business Services	3
Manufacturing and distribution	3
Publishing and printing services	3
Activity in the field of law	3
IT companies	3
Air transport	2
Funds management	2
Accommodation services	2
Banks	2
Investment companies	2
Wastewater treatment, sewage	1
Non-profit	1
Building of ships and floating structures	1
Activities in the field of employment	1
Auto dealers	1
Cleaning services	1
Insurance	1
Other	6

Total
533

LOCAL VS FOREIGN COMPLAINANTS

Number of complaints

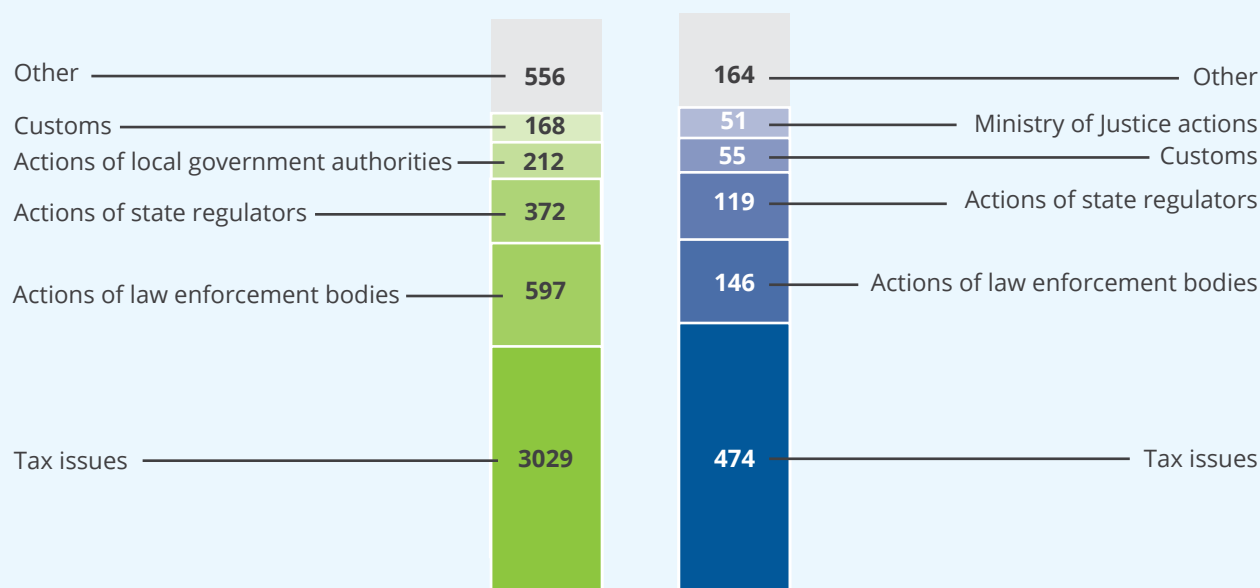


Structure



Traditionally, the majority of complaints (84%) was submitted by Ukrainian companies. In 2019, we received the same number of complaints as in 2018 (260 vs 261), while the number of appeals from local enterprises went down. At the background of decrease in the total number of complaints, the share of appeals from foreign businesses went up by 1pp and amounted to 16% at the end of 2019.

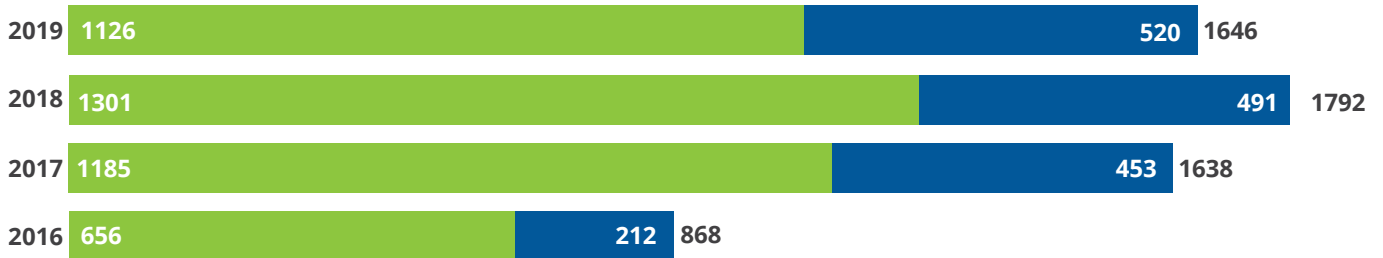
TOP-5 Subjects of complaints: breakdown by origin of complaints



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

SIZE OF BUSINESSES: SMALL/MEDIUM LARGE

Number of complaints



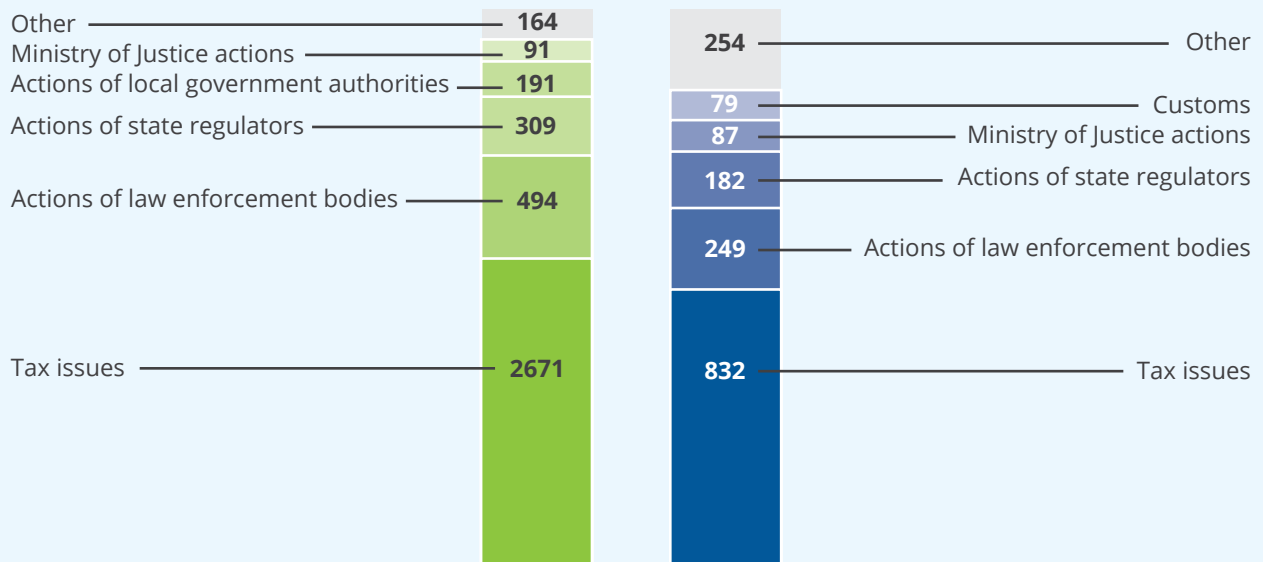
Structure



When comparing 2019 with 2018, we note a 13% decline in the number of appeals submitted by SMEs. Since the key matter of SMEs appeals to the Council in 2017-2018 was the suspension of tax invoices, this primarily shows normalization of the automatic system’s functions.

On the contrary, in 2019, we received 6% more appeals from large businesses as compared to 2018. Therefore, the share of appeals from large companies went up by 5pp and reached its maximum since launch of operations — 32%.

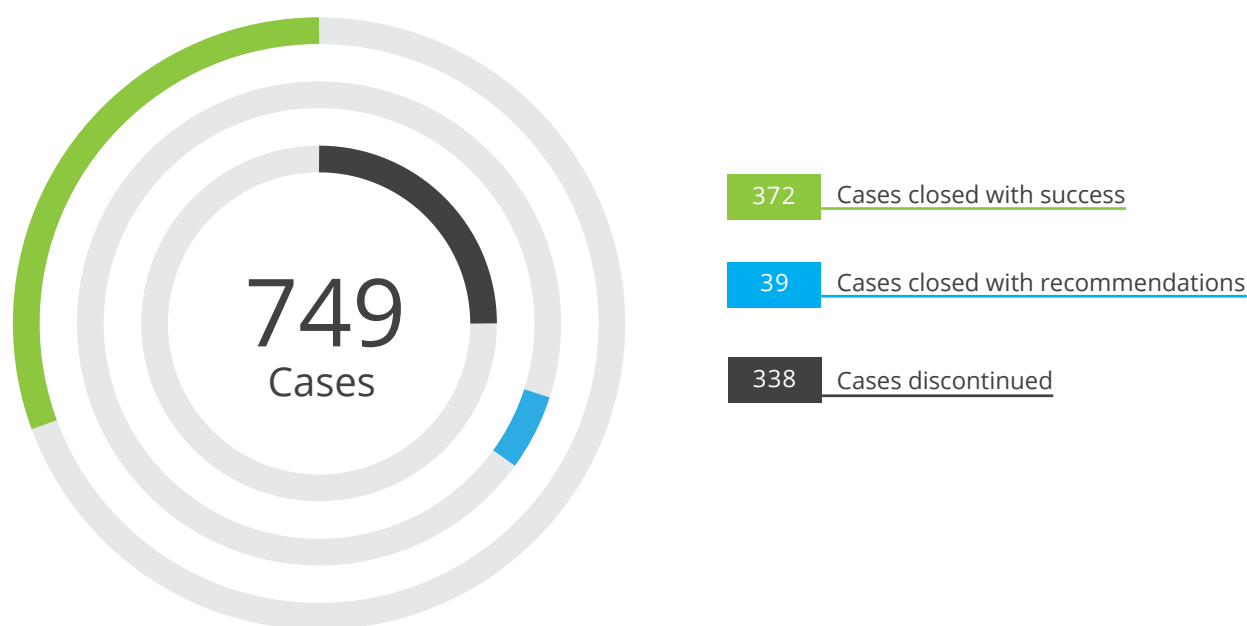
TOP-5 Subjects of complaints: breakdown by size of business



Tax issues amounted to 63% 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: 14% vs 11% and 11% vs 8% respectively. Customs issues only hit the TOP-5 of large businesses with 4% share.

2. SUMMARY OF KEY MATTERS AND RESULTS OF IMPORTANT INVESTIGATIONS RECEIVED IN 2019

TAX ISSUES



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
VAT invoice suspension	141	13	78	232
Tax inspections	109	3	189	301
VAT electronic administration	26	8	11	45
Tax criminal cases	24	4	9	37
VAT refund	10	2	4	16
Tax termination of agreement on recognition of electronic reporting	9	0	2	11
Tax termination/renewal/refusal of VAT payers registration	2	0	1	3
Tax other	51	9	44	104

Subject: VAT invoice suspension

**Is your real business
on a high-risk list?
What can you do?**

Subject of complaint:
The Main Department
of the State Fiscal Service
in Kyiv city (SFS)

Complaint in brief:

A company specializing in industrial machinery installation complained to the Council about having been unreasonably put on the risky taxpayers list by the SFS.

The legislation allows fiscal authorities to add businesses with negative tax information to the risky taxpayers list. The acquisition of such a status has extremely burdensome consequences for a taxpayer. First of all, such company's tax invoices are likely to be "blocked". And counterparties usually refuse to cooperate with companies having trouble with such tax invoices registration.

The Council sometimes receives complaints where "risky" signs can be discerned with the naked eye. For instance, the company is registered as a titular CEO or a "mass registration" address is used.

However, this complaint came from a real business. The company CEO was concerned about the situation and did not know what to do. In addition, the SFS was not quick to explain the reasons for its decision to the company in detail and argue the need for chosen actions.

Actions taken:

The Council asked the SFS to explain in detail why the company had been put on the risky taxpayers list. Not having received the answer on the merits, the investigator addressed the tax office again requesting to analyze whether the grounds to qualify a real enterprise as risky were sufficient.

In addition, the investigator arranged and participated in a working meeting with the SFS representatives to discuss the company's issue. As it turned out, the tax authority doubted the fact the company was located at the address of registration and received postal correspondence. During the meeting, the Complainant proved the company was indeed located at the specified address and offered SFS representatives to visit the company's office and a production facility.

He also confirmed readiness to receive a request for information from the tax authority and respond to it.

Result achieved:

The SFS admitted its conclusions were premature and removed the company from the risky taxpayers list. The Complainant can operate as usual again.

Subject: Tax inspections**SFS drops fine worth
UAH 2.3 bn for METRO**

Subject of complaint:
The Main Department of
the State Fiscal Service in
Mykolaiv Oblast (SFS)

Complaint in brief:

The largest German investor in Ukraine — METRO Cash & Carry Ukraine (METRO) approached the Council. The Complainant disagreed with the tax audit conclusions, according to which it had to pay a fine worth UAH 2.3 bn for violating cash discipline.

The SFS concluded that Mykolaiv hypermarket violated rules for posting cash in the amount of UAH 485 mn. But what was wrong? During 2016-2018, the company entered cash receipts via payment transactions recorders (cash register). At the same time, the cash was reflected in settlement operations accounting books (KORO) based on fiscal sales receipts. Since the hypermarket did not carry out cash settlements with issuing their cash orders, METRO did not enter the above-mentioned cash amount additionally in the cash book.

According to the SFS position, the Complainant should have done both: entered cash receipts in cash registers, reflecting cash in KORO and apart from it entered cash in the cash book. Therefore, the tax authority treated that as a violation and applied a fine to the Complainant which was five times more than the amount of transactions performed — UAH 2.3 billion.

It is noteworthy, that Mykolaiv hypermarket entered cash in the same way as all other network stores. It used this entering method for a long time and its correctness had been confirmed by several tax audits. It was unclear what was wrong right then and exactly with Mykolaiv store.

The Complainant insisted: the situation was not quite correct and even absurd. It was important that tax inspectors who conducted the inspection themselves realized that the violation Metro had been charged with could not in any way lead to tax evasion and budget losses accordingly. At the same time, a five-time fine from the turnover was applied to the taxpayer for formal non-entering of cash. Therefore, on April 9, 2019, the company turned to the Business Ombudsman Council for help.

Actions taken:

The investigator examined the circumstances of the case and made sure the law provides for several options of entering cash. The first one is to carry out cash transactions with issuing a cash receipt and record cash receipts amount in the book. The second one is making cash payments by using a cash register with accounting of cash receipts in KORO. That's exactly the way the Complaint performed its transactions.

Therefore, the Council asked the SFS to comprehensively and impartially consider the company's complaint and provided the following arguments:

1. According to the Council, the Complainant did not violate cash entering rules. The legislation clearly distinguishes situations when the taxpayer is obliged to enter cash in a cash book, and when in KORO. In particular, the legislator associates the obligation of maintaining a cash book with making settlements and issuing their cash orders. Using a cash register requires cash accounting in KORO. The Council stressed the Complainant did not carry out cash settlements with issuing their cash orders. Therefore, in the opinion of the Council, the SFS conclusion the Complainant was obliged to enter records both in the cash book and KORO was ungrounded.
2. The fine applied by the SFS was disproportionately large. The tax authority agreed that the Complainant did not evade from paying taxes, since the network cash registers were directly connected to the SFS systems, which excluded the possibility of any fraud. Therefore, one cannot fine it for billion amounts.
3. The judicial practice of the Supreme Court in a number of cases provided by the investigator also spoke for the Complainant.

During April-June, the Council's investigator, as well as the Business Ombudsman and his Deputy met with the SFS leadership team for several times to personally communicate their arguments on the unjustified nature of the fine. At the end of May, the case was reviewed by the SFS, where the Council again upheld the company's position.

Result achieved:

On June 18, the SFS satisfied the company's complaint and completely dropped the fine.

The Council believes that a two-billion fine for a situation that in no way evidenced tax evasion or other grave violation is a dark strain on the country's investment climate. However, the fact the fine was dropped at the administrative appeal stage without lengthy court proceedings proves businesses can protect their interests legitimately and effectively. We hope that after recent changes in cash discipline, billion amount fines for similar violations will remain in history forever.

Subject: Tax criminal cases

Repeated searches based on one court order are forbidden!

Subject of complaint:

Investigation Department for Financial Investigations of the General Directorate of the State Fiscal Service in Kyiv city (Tax Police)

Complaint in brief:

The company providing visa services addressed the Council. The company complained about unlawful actions of the Tax Police — law enforcers searched the Complainant twice, though they had a court permit only for one search.

Based on a court order, an investigator and other Tax Police officers legally got into the Complainant's office for the first time and started the search. After spending some time there, all the law enforcers left the premises. They returned the next day to renew the search. However, they presented the same court order as the first time.

However, the Complainant objected to it — in his view, a court order allowed only one entry into the office, which had already been completed, as law enforcers conducted the search and left the premises.

Actions taken:

The Council's investigator analyzed case files and relevant legislation and concluded the Complainant was right. The second entry into the office that took place on another day couldn't be considered authorized by a court and, therefore, was illegal. The Council wrote about it to the Tax Police and brought up the Complainant's issue at the Expert Group meeting created based on Memorandum on Partnership and Cooperation between the Council and the SFS of Ukraine.

During the meeting, the government agency expressed an alternative approach to interpretation of the law. The Tax Police responded the Complainant's case was a controversial issue having different practices. Therefore, it did not see any violations in the investigator's actions.

However, being convinced of its legal position correctness, the Council did not give up. The Council's investigator conducted an additional analysis of court judgements on this issue, including both investigating judges' and appellate instance courts' decisions. Everything pointed towards legitimacy of the Complainant's position.

Therefore, the issue was again brought under consideration at the Expert Group meeting. At the meeting the Council's representative presented findings of an in-depth research as well as arguments in favor of the company. The Council asked to officially inform all the Tax Police authorities that one mustn't conduct a repeated search based on one court order.

Result achieved:

During the second Expert Group meeting, the Council managed to persuade the state authority. The Tax Police sent a directive to the heads of all branches of the Tax Police in oblasts, the city of Kiev and Large Taxpayers' Office to be followed in their work. Taking the existing judicial practice into account, the document determined a re-entry into the dwelling or other possession of the person that had been previously entered into based on the investigating judge's order for a search as forbidden. The case was closed successfully.

Subject: VAT electronic administration

SFS innovation: VAT limit arrest for cooperation with suspicious counterparty

Subject of complaint:
The State Fiscal Service of Ukraine (SFS)

Complaint in brief:

The company from Kharkiv turned to the Council with a complaint about non-enforcement of the court decision by the Tax Service. As a result of the SFS omission, the Complainant was unable to fulfill its commitments to counterparties and register tax invoices.

After one of the Complainant's counterparties became involved in the criminal proceedings, and the SFS initiated an arrest of UAH 1.6 mn. from its SEA VAT (VAT electronic administration system) limit. The company challenged this decision in the appellate court. The Court of Appeal overturned the petition for arrest because SEA VAT amount limit couldn't be considered material evidence.

However, even after the decision came into force, the SFS was slow on unblocking the limit. The tax authority insisted the court order should appear in the Unified State Register of Court Judgments (USRCJ) first, as such decisions were often forged. The tax authority ignored the fact that the decision had already entered into force and the legislation did not provide for appearance of a court decision in the register for its enforcement.

By coincidence or not, the court decision would not appear in the register for a long time. The company tried to speed up publication of the ruling, however, faced the unusual situation where the investigator in criminal proceedings (which, by the way, had to do not with the enterprise itself, but its counterparty ruled to prohibit publication of the court decision online in order "not to disclose the pre-trial investigation secret". After having been trapped in a vicious circle, the Complainant appealed to the Business Ombudsman Council.

Actions taken:

The investigator examined the circumstances of the case and asked the SFS in writing to comply with the appeal decision. He stressed the legislation does not provide for publication of a judgment in the Unified State Register of Court Judgments as a condition for its enforcement. The Council helped arrange a conference call during which the Complainant and the SFS discussed the unusual situation with the SFS of Ukraine.

Result achieved:

The parties agreed the Complainant would send the SFS a reply from the USRCJ on the court ruling publication prohibition. Two days later the SFS unblocked the Complainant's VAT limit. The case was closed successfully.

Subject: Tax other

SFS drops additional payment worth UAH 635 mn against Philip Morris Ukraine

Subject of complaint:
The State Fiscal Service of Ukraine (SFS)

Complaint in brief:

The Business Ombudsman Council worked on Philip Morris Ukraine international tobacco company's case for three years. At first the company challenged SFS tax audit conclusions and then the failure of the State of Ukraine to perform the settlement agreement with the US, Swiss and Ukrainian Philip Morris offices to drop an additional payment worth UAH 635 mn.

In 2015, Philip Morris began to apply a special customs regime of processing on the territory of Ukraine for further products export. At the same time the company obtained a permit from Kharkiv Customs for conditional release from payment of Ukrainian import duties and other taxes.

The total value of products manufactured and exported under this regime during 2015-2016 was EUR 87 mn. However, in March of 2016, when the validity period of this regime almost expired, the SFS conducted a tax audit and questioned the legality of special regime use by Philip Morris companies. Based on audit conclusions the SFS issued tax notifications-decisions to the company totally amounting to UAH 635 mn. At this stage the company turned to the Council for help.

Actions taken:

The BOC upheld the company's position but it failed to convince the tax authority. Upon unsuccessful completion of the administrative appeal procedure in the SFS authorities, four Philip Morris companies raised the issue of violation of Ukraine's commitments

under international agreements on international investments protection and sent a notification on the investment dispute to the Government of Ukraine.

To resolve the issue, the Government created an interdepartmental working group including experts from the BOC, the SFS, the Ministry of Justice, the Ministry of Economic Development and Trade and the Ministry of Foreign Affairs. The working group analyzed the situation and assessed all the risks: if the Complainant had declared violation of foreign investors rights at the international level, the State of Ukraine would have highly likely lost the investment dispute. Therefore, the Council recommended that the parties conclude a settlement agreement.

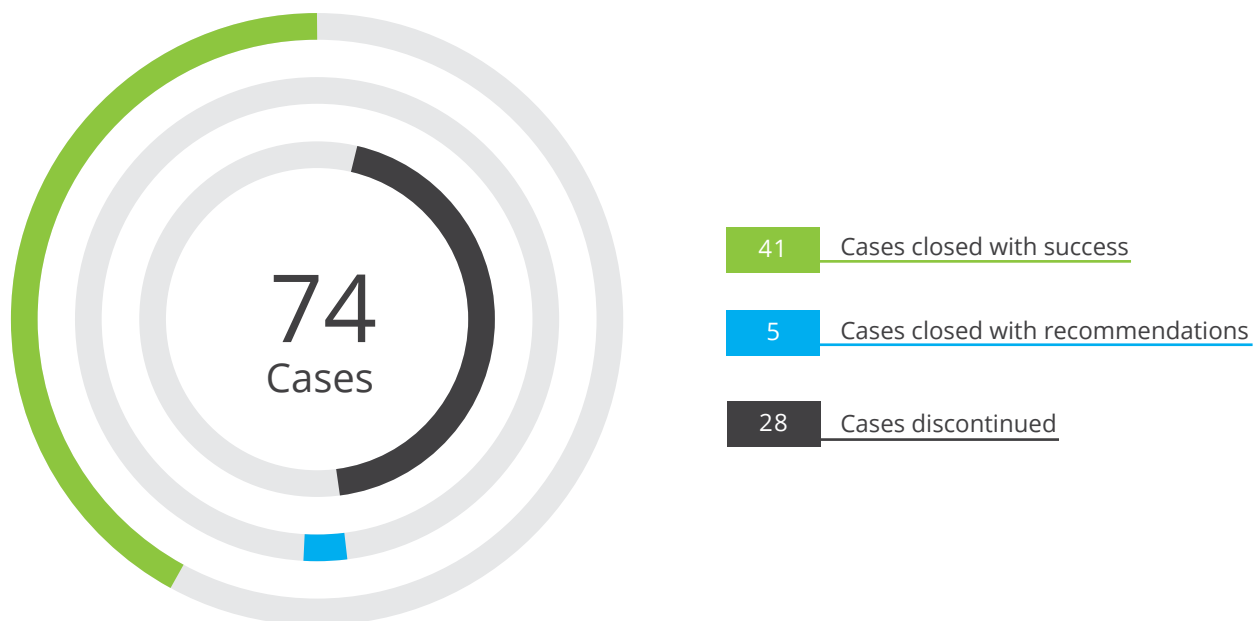
The Council's experts constantly monitored text approval, signing and fulfillment of the terms of the agreement. The SFS top management signed the document on January 31, 2019, but did not cancel additional payments within 30 days, as provided by the agreement.

To attract the attention of the public to the issue, the company initiated a press conference where it spoke on the settlement agreement implementation status. The Deputy Business Ombudsman publicly stressed failure to fulfill the settlement agreement terms violated commitments of the State of Ukraine under mutual investment protection treaties with the United States and the Swiss Confederation.

Result achieved:

In late March, the SFS finally fulfilled the terms of the settlement agreement and dropped the additional payment against the Complainant worth UAH 635 mn. The company thanked the Council for professional assistance and support. The case was closed successfully.

ACTIONS OF STATE REGULATORS



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
StateGeoCadastrre	8	1	3	12
DABI	5	0	5	10
AMCU	1	0	2	3
National regulatory agencies NERCUS other	2	0	0	2
Other state regulators	25	4	18	47

Subject: Other state regulators StateGeoCadastrre

Locality boundaries approved with the Council's facilitation

Subject of complaint:
The Main Department of the StateGeoCadastrre in Zaporizhzhia Oblast (StateGeoCadastrre)

Complaint in brief:

The Institute of Effective Technologies-Geo, a company from Zaporizhzhia, delivering geodesy and land management services approached the Council. The Complainant disagreed with the StateGeoCadastrre's remarks on the land use documentation.

The Complainant developed a land management project to change the boundaries of Grygorivka village of Polohivskyi district in Zaporizhzhia Oblast. According to the legislation, the said documentation is subject to state expert audit. However, the StateGeoCadastrre several times in a row refused giving the Complainant a positive expert's opinion on the state examination results.

It should be noted that land management complaints are particularly difficult cases, as legislation in this area is ever changing. Due to this fact authorized authorities' decisions may not always be predictable for businesses. Moreover, land users quite often come across incorrect information contained in the respective state registers. A similar situation occurred in this complaint as well.

Actions taken:

In the framework of the complaint the Council's investigator in charge helped arrange and hold a meeting with the Complainant and the StateGeoCadastre. The parties openly and objectively discussed the remarks to documentation and approved the procedure to eliminate them. During the meeting, the investigator stressed the need for good administration principles to be practically implemented in the work of state agencies, as well as partner relationships between the business and the state to be built.

Result achieved:

Following the discussion, the Complainant was able to obtain a positive state audit opinion and proceed to the next stage of setting the locality boundaries. In this particular case the StateGeoCadastre's top management demonstrated a really constructive approach and actively contributed to resolving the issue.

Subject: Other state regulators — AMCU

BOC contributes to protection of economic competition

Subject of complaint:

Kyiv Regional Department of the Antimonopoly Committee of Ukraine (AMCU)

Complaint in brief:

An equipment supplier turned to the Council with a complaint regarding actions of the Antimonopoly Committee. The Antimonopoly Committee delayed the consideration of the company's complaint regarding violation of legislation on protection of economic competition.

The Complainant participated in the "Prozorro" tender for equipment supply for Ukrzaliznytsia. Apart from it several companies submitted bids for tender in which the Complainant noticed some nonrandom one and the same things. For example, identical product description and warranty letters texts, bank guarantees issued on the same date. There was even a document submitted by various participants, the author of which was one and the same person. Given such facts proving anti-competitive coordinated actions, the Complainant applied with a statement to the AMCU. However, the government agency dragged on its consideration and opening a case on violation of legislation on protection of economic competition.

Actions taken:

The Council's investigator examined the complaint documents and upheld the company's position. He applied to AMCU in writing and asked to make a decision regarding the appeal of a company — to start considering the case or refuse to in accordance with the rules of consideration of applications on violation of economic competition.

Result achieved:

The AMCU accepted the Council's arguments and started considering the case on anti-competitive coordinated actions related to tender results distortion. So, the AMCU conducted an investigation and found signs of violation of the law, and, accordingly, began considering the case on violation of legislation on protection of economic competition. The Complainant thanked the Council for assistance. The case was closed.

Subject: State regulators — DABI

DABI approves putting supermarket into operation with the Council's facilitation

Subject of complaint:

Department of the State Architectural and Construction Inspectorate in Kyiv Oblast (DABI)

Complaint in brief:

The Business Ombudsman Council received a complaint from a developer, a contractor and a customer of a supermarket construction in Kyiv Oblast. DABI did not allow developers to commission a ready-made object and declared all already approved documents invalid.

The Architectural Service got interested in the facility after an NGO complained about developers. In the activists' view, the developer violated the urban planning legislation during construction, in particular, might not have had due permits (as it turned out later, it was not true).

Therefore, during the year DABI tried several times to conduct an unscheduled inspection of the facility, issued a series of orders to companies, fined them and eventually canceled registration of the notice of construction commencement. The Complainant insisted DABI's orders and decisions were illegal and civil servants' actions were unlawful.

The Council's investigators started working on such a controversial case.

Actions taken:

Having examined the circumstances of the case and parties' positions, the Council upheld the company. In particular, investigators found out activists' appeal had no nitty-gritty, except for suspicion the developer might not have permits (which could be easily denied without any inspections by using the online register).

The law provides for such situations and prohibits initiation of unscheduled inspections based on anonymous or other clearly unreasonable inquiries.

However, supervisory authorities are usually afraid of being accused of lack of attention to activists' complaints and proceed from the logic: "it's better to double check" without taking into account how much inconveniences an inspection will cause to a business.

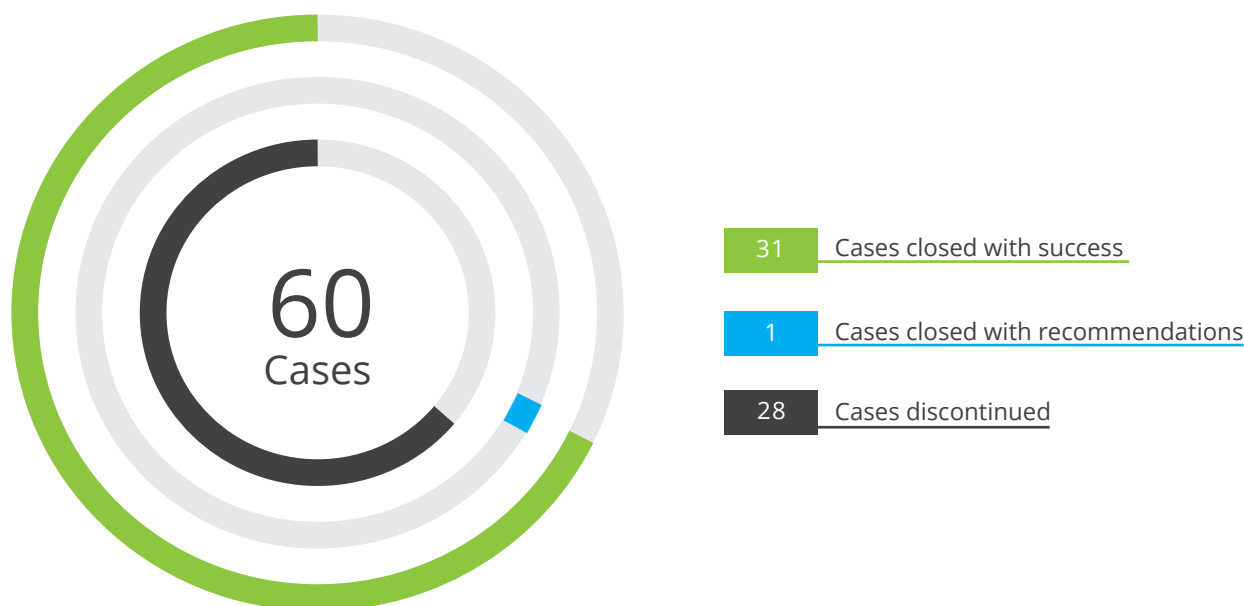
The Council's investigators also found out DABI's officers committed a number of procedural violations trying to conduct an unscheduled inspection. For example, the subject of inspection should have been in compliance with construction law in general, not only permits availability issue activists drew attention to. The company thus had reasonable grounds to really fear activists' appeal could be a formal pretext to apply sanctions and block construction.

A Deputy Business Ombudsman and the Council's investigator met with the DABI top management and comprehensively discussed complaints from the developer, the contractor and the construction customer.

Result achieved:

SBU accepted the Council's arguments and took the Complainant's information into account in its internal operative activities. Law enforcers pressure on the company's business stopped. The company thanked the Council for assistance in resolving the case.

CUSTOMS ISSUES



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
Customs clearance delay/refusal	16	0	11	27
Customs valuation	5	0	14	19
Overpaid customs duties refund	3		0	3
Customs other	7	1	3	11

Subject: Customs valuation

Kyiv Customs drops customs value adjustment for furniture company

Subject of complaint:
Kyiv City Customs of the State Fiscal Service (Kyiv Customs)

Complaint in brief:

The Council received a complaint from the Ukrainian Association of Furniture Manufacturers on behalf of a furniture company. Kyiv Customs, disagreeing with the customs value of goods determined by the Complainant at the contract price, decided on its adjustment.

To confirm the declared customs value of goods, the Complainant provided the Customs with an exhaustive list of documents established by the Customs Code of Ukraine, as well as additional documents. However, the customs authority had doubts, particularly regarding the form and content of the price list. According to Kyiv Customs, the price list issued directly for the Complainant was targeted that contradicts the essence of the said document as a commercial offer for an unlimited number of customers. In turn, the Complainant pointed out the commercial offer and individual terms of placing orders were the result of many years of cooperation between

companies. Disagreeing with Kyiv Customs decision, the Complainant turned to the Council for help.

Actions taken:

The Council's investigator thoroughly examined the complaint materials and provisions of relevant legislation. The Council prepared a detailed analysis of circumstances of the case and provided its own arguments regarding the necessity to cancel Kyiv Customs decision on customs value adjustment.

Apart from it, the Council backed up its position with the relevant case law in favor of the Complainant. The Council appealed to the supervisory authority with a request to ensure a full and impartial consideration of the Complainant's case taking into account the Council's arguments.

Result achieved:

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

Subject: Customs clearance delay/refusal

The Council helps speed up customs clearance of imported flowers

Subject of complaint:

Volyn Customs of the State Fiscal Service (Volyn Customs)

Complaint in brief:

The Council received a complaint from a large Ukrainian importer of flowers. The company complained about a delay in customs clearance by Volyn Customs.

According to the Complainant, customs clearance of goods became longer recently — customs officers especially carefully and several times examined the boxes and pallets on which the flowers were transported. Considering that flowers are a very perishable commodity, long interruptions for the company created serious problems. One of the examples provided by the Complainant was a day's delay of a batch of tulips from the Netherlands at the request of Volyn Customs. According to the company, similar situations happened several times a week. Moreover, after long examinations, customs officers released cars without finding any violations. In order to avoid further losses from delays, the company sought assistance from the Business Ombudsman Council.

Actions taken:

The Council's investigator examined the circumstances of the case. She promptly addressed the Head of Volyn Customs of the State Fiscal Service and asked in writing to prevent possible violations of the complainant's legitimate interests as a result of lengthy examinations.

The investigator stressed duration of customs clearance of goods should not exceed 4 hours. She further emphasized the Complainant's losses caused by the delay in customs clearance were disproportionate to the potential danger of the imported goods.

Result achieved:

Volyn Customs heeded the Council's request — numerous long-lasting examinations stopped. According to the company, all further deliveries of goods were successfully cleared. The Complainant thanked the Council for assistance. The case was closed successfully.

Subject: Overpaid customs duties refund

Odesa customs refunds UAH 1.3 mn. of overpayments to tire importer

Subject of complaint:
Odesa Customs of the SFS
(Odesa Customs)

Complaint in brief:

Odesa-based tire importer approached the Council. The company could not get a refund of overpaid customs duties.

In 2017-2018, Odesa Customs adjusted the customs value of the Complainant's imported goods for a total amount of over UAH 2 mn. The company disagreed with the price for the products determined by the customs authority but paid the duty to import the products into the territory of Ukraine as required by the government agency. Later the company appealed the decision of Odesa Customs in court. Odesa District Administrative Court declared the customs value adjustment made by the customs authority illegal and obliged customs officers to refund overpayments in full.

Almost two years have passed since the decision came into force, while the government agency returned only one third of the amount. The company turned to the Business Ombudsman Council with this issue.

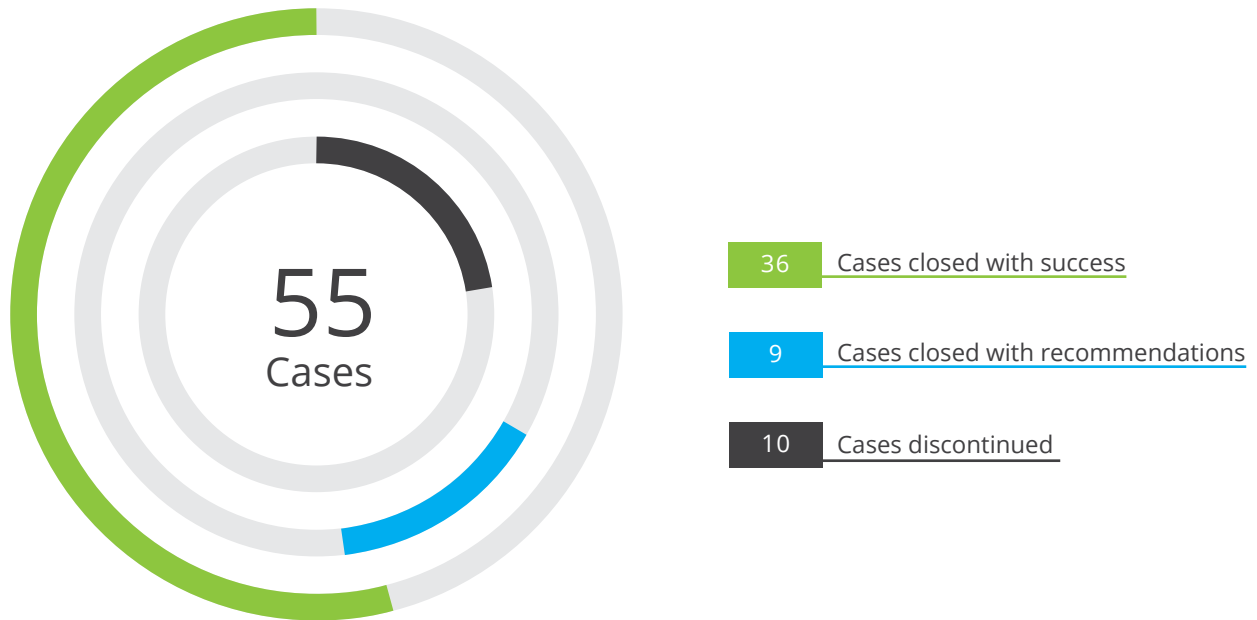
Actions taken:

The Council's investigator twice addressed Odesa Customs in writing with a request to execute a court order and refund the rest of the amount to the company. For the first time the government agency allegedly lacked a written application for the overpayment refund from the company.

Result achieved:

Odesa Customs finally accepted the Council's arguments and agreed to refund UAH 1.3 million to tire importer. The case was closed successfully.

ACTIONS OF NATIONAL POLICE



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
National Police procedural abuse	17	1	8	26
National Police inactivity	15	5	1	21
National Police criminal case initiated	1	1	1	3
National Police corruption allegations	2	0	2	4
National Police other	3	2	0	5

Subject: National Police procedural abuse

Woodworking equipment returned to Chinese investor

Subject of complaint:

The National Police (National Police) and the Prosecutor's Office of Ukraine (Prosecutor's Office)

Complaint in brief:

A company with Chinese investments addressed the Council with a complaint about omission of the National Police and the Prosecutor's Office.

The Complainant imported a woodworking equipment and component parts that it planned to use for productions of goods. There was a dispute with the customs authority regarding possible undervaluation of its value during customs clearance. Unfortunately, this dispute failed to be resolved amicably. The police launched criminal proceedings, and within the framework thereof they seized the property. The Complainant's lawyer promptly turned to the investigating judge, and he, having assessed the lawyer's arguments, ordered the police to return the seized property.

And that's when a surprise was waiting for the importer. The police supported by the Prosecutor's Office refused to return the property. In the refusal the authorities referred to the judge's "wrong" decision and

intended to challenge it in courts of higher instances. They also motivated their refusal by the fact that the seized property had the status of material evidence, therefore, allegedly it couldn't be returned to the owner. Finally, the last argument from law enforcers was that an expert examination of the property was being carried out. Having received such several refuses, the company asked the Council for assistance.

Actions taken:

Despite a strong position of law enforcers at first glance, the Council's investigator, having looked into the situation, found that none of their arguments were relevant. After all, the decision of the investigating judge on the return of property was enforceable regardless of the fact whether parties to the criminal proceedings agree with it, while the law did not provide for its administrative appeal. The prosecutor was very well aware of it – he appealed to the court of appeals but the court refused to initiate the appeal proceeding. The commodity expert examination law enforcers referred to, had already been completed at the time of the complainant's appeal to the Council (as the Council's investigator learned when studying documents in the court register). Yet, the economic expert examination, which continued, did not require physical availability of property. Finally, the fact that property had been recognized as a material evidence was not itself the reason for its being kept by law enforcers, which clearly follows from the provisions of the law and relevant explanations.

Having made sure the Complainant's claims were substantiated, the Council's representatives sent a letter to the Police and the Prosecutor's Office, where they refuted every point of their argumentation and urged them to return the property. The Council received the same formal replies to its first letter sent directly to authorities-offenders as earlier received by the Complainant.

Result achieved:

After the Council discussed the Complaint at Expert Group meetings with the National Police of Ukraine and the GPO, and sent a second letter directly to the PGO, the property was returned to the owner for a responsible storage. The case was closed successfully.

Subject: National Police inactivity

Law enforcer gets penalized for ineffective case investigation

Subject of complaint:

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

Complaint in brief:

The Council received a complaint about an ineffective pre-trial criminal investigation from a garage co-operative owner in Zaporizhzhia.

According to the Complainant, the garage cooperative, the market value of which amounts to UAH 8 mn, has been a sweet spot for many people since early 90's. In general, the owner appealed to law enforcers three dozen times — one attempted to take over the cooperative.

And so, in early 2018, there was an episode mentioned in the criminal case. On a cold Sunday morning, the owner of the cooperative was called and informed that the complex had been taken over by raiders. Having arrived at the scene, he saw that the central entrance to the area had been welded, the side gates broken, and a box office booth was put up near them for those wishing to enter the cooperative. According to the Complainant, a few armed men in black uniform were on guard near the blocked administrative building. As the owner approached them, he was greeted with a stream of obscenities and threats of murder. The brawl began. One of the attackers took out a gun.

At this moment, a police patrol arrived. Weapons were hidden, but curses and threats did not stop. When one started looking for the watchman, it turned out the raiders threatening with a weapon had locked him in the pantry the night before. He was kept there until morning, while all the assembly and dismantling works were carried out on the territory of the cooperative.

The Complainant insisted the documents presented by new owners to police officers were forged. Based on the Complainant's application, the National Police initiated an investigation into an unauthorized seizure of property. Meanwhile, the garage cooperative operated for the benefit of new owners.

However, the investigation appeared to be ineffective. The company complained there was no progress in the case at all. Numerous requests were formally replied to. When almost a year passed, the company turned to the Business Ombudsman Council for help.

Actions taken:

Since the early days of the complaint receipt, the investigator established regular communication with the Investigative Department of Zaporizhzhia Oblast police.

To ensure the outcome, the Council addressed Zaporizhzhia National Police and the Prosecutor's Office in Zaporizhzhia Oblast in writing regarding law enforcers misconduct.

Result achieved:

The Regional Prosecutor's Office responded to the Council's request unprecedentedly quickly and within a few days reported that a decision had been made to punish the head of the local Prosecutor's Office by stripping him of his personal bonus.

The Council had been considering the complaint for nearly four months. During this time, the complaint was the subject of consideration of the Central Investigative Department of the National Police of Ukraine. The National Police top management of one of Zaporizhzhia city districts received an official warning of ineffective pre-trial investigation of criminal proceedings and the investigator received corresponding instructions. Although no final procedural decision has been made yet, the Council stays in touch with the Complainant and hopes that, after joint efforts made, this story will logically end in favor of the bona fide property owners.

Subject: National Police other

Penalize impossible to skip

Subject of complaint:

The National Police, Patrol
Police Department in Odesa
Oblast (Patrol Police)

Complaint in brief:

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Actions taken:

The investigator examined the subject of the complaint and the legislation governing it. In particular, he found out it was the intended use of the car that was the key criterion in similar situations. If profit is derived directly from carrying passengers or goods, technical inspection is mandatory. However, in the Complainant's case the situation was quite different. It was used to carry the administrative staff. Therefore, according to the Law of Ukraine "On Road Traffic" and clauses 1, 2 of the CMU Procedure No.137, such a passenger car is not subject to mandatory technical control.

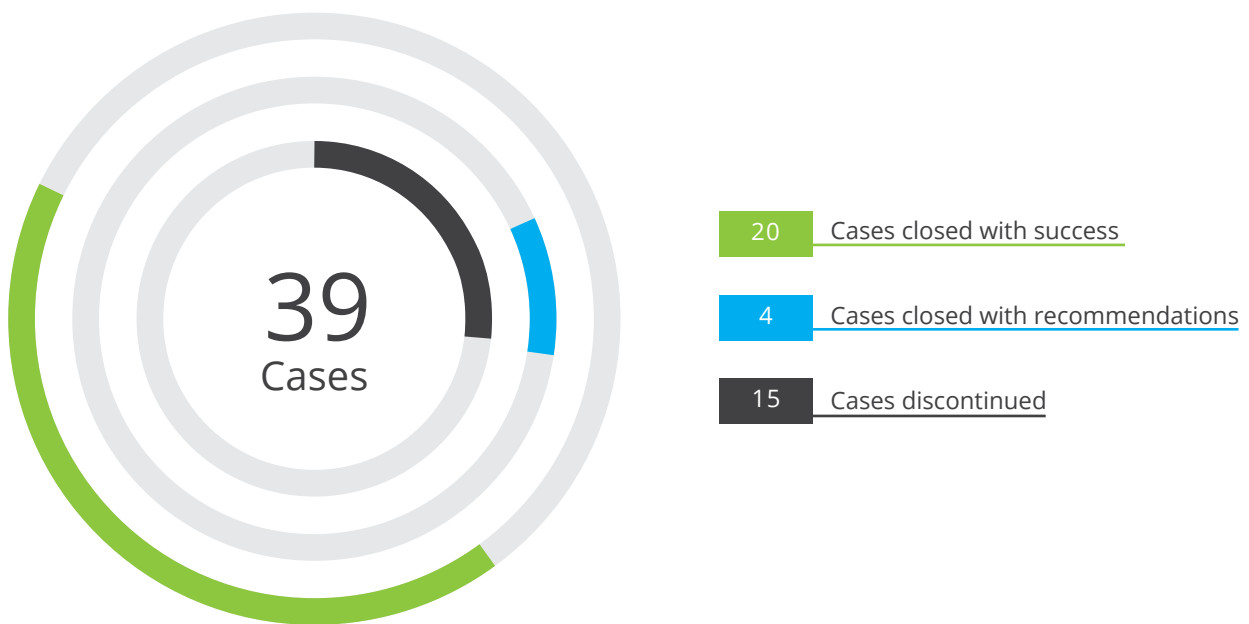
The investigator also provided several examples of administrative courts case-law, the decisions of which testified in favor of the complainant.

Realizing that the problem may be repeated in other regions of Ukraine, the Council recommended that the Head of the National Police of Ukraine conduct a methodological awareness-raising campaign on this subject among his staff members.

Result achieved:

Following the Council's recommendations, the National Police provided a written response and informed all regional divisions of inadmissibility of drawing up administrative protocols for drivers of cars registered to legal entities and not carrying passengers to get proceeds from transportation. The case was successfully closed.

PROSECUTOR'S OFFICE



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
Prosecutor's office procedural abuse	14	1	13	28
Prosecutor's office criminal case initiated	4	1	0	5
Prosecutor's office inactivity	0	2	1	3
Prosecutor's office other	2	0	1	3

Subject: Prosecutor's office procedural abuse

Law enforcers' pressure on outsourcing company stopped

Subject of complaint:
Kyiv City Prosecutor's Office
(Prosecutor's Office)

Complaint in brief:

A Promotion Outsourcing LLC recruiting agency, the company providing personnel outstaffing, outsourcing and recruiting services approached the Council with a complaint about the Prosecutor's Office actions. According to the Complainant, law enforcers put an unjustified pressure on it.

The company has been working on the Ukrainian market for over 19 years. During this time, it created a client portfolio of leading international and Ukrainian companies, providing service to over 2500 outsourcing specialists in Ukraine. It has been a large taxpayer in Ukraine since 2016 and reached a profit of over 700 million hryvnias a year. And in the summer of 2018, the enterprise's activities became an object of interest of the Prosecutor's Office.

Law enforcers characterized the company's activities as illegitimate. They accused the Complainant of violations, which caused a state budget gap of almost one billion hryvnias. Law enforcers based their arguments, inter alia, on the fact that the Complainant didn't have a special Permit to recruit personnel to work in Ukraine for other employers, according to Art. 39 of the Law of Ukraine "On Employment of the Population."

Upon receiving a court ruling on temporary access to documents with the possibility for the Prosecutor's Office to seize their originals, the company immediately turned to the Business Ombudsman Council to prevent the disproportionate interference and pressure of law enforcers.

Actions taken:

The Council's investigator thoroughly studied the case materials and the legislation regulating it. She found out that the absence of the company's special permit was actually a gap in statutory regulation, and it was in fact impossible to obtain it. This was also confirmed by other competent authorities.

The Council brought up the Complainant's issue at the Expert Group meeting with the Prosecutor General's Office (PGO). The Council's investigator asked the PGO in writing to verify the circumstances of the case in order to eliminate violations, if detected during the check based on the appeal. In its turn, the company set up proper cooperation with the Prosecutor's Office in accordance with the Ukrainian legislation. It submitted documents refuting the investigation evidence and a comprehensive company's activities analysis as regards providing services to customers in full compliance with the current Ukrainian legislation.

Result achieved:

Notably, this investigation was launched by the Council in a preventive manner to avert disproportionate interference of law enforcers with the enterprise business activities and to protect it from an unjustified

pressure. As a result, law enforcers did not seize original documents, but only made their copies disrupting neither the company's nor its customers' normal business operations. The company informed the Council that law enforcers didn't exert pressure on its business any longer. The Complainant also mentioned that the professional cooperation in accordance with the legislation of Ukraine had been set up, the requested materials had been provided and analyzed according to the established procedure as well as necessary investigative actions to refute company's relation to circumstances established within the framework of the criminal proceedings had been performed. The case was closed successfully based on the Complainant's appeal.

Subject: Prosecutor's Office inactivity

Criminal case against developer from Kyiv Oblast finally closed

Subject of complaint:
Kyiv Oblast Prosecutor's Office (Prosecutor's Office)

Complaint in brief:

A developer building a residential complex (Complex) in Kyiv Oblast appealed to the Council. The company complained about interference of the Prosecutor's Office with its business activity and law enforcers pressure, who put the further Complex construction at risk.

According to the Complainant, the prosecuting authorities doubted that he lawfully used the land plot of the Complex. Thus, the Prosecutor's Office was concerned about land plot lease and sublease agreements compliance with current legislation. However, all courts — of the first instance, the appellate and the cassation ones — confirmed that developer's documents were ok. Moreover, even in 2017, the court ordered law enforcers to return temporarily seized property to the Complainant within the framework of the investigation.

Notwithstanding that fact, law enforcers were in no hurry to comply with the court order. The company turned to the Business Ombudsman with this issue.

Actions taken:

The Council had been working on the complaint for almost two years. Having gone through all the instances, the investigator addressed the Prosecutor General of Ukraine. However, for a long time law enforcers replied only that the land assessment examination was ongoing. The Council, for its part, referred to current legislation, which did not provide for the mandatory handing over all case files during the examination, and insisted on the court order enforcement.

Result achieved:

After months of delay, criminal proceedings against the Complainant were closed due to absence of a crime. The company asked the Council to complete investigation of the complaint and thanked for assistance: "We are confident that the work of the Business Ombudsman's team has significantly contributed to the successful outcome of our case."

Subject: Prosecutor's Office criminal case initiated

**Criminal proceedings
against Oil Transportation
Institute finally closed**

Subject of complaint:
Kyiv City Prosecutor's Office
(Prosecutor's Office)

Complaint in brief:

Shareholders of Oil Transportation Institute (ITN), a leading company dealing with design and maintenance of oil transportation, storage and distribution facilities, turned to the Council. The company complained against the Prosecutor's Office violating pre-trial investigation reasonable time limits. According to the Complainant, the criminal case was deliberately delayed to extend seizure of the company's securities.

The criminal proceedings against the Complainant were initiated back in 2016 based on a former company's CEO application. According to the application, 6 years before, a group of people fraudulently seized the company's shares. At the same time, the Complainant stated the ex-CEO sold securities voluntarily, which was confirmed by contractual documents bearing his signature. It is of interest the plaintiff decided to appeal to law enforcers only after he had been decided to be removed from office. Then, according to the Complainant, the ex-executive began to block holding meetings and decision-making on changing the company's top management.

For over three years no investigative actions except for filing petitions for arresting majorities' shares were taken in the framework of initiated criminal proceedings. Meanwhile, given regular arrests, the Complainant could not dispose of his property. That was the reason why he asked the Business Ombudsman for assistance.

Actions taken:

The Council sent written appeals to Kyiv City Prosecutor's Office and the Prosecutor General's Office of Ukraine (PGO) requesting to take control of the pre-trial investigation. The investigator stressed that reasonable time limits for pre-trial investigation had been violated long ago and it was important to make a procedural decision on the case as soon as possible.

The Prosecutor's Office replied that procedural persons in charge found no delays or reasonable terms violations.

The Council continued working on the complaint over eighteen months. The Complainant's issue was repeatedly brought up for consideration at the Working Group meeting with the PGO.

Result achieved:

In November 2019, the Council signed a Memorandum of Cooperation with the PGO. The Complainant's case was passed to the new PGO top management.

ACTIONS OF LOCAL GOVERNMENT AUTHORITIES



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
Government authorities land plots	9	0	1	10
Government authorities rules and permits	1	2	0	3
Government authorities other	8	3	9	20

Subject: Local government authorities — land plots

BC successfully manages to get fair payment for lease of land

Subject of complaint:
Zaporizhzhia Oblast State Administration, the Main Department of the State Geocadastre in Zaporizhzhia Oblast

Complaint in brief:

A foreign company that planned to build a solar park in Zaporizhzhia Oblast approached the Council.

The company complained against local authorities that violated the terms of the previous agreements reached within the framework of the international cooperation program and transferred the plot to another tenant.

Existence of working arrangements were confirmed by investor correspondence with Zaporizhzhia Oblast State Administration. In addition, according to these arrangements, the Chairman of the village council filed a motion with the StateGeoCadastre of Zaporizhzhia Oblast (StateGeoCadastre) seeking expansion of the boundaries of the village and inclusion of adjacent agricultural lands in its borders. Merging current (63 ha) and new (72 ha) areas would allow creating a 135 ha area required for solar power plant construction by the foreign investor.

Three days later, a private Ukrainian company also approached the StateGeoCadastre of Zaporizhzhia Oblast. The applicant, who did not show interest in the lands of the village before, suddenly wanted to lease the same plot (72 ha) also supposedly for construction of the power facility. The StateGeoCadastre very quickly allowed the Ukrainian company to develop land use documents for the said land plot. Of course, nobody informed the foreign investor thereof.

At the same time, the chairman of Oblast State Administration assured the foreign company director in writing that government agencies supported the project and enclosed a map of the land plot layout for construction of a solar power station. The investor continued to get ready for launching construction process.

Meanwhile, the regional StateGeoCadastre approved all necessary documents and leased the plot to the Ukrainian company. The lease contract was signed, despite the absence of the normative monetary land evaluation ("NGO"). The lease fee was approved in the amount of UAH 56k per year making up 3% of the NGO of the arable land in the oblast. This amount was ten times less than the market value calculated for the foreign investor before.

Only months later, the foreign company learned that the land had been leased to a third party. Shocked and disappointed by the actions of government authorities, the investor turned to the Business Ombudsman Council.

Actions taken:

The Council's investigation revealed several pieces of evidence that the Ukrainian company-tenant could be controlled or related to the former Head of the Main Department of the State Land Agency in Zaporizhzhia Oblast — an authority whose legal successor was the Main Department of the StateGeoCadastre in Zaporizhzhia Oblast.

During five months the Council sent 5 appeals to various government agencies and local municipalities and performed a set of other actions aimed at investigating and resolving this case. In particular, the investigator identified a legal deficiency that occurred during disposal of the land plot — absence of normative monetary evaluation and, accordingly, fairly calculated lease amount and drew the StateGeoCadastre of Ukraine attention to it.

Unfortunately, the complexity and ambiguity of the legal component of the situation made it impossible to achieve a quick positive result. Investigation of possible linkages between the tenant and former or current Ukrainian government agencies officials could not be conducted without engagement of law enforcers agencies through applying to them by a concerned party (e. g. the Complainant) and leaving the land plot would be impossible without lawsuits, initiation of which also required the Complainant's involvement. Realizing that the foreign investor, which did not even come to Ukraine, was not interested in initiating lengthy litigations and criminal cases, the Council began working hard to at least eliminate discrimination of the investor — to establish a fair fee for land use for the power plant for the current tenant.

Result achieved:

Taking into account actual circumstances, the foreign investor decided to reduce the scope of construction and abandoned plans with respect to the second part of the plot. He leased an available plot of 63 ha in Zaporizhzhia Oblast. Thus, the submitted complaint was no longer relevant. Given the positive experience of cooperation with the village council and thanks to the efforts of the BOC and UkraineInvest Investment Promotion Office, one managed to persuade the foreign company not to give up plans to invest in Ukraine.

Besides, the Council managed to ensure a fair evaluation of the land plot, thus having eliminated a legal deficiency and discrimination against the foreign investor. It means that the Ukrainian tenant that appears to be linked to a former official, should now pay for the use of the land about UAH 2 mn a year — it is 40 times more than the previous value and close to the market one calculated earlier for the foreign investor. The case was closed.

Subject: Local government authorities — land plots

Mykolaiv-based company manages to extend land plot lease term with the Council's facilitation

Subject of complaint:
Mykolaiv Regional State Administration (Mykolaiv RSA)

Complaint in brief:

A company with French investments complaining about Mykolaiv RSA omission turned to the Council. Running before the hounds we would like to point out land issues remain the most topical subject in business relations with local municipalities. As it turned out, this complaint was not an exception.

Since 2017 the company has leased a land plot near the quarry where it extracted minerals — kaolin. After enrichment, raw kaolin is used for ceramics production. The company's products are exported to many countries around the world.

Some time before the lease period expired the company appealed to Mykolaiv RSA for its extension. Mykolaiv RSA ignored the Complainant's inquiries for almost a year. During 2018-2019, the company applied five times to Mykolaiv RSA for lease extension, but all appeals were in vain. Despite the actual refusal to extend the lease period, the Complainant continued paying a lease fee.

Realizing that further appeals would not make sense, the Complainant asked the Business Ombudsman Council for help. Moreover, the issue raised was already the subject of the French Embassy's attention in Ukraine.

Actions taken:

During complaint investigation the Council's investigator in charge traced the plot of the "story". In particular, we were interested in the existence of specific legal barriers for extending the lease agreement validity term (such as violation of the agreement terms and conditions with regard to lease payments, misuse of land, approval of certain decisions on inexpediency of extending the lease term) by state or local authorities. Being unable to find any apparent reason for refusal to extend the term of lease, the Council's investigator in charge repeatedly appealed to Mykolaiv RSA in writing emphasizing the necessity for compliance with the good administration principle. This principle requires government agencies to act in the most consistent and predictable manner, while any negative decision for a private individual should be substantiated. In addition, the Council's investigator provided the relevant practice of the European Court of Human Rights illustrating similar cases and containing court criticism of the states that did not ensure proper administration in such an important area as land use. Besides, the Council's investigator in charge made a working visit to Mykolaiv RSA during which he emphasized the need for practical implementation of the good administration principle in Mykolaiv RSA everyday activities.

Result achieved:

With the Council's facilitation Mykolaiv RSA finally extended quarry lease agreement term. The Complainant thanked the Council's team for assistance in resolving the case.

Subject: Local government authorities other

Rubizhne City Council procurement results found unlawful

Subject of complaint:

The Department of Education, Department of Healthcare of Rubizhne City Council

Complaint in brief:

The Council received a complaint from a private heat supplier in Luhansk Oblast. The company complained of violations committed by Rubizhne City Council during heat energy procurement.

In late 2018, the Department of Education of Rubizhne city announced a heat energy procurement tender. The Complainant submitted its proposal. However, the tender was not held because the bid was received only from one company — our Complainant. Shortly afterwards, the State customer announced a new procurement in the form of a negotiating procedure. Such a procedure does not envisage open reception of bids and is appointed in cases where the customer, in particular, argues there is competition on the market. In this case, the customer pointed out the absence of technical competition — its heating networks were hooked up to Supplier 2 networks.

A week later, the story repeated with another state object. The customer announced the tender again, received a bid from our Complainant and the tender was not held. The negotiating procedure was performed. The Supplier 2 was announced the winner.

Simultaneously, the Department of Healthcare of Rubizhne city decided on the contractor for heat energy supply. The Complainant also attended the tender, but its bid was rejected and a negotiation procedure was carried out. This time the negotiating procedure was applied because of force majeure circumstances — winter frosts. The procedure winner was Supplier 2.

Based on tender's results, tender proposals were at a lower price than of the Supplier 2. Realizing that structural subdivisions of the city council violated public procurement, the Complainant addressed the Council. It asked to initiate a check of the actions of the city council by the State Audit Service (SAS).

Actions taken:

The Council's investigator analyzed the circumstances of the case. He drew attention to the fact that use of negotiation procurement procedure in that case was premature because there is competition between heat suppliers on the heat supply market. The Supplier 2

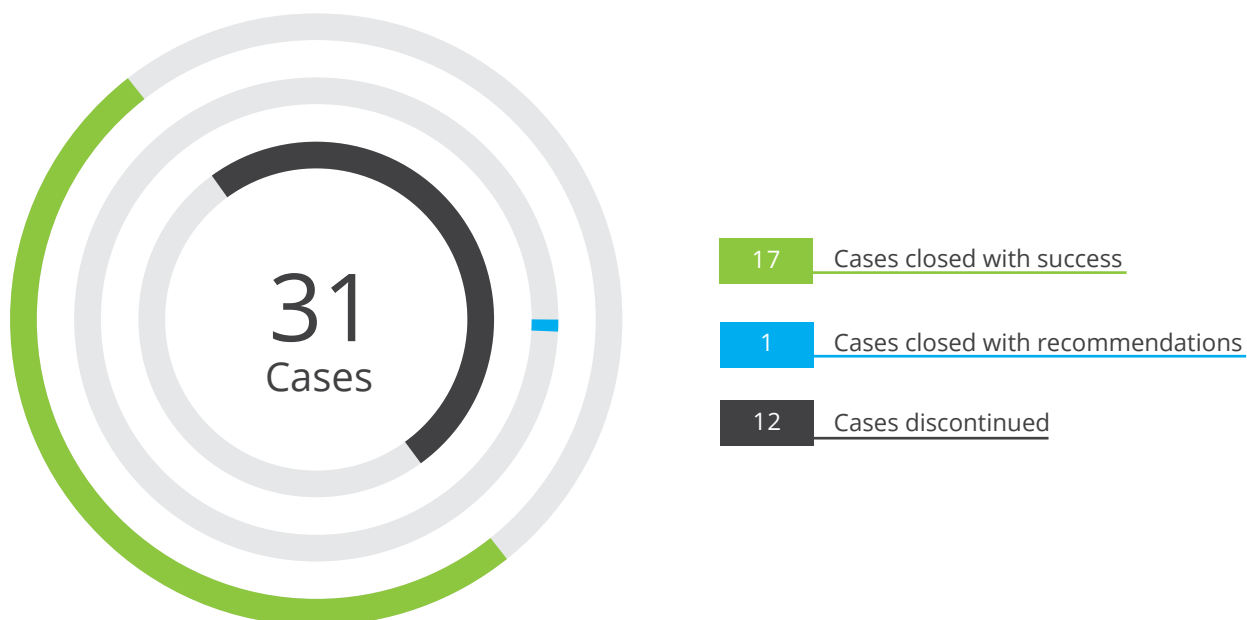
also violated the law after it had been announced the winner. It did not produce heat independently, as stipulated by law, but only acted as an intermediary. It purchased heat from another company and resold it to a state customer. In addition, in accordance with the law, winter cold, which allegedly made the customer apply a negotiating procedure, was not a reason good enough.

The Council addressed the SAS with these and other arguments in writing asking to properly and impartially consider the company's complaint.

Result achieved:

The SAS examined the Complainant's appeal and checked public procurement procedure circumstances. As a result, the audit service discovered a violation of the law in the course of the procurement process and published a solid opinion thereon in the Prozorro system. It means the customer has to either cancel bidding results on its own or the Court has to bind it to. The Complainant thanked the Council for assistance. The case was closed.

MINISTRY OF JUSTICE ACTIONS



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
MinJustice registration department	9	0	9	18
MinJustice enforcement service	8	1	4	13

Subject: MinJustice Registration Service**The BOC helps fight back raider attack against the Lithuanian investor**

Subject of complaint:
Commission on State
Registration Complaints
Consideration (MinJust
Commission)

Complaint in brief:

A Lithuanian investor appealed to the Council. The Complainant informed about illegal takeover of its business.

In 2015, the Lithuanian investor established a credit union in Ukraine. On November 14, 2018, the director of the union accidentally learned that someone had changed the information about the owner and director of the credit group in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine (the Register). As the law enforcers found out, a private notary had entered false information in the Register based on intentionally forged documents and re-registered the Complainant's business to other persons. In addition, the director and the owner of the company didn't approve selling of the company with anyone, nor did they authorize anyone to do it.

The Complainant immediately informed the National Police, the Ministry of Justice, the Embassy of the Republic of Lithuania and the Business Ombudsman Council of the illegal takeover.

Actions taken:

Having thoroughly investigated the circumstances of the complaint, the Council's investigator addressed the Deputy Minister of Justice of Ukraine on state registration and the MinJust Commission in writing with a request to give a thorough and impartial consideration of the case and to provide a reasoned decision.

Besides, the issue was submitted for consideration to the Interdepartmental Commission on Investors' Rights Protection and Counteraction to Illegal Takeover and Seizure of Enterprises. At this meeting, the Deputy Business Ombudsman presented the Complainant's case. After considering the company's complaint, the Commission ordered the Ministry to take personal charge of the case and promptly check the private notary's actions.

Result achieved:

Pursuant to the MinJust order, illegal actions of the private notary were canceled. The founder and director of the Complainant restored their legal rights. The notary was blocked access to the Register and a procedure for revocation of his notarial activities certificate was initiated. The case was closed successfully.

Subject: MinJustice registration department

Raider attack against company from Ternopil successfully fought back

Subject of complaint:
Registration Service of the Ministry of Justice of Ukraine

Complaint in brief:

A company from Ternopil filed a complaint with the Council against a raider attack. The Complainant is a small company providing car repair and maintenance services and owns, in particular, two facilities with an area of 3000 m² in Ternopil. At the end of 2018, the Complainant's real estate objects were re-registered to another owner.

On December 11, a private notary of Dnipropetrovsk Oblast re-registered the Complainant's property to another owner. The reason for it was allegedly the decision of one of the district courts of Donetsk dated back to 2011. Four hours later, a Kyiv notary re-registered the property in favour of a new company. The next day she executed a sale and purchase agreement under which another owner bought two thirds of the property. The head of the company was also illegally changed. The attackers did not stop at that. They issued a series of mortgage obligations for the said real estate objects.

The Complainant promptly reported the National Police on the crime and filed a complaint with the Complaints Commission in the Sphere of State Registration of the Ministry of Justice (Anti-Raider Commission). The Complainant also appealed to the Business Ombudsman Council to protect its legitimate rights and recover the property.

Actions taken:

The Council's investigator examined case materials. She found out Donetsk court decision, as a reason for the first re-registration, was not selected by accident. Since the court is located in an uncontrolled territory of Ukraine, it is actually impossible to check the reality of its decisions.

The Council's investigator participated twice in the Anti-Raider Commission meeting and upheld the company's position. Certain efforts were made to obtain a confirmation from the corresponding court in Donetsk (working in a controlled territory of Ukraine) regarding the fact of absence of the decision based on which property owners had been changed.

Result achieved:

With the Council's facilitation, the Anti-Raider Commission cancelled unlawful registration actions against the company and completely renewed its rights. The Complainant thanked the Council for assistance in resolving the issue. To chase raiders, the company submitted a separate complaint to the National Police.

Subject: MinJustice Enforcement Service

Working meetings with government agencies is effective tool for solving cases

Subject of complaint:
The State Enforcement Service Department of the Ministry of Justice of Ukraine (MinJust Enforcement Service)

Complaint in brief:

A construction company from Zaporizhzhia turned to the Council. The company complained about MinJust Enforcement Service that refused to initiate proceedings for formal reasons.

In late 2018, Zaporizhzhia Administrative Court ordered the State Tax Service to register the Complainant's tax invoices worth UAH4.5 mn. The Complainant sent the corresponding writ of execution to the MinJust, however, in a month upon the document receipt, the Enforcement Service refused the company because of failure to provide documents confirming powers of the signatory. Therefore, the Complainant prepared an additional set of documents and sent them to the MinJust. After a repeated application, another month passed, but no response was ever received by the company.

Feeling that the MinJust deliberately delayed the enforcement of a court decision and sent only formal replies, the company turned to the Business Ombudsman Council for support.

Actions taken:

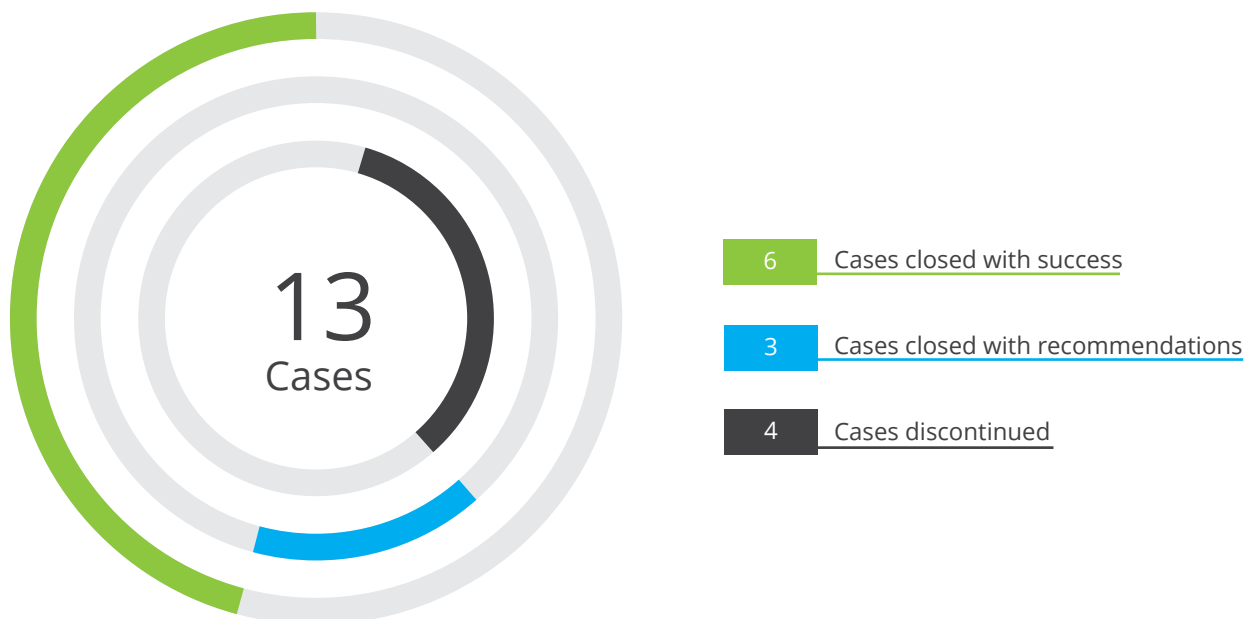
Considering a possible violation of the Complainant's rights and legitimate interests, the Council's investigator asked the MinJust in writing to check the circumstances of the case and cease the Enforcement Service malpractice. Instead, the company received a new refusal by the MinJust — a full name and patronymic of the official who issued it was not indicated in the writ. The Council had to apply to the MinJust again. The investigator stressed that it was unlawful to refuse to initiate proceedings on the court decision enforcement with such argumentation.

In an effort to establish a constructive dialogue with the government agency, the Council used another tool envisaged by the Memorandum of Cooperation with the Ministry of Justice. Thus, an Expert Group meeting with the participation of the Deputy Ombudsman, Council's investigators and the MinJust experts with the Head of the Enforcement Service Department in particular, was held.

Result achieved:

During the meeting, the government agency accepted the Council's arguments. The Enforcement Service canceled the most recent refusal on the same day and initiated enforcement proceedings at the company's request. It would enable the Complainant to refund UAH 4.5 mn of VAT. The case was closed successfully.

STATE COMPANIES



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
State companies abuse of authority	2	0	2	4
State companies other	4	3	2	9

Subject: State companies other actions

AMCU cancels heat energy public procurement results

Subject of complaint:

Special Operations
Rescue Detachment of the
Department of the State
Emergency Service of Ukraine
in Ivano-Frankivsk Oblast
State Enterprise (SE)

Complaint in brief:

A heat energy supplier turned to the Council with a complaint about actions of the enterprise subordinated to the State Emergency Service. The company informed about possible illegal actions of the SE in the process of public procurement.

According to the Complainant, it has been supplying thermal energy on a competitive basis to the SE since 2015, continuously and fully fulfilling its contractual obligations, even despite long delays in payment. In January 2019, the SE decided to hold a tender in the Prozorro system and change the energy supplier, which generally is not prohibited. However, in the conditions description the SE indicated there was no competition in this market, so the

procurement could be made only in the form of the negotiating procedure with one supplier. The buyer chose a potential partner on its own — and it was not the Complainant.

According to the Complainant, applying negotiation procedure is illegal because its existence and work experience with the buyer proves there is competition in this market. The company appealed against the procedure in the Antimonopoly Committee of Ukraine (AMCU). However, right the next day a heat energy procurement contract with the above-mentioned potential partner was published on Prozorro website.

The Complainant addressed the Council with the request to intervene and cease SE illegal actions.

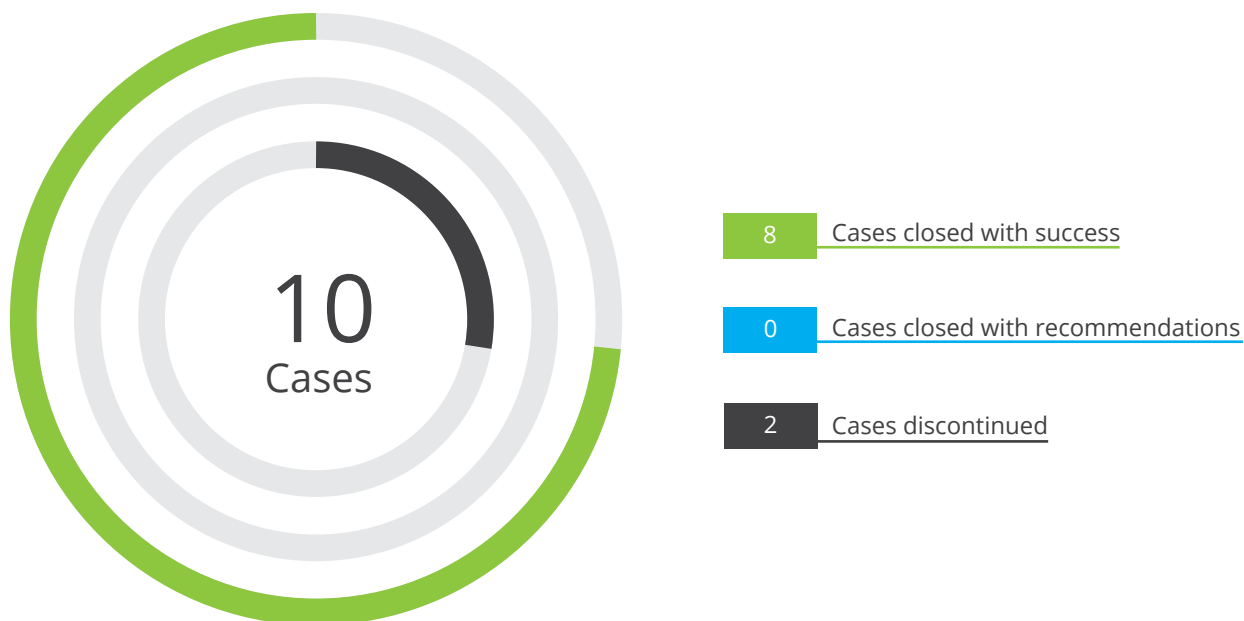
Actions taken:

The Council's investigator thoroughly studied the circumstances of the case and law enforcement practice on the subject of the complaint, and, as a result, upheld the Complainant's position. The Council recommended the Antimonopoly Committee in writing to consider the company's complaint properly and impartially. In addition, the Council's investigator participated in the company's complaint consideration at the meeting of the AMCU Permanent Administrative Panel for Consideration of Complaints on Violation of Legislation in the Sphere of Public Procurement.

Result achieved:

The Antimonopoly Committee Panel accepted the Council's arguments. Tender results were canceled. The case was closed successfully.

STATE SECURITY SERVICE ACTIONS



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
State Security Service procedural abuse	7	0	2	9
State Security Service criminal case initiated	1	0	0	1

Subject: State Security Service procedural abuse

Proceedings against YouControl are finally closed

Subject of complaint:
Central Investigation
Department of the State
Security Service of Ukraine
(SSS)

Complaint in brief:

An IT company providing information services turned to the Council. The company complained about SSS procedural abuse.

In 2016, law enforcers initiated a pre-trial investigation against the company. It was charged with illegal receiving of information and interfering with automated systems operation. Accordingly, the company's office, the employees' and their relatives' apartments were searched. Computer equipment, documents and monetary funds were seized. The company's activities were seriously limited.

In the summer of 2018, the court set a time limit for completing the pre-trial investigation on a case — 2 months. However, at the time of the Complainant's appeal to the Council, the pre-trial investigation was ongoing.

Actions taken:

The Council recommended the SSS and the Prosecutor General's Office (PGO) in writing to comply with reasonable time limits of the preliminary investigation, particularly to implement the court ruling. However, the SSS replied the PGO planned to challenge the corresponding court decision.

Therefore, the Council brought up the Complainant's issue for consideration of the Expert Group with the SSS and the PGO, where it expressed its position. The investigator stressed the court ruling on completion of the pre-trial investigation was valid and should be complied with.

Result achieved:

With the Council's facilitation, the Anti-Raider Commission cancelled unlawful registration actions against the company and completely renewed its rights. The Complai

Subject: State Security Service procedural abuse

Law enforcers pressure on company from Dnipropetrovsk Oblast stopped

Subject of complaint:
Nikopol Department of the State Security Service of Ukraine Office in Dnipropetrovsk Oblast (SBU)

Complaint in brief:

An electronic equipment distributor turned to the Council. The company complained about law enforcers pressure on its economic activities.

According to the Complainant, SBU officers, having travelled a 236 km distance, came to the company CEO's home on a day-off to allegedly check the company's location. Moreover, law enforcers urged the CEO to certify in writing that one of his counterparties was a fictitious company. According to the Complainant, after the CEO refused, the pressure intensified. The company's CEO was summoned for an interview. However, no official suspicion from law enforcers was put forward to him.

Having no idea what was going on and what actually caused such an interest on the part of law enforcers, the Complainant appealed to the Council, the Prosecutor General's Office of Ukraine and the State Bureau of Investigations (DBR).

Actions taken:

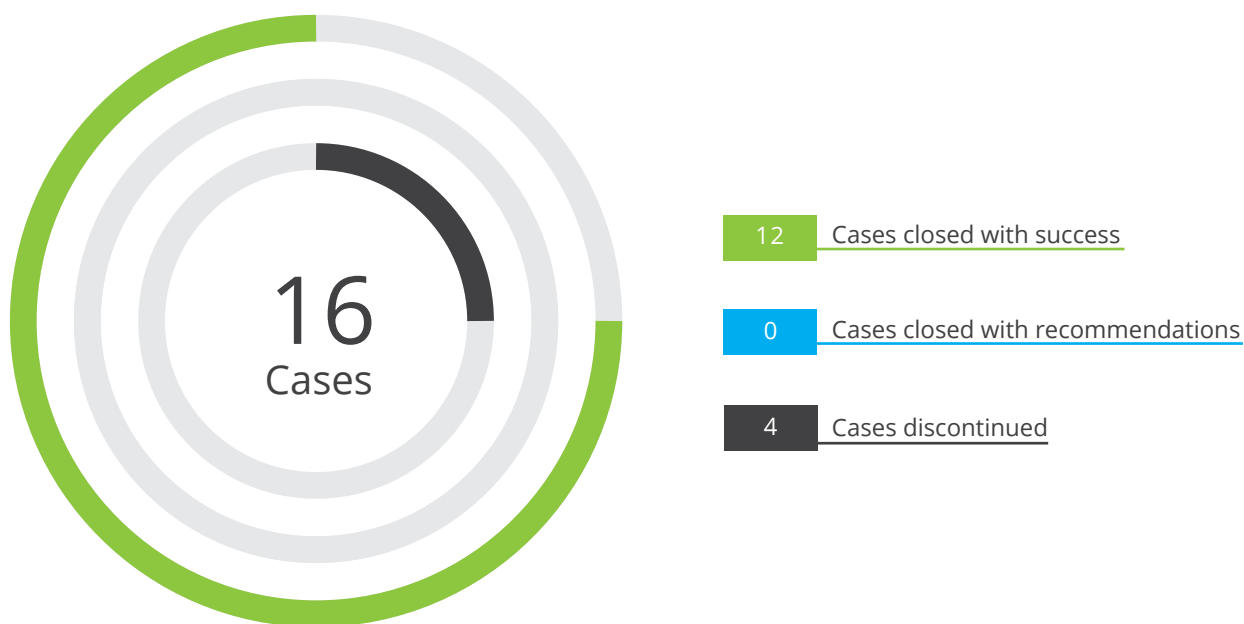
The Council considered the company's complaint and recommended the PGO and the DBR to check SBU officers' actions. However, DBR did not see sufficient grounds in their actions to

launch criminal proceedings. The PGO forwarded the Council's appeal to the Military Prosecutor's Office of Southern Region of Ukraine, and the latter — to its garrison in Dnepropetrovsk. The complainant's appeal finally came to SBU.

Result achieved:

SBU accepted the Council's arguments and took the Complainant's information into account in its internal operative activities. Law enforcers pressure on the company's business stopped. The company thanked the Council for assistance in resolving the case.

LEGISLATION DRAFTS/AMENDMENTS



Subject	Case closed with success	Case closed with recommendations	Case discontinued	2019 Total
Legislation drafts/amendments	6		2	8
Deficiencies in regulatory framework state regulators	3		1	4
Deficiencies in regulatory framework other	3		1	4

Subject: Ministry of Health of Ukraine (MHU)

With the assistance of Council, MOH registers disinfectants

Subject of complaint:
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 №178 dated 14.03.2018) to the Order of 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 the 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 Health Department was responsible for the consideration of applications on disinfectants registration. Though, 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 Complainants informed the Council on the successful state registration of their disinfectants.

3. SYSTEMIC ISSUES IDENTIFIED AND RECOMMENDATIONS TO STATE BODIES

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 2020.

3.1. Systemic issues identified

(Clause 5.3.1 (h) of Rules of Procedure)

Tax issues

Tax issues remain the major subject of complaints lodged with the BOC. The major group (38%) of tax-related issues — tax inspections — performed a sharp increase as compared to previous years. We decided to check, whether the number of total appeals submitted to the STS correlates with this trend and reached some interesting conclusions:

	Challenged tax decisions	Cancelled tax decisions	Share of tax decisions cancelled in favor of the complainant
2019	32,634	6,403	20%
2018	23,366	3,743	16%
2017	15,152	1,720	11%

Source: <https://tax.gov.ua/diyalnist-/pokazniki-roboti/vregulyuvannya-podatkovih/apelyatsiyna-praktika/page1>

The data above shows, that since 2017 the number of challenged decisions has increased over two times from 15K to 32K. In the meantime, the number of successful administrative appeals for taxpayers increased almost four times: from 1720 to 6403. Thus, the share of successfully reviewed tax decisions gained 9pp and amounted to 20% by the end of 2019.

Interestingly, the increase in the number of complaints was not associated with the increase in the volume of control and supervisory activities — on the contrary, it showed a decline. The volumes of additional payments according to such audits findings were not on a rise either:

	Number of documentary audits of legal entities	Volume of additional payments according to audits findings
2019	13,877	UAH 13.14 bn
2018	18,357	UAH 13.23 bn
2017	19,169	UAH 16.3 bn

* Source: <https://tax.gov.ua/diyalnist-/pokazniki-roboti/kontrolno-perevirochna-robot/>

It seems like there are two interrelated trends:

- 1) the administrative appeal procedure in the State Tax Service of Ukraine is becoming increasingly popular with taxpayers;
- 2) it becomes a more effective remedy.

The BOC seems to have contributed to these trends. In 2019 we received 371 complaints on tax audits (with the total number of challenged appeals in the STS of Ukraine being 24,769). Thus, the share of complaints we were involved in was approximately 1.5% (on average, we participated in 1 out of 67 appeals).

Actions of law enforcers

Complaints regarding malpractice of **law enforcement bodies**, the second most widespread subject of appeals after tax issues, went down in 2019. As compared to the previous year, companies submitted fewer appeals regarding actions and inactions of all law enforcers without exception. However, the systemic issue in focus concerns

initiating **ungrounded criminal proceedings** under Article 212 of the Criminal Code of Ukraine. To emphasize the severity of the problem, let us provide the official PGO statistics on the number of registered criminal offenses and their pre-trial investigation results:

	Criminal proceedings recorded under Article 212 of the Criminal Code of Ukraine	Sent to court with indictment	A share of unsubstantiated criminal proceedings
2019	852	22	97%
2018	1099	39	96%
2017	1009	34	97%

It means the vast majority of opened proceedings with searches and blocking accounts were unjustified, mostly unsubstantiated, and, as a result, business was unable to operate properly. Following our recommendations, almost a quarter fewer criminal proceedings were initiated in 2019 — 852.

However, if we consider, that only 22 of them were sent to the court with indictment, it becomes clear it is necessary to implement the Council's systemic recommendation to ban the criminal prosecution of an individual for tax evasion until tax liabilities final settlement.

Non-enforcement of court decisions

Failure to comply with court decisions is another serious issue that we continued to monitor in 2019. Since launch of operations, we have received over 400 of appeals on this matter, with respect to primarily tax authorities and law enforcement

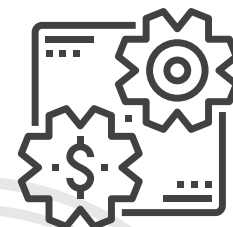
bodies. The problem is that the state body cannot be forced to execute a decision. Coercive mechanisms that work for individuals and legal entities do not work in case of state bodies, responsible for implementation of court decisions.

Raidership

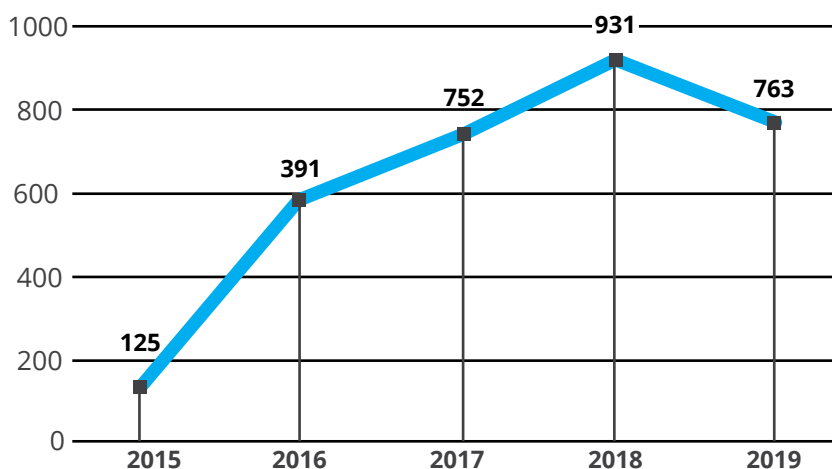
The problem of **property rights protection** remains actual for businesses in Ukraine. There are many cases of so-called "raidership" under which we understand the seizure of assets and / or corporate rights of a legal entity using illegal tools. Typically, raidership is directly or indirectly related to interfering with public registries.

Since May 2015, we received 114 complaints concerning malpractice of state registrars. We observe an increase in the number of complaints on this matter for the third consecutive year. In 2019, we received 35 such appeals, which is 18% more complaints than in 2018.

3.2. Individual recommendations to relevant authorities and implementation rate



Number of recommendations issued in 2015-2019



Total number of recommendations issued since launch of operations:

2948

Number of recommendations implemented:

2675

Number of recommendations subject to monitoring:

114

Number of recommendations not implemented:

159



Government agencies whom the BOC issued individual recommendations in 2015-2019 and ratio of implementation

	Issued	Implemented	Implemented to issued
State Fiscal Service	2010	1875	93%
National Police of Ukraine	151	123	81%
Prosecutor's Office of Ukraine	131	107	82%
Local government authorities	118	87	74%
Ministry of Justice	104	96	92%
Ministry for Development of Economy, Trade and Agriculture of Ukraine	65	55	85%
Ministry for Communities and Territories Development of Ukraine	56	55	98%
State Security Service	54	53	98%

	Issued	Implemented	Implemented to issued
Ministry of Energy and Environmental Protection of Ukraine	50	46	92%
Parliament, the Cabinet of Ministers, the President of Ukraine	30	27	90%
State Enterprises	29	25	86%
Ministry of Social Policy and Labour of Ukraine	27	25	93%
Ministry of Finance of Ukraine	22	19	86%
Ministry of Infrastructure of Ukraine	17	13	76%
Ministry of Internal Affairs	14	11	79%
Ministry of Health of Ukraine	13	12	92%
National Commission for State Regulation of Energy and Public Utilities	11	10	91%
Antimonopoly Committee of Ukraine	10	7	70%
Commercial and other courts	7	7	100%
State Funds	5	2	40%
National Bank of Ukraine	5	2	40%
NABU	4	4	100%
State Emergency Service of Ukraine	1	1	100%
Ministry of Education and Science of Ukraine	1	1	100%
National Council of Ukraine on Television and Radio Broadcasting	1	1	100%
Other	11	10	91%
Grand Total	2948	2675	91%

By the end of 2019, state bodies have implemented 91% of case-by-case recommendations, issued by the Council in 2015-2019.

Out of all 2948 recommendations, 68% were addressed to the ex-State Fiscal Service. Nevertheless, this group of state bodies performed a high ratio of implemented recommendations — 93%.

Among state bodies, to whom we issued 30+ recommendations, following agencies also performed above the cumulative figure of 91%: the Ministry of Justice (92%), the Ministry for Communities and Territories Development of Ukraine (98%), State Security Service (98%), Ministry of Energy and Environmental Protection of Ukraine (92%), Ministry of Social Policy and Labor of Ukraine (93%).

The lowest ratio of implemented recommendations is recorded for local government authorities (74%), the National Police (82%), the Prosecutor's Office (82%), the Ministry for Development of Economy, Trade and Agriculture (85%), as well the block of the Parliament, the Cabinet of Ministers, the President of Ukraine (90%).

3.3. Solved systemic issues arising from investigations

State body	Issue arising from the investigation	Result achieved with the BOC facilitation
The Cabinet of Ministers	The Council faced a gap in the legislation on import of demilitarized equipment. In practice, it was not easy to figure out which government agency is responsible for issuing permits for civil use.	<p>The Ministry of Defense and State Service for Export Control only forwarded the appeal to one another. The Ministry of Economic Development and Trade (MEDT), which implements export control policy, was involved in the dialogue, and eventually the issue was brought up at the CMU leadership team level. When it became clear that a quick compromise could not be achieved, the parties decided to initiate amendments to the legislation.</p> <p>In the summer of 2018, the President enacted the National Security and Defense Council decision "On Improvement of the State Policy on Provision of the Armed Forces of Ukraine and Other Military Units with Foreign Produced Defense Products, as well as Promoting Cooperation of Defense Enterprises of Ukraine with Foreign Partners." Only at the beginning of 2019, based on the experience of other market players, we made sure that the procedure worked indeed.</p>



3.4. Solved systemic issues from systemic reports



Systemic Report

PROBLEMS WITH CROSS-BORDER TRADING IN UKRAINE



Systemic Report

MAIN PROBLEMS FACED BY BUSINESS IN CUSTOMS SPHERE

Issue

Delays in checking and accepting customs declarations mean goods detentions at customs, failure of delivery terms, additional logistics costs for businesses.

BOC's recommendation

To transfer customs control from the stage of customs clearance to the post clearance audit. This means that customs procedures are applicable not at the checkpoint, but after the completion of their customs clearance and release of goods into free circulation.

Actions taken by government agencies

The draft law "On amendments to the Customs Code of Ukraine" was adopted in the first reading, which, in particular, envisages introduction of a new form of control — post clearance audit.



Systemic Report

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

Issue

The lack of a clearly defined procedure for assigning postal addresses to finished construction sites. Prior to this, the provision of postal addresses was carried out by local authorities at their own discretion. This often resulted in abuses: artificially delaying the procedure and creating further obstacles to registration of new real estate objects.

BOC's recommendation

Establish a single, transparent and business-friendly procedure for assignment of postal addresses to construction sites and real estate objects.

Actions taken by government agencies

The Cabinet of Ministers of Ukraine adopted a comprehensive regulation, initiated and developed by MEDT, which defines the required procedure for assigning postal addresses.



Systemic Report

MAIN PROBLEMS FACED BY BUSINESS IN CUSTOMS SPHERE

Issue

Court practice developed in Ukraine in such a way that administrative courts, — when cancelling the decision of the customs, which resulted in excessive payment of customs duties (on adjustment of customs value, determination of the UCGFEA code of goods, etc.) — at the same time tend not to incorporate to resolatory part of their decisions an explicit reference to obligation to collect excessively paid customs duties from the state budget in a plaintiff's (declarant's) favor. Such a claim, if lodged, would be considered premature.

Hence, in practice customs authorities sometimes refuse

issuing such conclusions by arguing that a court, — while cancelling a decision of the customs on adjustment of customs value or determination of the UCGFEA code of goods, — has not directly obliged anyone to refund excessively paid customs duties to a declarant.

As a result, declarants have to go to court again with a claim seeking inactivity of the customs authorities to be acknowledged unlawful and to oblige the latter to prepare and send the relevant conclusion to the State Treasury Service.

BOC's recommendation

To introduce amendments to the Procedure for Refund of Advance Payments (Prepayment) and Erroneously and/or Excessively Paid Amounts of Customs Duties, approved by the Order of the Ministry of Finance of Ukraine, dated July 18, 2017 No.643, which would enable a declarant to attach to the application for refund of erroneously and/or excessively paid amounts of customs duties a court decision rendering illicit or acknowledging unlawful decision or actions on the part of SFS authorities that led to (resulted in, caused) erroneous and/or excessive payment of customs duties (i.e., as an alternative to enforcement letter (writ) issued by a court and/or a court decision explicitly authorizing refund of certain amount of customs duties).

Actions taken by government agencies

On April 12, 2019 the Order of the Ministry of Finance of Ukraine, dated February 22, 2019 No.80 "On Introducing Amendments to the Procedure for Refund of Advance Payments (Prepayment) and Erroneously and/or Excessively Paid Amounts of Customs Duties" (the "Procedure") entered into legal force.

The said act of secondary legislation finally eliminated the controversial requirement to attach to the application on refund the court's enforcement letter (writ) and/or the court decision that came into legal force (if any) explicitly ordering refund of excessively paid amounts of customs duties.

Hence, currently the paragraph 16 of Clause 3 of Section III of the Procedure reads as follows:

"The following shall be attached to the application:

[...]

the court's enforcement letter (writ) and/or the effective court decision (if any) rescinding decision of the customs authority of the SFS, which led to the appearance of erroneously and/or excessively paid amounts of customs duties, other fees as well as penalties;

[...]".



Systemic Report

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

BOC's recommendation

To increase the threshold amount of actual amounts due to be paid to the budget (arising from the unpaid taxes, levies and unified social tax), triggering treatment of such action on the part of taxpayer as a criminal offence.

Issue

A fair share of complaints received by the Council purport challenging groundless launching of criminal proceedings under Article 212 of the Criminal Code of Ukraine (tax evasion).

According to the statistics disclosed by the Prosecutor General's Office of Ukraine, in 2018, pre-trial investigation authorities have commenced (registered) 1099 criminal proceedings under Article 212 of the Criminal Code of Ukraine. Nonetheless, only 39 ended up with the actual "act of conviction" and were filed with the court (almost a similar figure of 34 indictments was for 2017).

Another factor explaining why the practice of commencing criminal proceeding for tax evasion became

more widespread is that since 2011 (when the Tax Code entered into force) the threshold has, de facto, decreased in comparison with its original equivalent in USD (i.e., from approximately USD 59,000 in 2011 to some USD 39,000 at the beginning of September 2019). Hence, almost every tax audit with a significant amount of taxes (in 2018 it was the amount of UAH 881 000 and in 2019 already UAH 960 500) resulted in opening a criminal case for tax evasion against the officials of businesses.

Thus, the analysis results of the complaints received by the Council gave the reason to assert the importance of amending legislation to decrease the number of groundless opening of criminal proceedings under Article 212 of the Criminal Code of Ukraine.

Actions taken by government agencies

On September 25, 2019 the Law № 101-IX "On Introducing Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine Aimed at Reducing Pressure on Business" entered into legal force.

The said Law increased thresholds for bringing persons to liability under Article 212 of the Criminal Code of Ukraine, — namely increased the size of a significant, large and especially large amount of actual non-receipt of funds in the budget from 3000 (UAH 2 881 500), 5000 (from 4 802 500 UAH) and 7000 (from UAH 6 345 500) non-taxable minimum incomes. Therefore, from now on for the

opening of criminal proceedings under part 1 of Art. 212 of the Criminal Code of Ukraine the threshold amount has increased from UAH 960 500 to UAH 2 881 500.

Thus, by adopting the Law № 101-IX, the Council's systemic recommendation — i.e., to increase the threshold amount of actual sums due to be paid to the budget (arising from the unpaid taxes, levies), triggering treatment of such action on the part of taxpayer as a criminal offence — was finally implemented. Such changes should reduce the pressure on business and thus can be considered quite positive.

¹ https://www.gp.gov.ua/ua/stst2011.html?dir_id=113897&libid=100820&c=edit&_c=fo#



Systemic Report

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

Issue

An equity contribution is a quasi-tax on construction, which is formally paid by the developer, but actually assigned to the buyer of real estate. Such a contribution not only increases the cost of investment in Ukraine, but also, due to the large discretion of local authorities, is often extremely corrupt.

BOC's recommendation

To cancel the obligatory equity contribution for developers.

Actions taken by government agencies

Implementation of this recommendation is envisaged in the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Encouraging Investment Activity in Ukraine", which was signed by the President on October 11, 2019.

The bill proposes to abolish the obligatory payment of 4% contribution to the development of the locality's infrastructure from the cost of housing construction and 10% — from the cost of non-residential construction.



Systemic Report

MAIN PROBLEMS FACED BY BUSINESSES IN CUSTOMS SPHERE

Issue

Implementing measures aimed at ensuring due protection of intellectual property rights (IPR) while transferring goods across customs border is a part of Ukraine's international commitments.

At the time of preparation of the Systemic Report, these measures were implemented in the Ukrainian legislation only partially.

Hence, business kept arguing that customs authorities were quite reluctant to exercise measures to combat IPR infringements.

Therefore, it appeared necessary to continue adapting the Ukrainian customs legislation to *acquis communautaire* (unified legislation of the European Union) in part of IPR protection.

BOC's recommendation

To prepare amendments to the Draft Law of Ukraine No.4614 dated 06.05.2016 "On Introducing Amendments to the Customs Code of Ukraine to Ensure Protection of Intellectual Property Rights While Moving Goods Across Customs Border of Ukraine" No.4614 dated 06.05.2016; or to introduce an alternative draft law to ensure implementation in Ukraine of the requirements set forth in (i) Regulation (EC) No 608/2013 of the European Parliament and of the Council regarding customs enforcement of intellectual property rights; as well as (ii) Commission Implementing Regulation (EU) No. 1352/2013 establishing the forms provided for in Regulation (EU) No 608/2013.

Actions taken by government agencies

The recommendation was largely implemented due to adoption of the Law of Ukraine No. 202-IX of 17.10.2019 "On Introducing Amendments to the Customs Code of Ukraine to Ensure Protection of Intellectual Property Rights While Moving Goods Across Customs Border of Ukraine", which entered into force on November 14, 2019.



Systemic Report

COMBATTING RAIDERSHIP:
CURRENT STATE AND
RECOMMENDATIONS

Issue

The extraterritoriality principle — originally introduced in Ukrainian legislation back in 2015 — has unfortunately become one of the legislative conditions that actually facilitated raidership attacks against real estate and corporate rights. This principle foresaw the possibility of conducting state registration throughout the territory of Ukraine regardless of the actual location of the object in whose respect the registration action is being made.

In 2016, in order to minimize abuses related to illicit acquisition of various objects, — the principle of extraterritoriality was restricted.

At the same time, rare cases of registrations conducted outside the territory determined for a registration action to be carried out pursuant to the law remains to be seen in practice.

BOC's recommendation

To prevent carrying out registration actions in violation of territoriality principle.

Actions taken by government agencies

On November 02, 2019 the Law of Ukraine "On Introducing Amendments to Certain Legislative Acts of Ukraine Aimed at Protecting Property Rights" No 159-IX dated 03.10.2019 (the "Anti-Raidership Law 2") entered into force.

The Anti-Raidership Law 2 effectively reinstated territoriality as one of the principles of state registration of rights, namely:

- 1) the state registration of property rights and other real rights is carried out at the location of immovable property (Paragraph 1 Part 5 of Article 3 of Law No 1952-IV).
- 2) on the basis of the decision of the Ministry of Justice, the state registration of property and other real rights in certain cases can be carried out within several administrative-territorial units or regardless of the location of real estate (Paragraph 2 Part 5 of Article 3 of Law No 1952-IV).
- 3) the state registration of legal entities on the basis of the documents filed in hard copy (paper form) shall be carried out at the location of the respective legal entity (Paragraph 1 Part 2 of Article 4 of Law No 755-IV).



Systemic Report

SYSTEMIC REPORT
"PROBLEMS WITH
CROSS-BORDER
TRADING IN UKRAINE"

Issue

The main reason requiring changes in legislation is a large number of opaque procedures, which causes corruption schemes in operations with scrap metal.

BOC's recommendation

Amend the Law "On the Scrap Metal," which regulates export and import, to streamline procedures and improve the economic and legal provisions related to scrap metal operations.

Actions taken by government agencies

In progress

The Draft Law of Ukraine "On Amendments to Certain Legislative Acts (concerning unshadowing metallurgical raw materials market and scrap metal operations)" (registration No.2426 of November 12,2019)

The draft law improves regulation of the scrap metal market players activities by:

- simplifying a scrap metal operations procedure;
- reducing unreasonable requirements for business entities performing scrap metal operations, as well as requirements for documenting scrap metal operations;
- abolishing the outdated system of scrap metal separation into household and industrial and related restrictions, thereby eliminating the possibility for corruption abuse by law enforcement agencies through their making unsubstantiated claims against legal scrap yards;
- clarifying state bodies competence in the field of scrap metal operations;
- taking scrap metal operations out of double state control;
- simplifying documenting scrap metal operations with the participation of individuals, procedure and payment for scrap purchased from the population by lifting the ban on cash payments;
- eliminating duplication of government functions in the field of scrap metal operations, cancelling the right of local state administrations to draw up an inspection certificate of specialized enterprises;
- simplifying technical and regulatory requirements for scrap metal suppliers, which only procure (purchase) it without actual processing.

3.5 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 6500 complaints lodged by businesses to challenge various malpractices on the part of government agencies and sub-national governments, 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 government bodies and began monitoring their implementation.

In total, the Council has issued 321 systemic recommendations in 14 reports. During 2019, state agencies took into consideration 16 recommendations, while the Council issued 41 new ones. This is how the overall share of implemented recommendations is 37% and 54% more are in progress of implementation. We haven't commenced yet the implementation of 4% of recommendations, while 5% of them lost their relevance over time.



321
systemic
recommendations



14
systemic
reports*

* We didn't take into consideration the recent report devoted to SMEs "Big challenges for Small Business", issued in February, 2020.

Recommendations issued to state bodies and ratio of their implementation as of December 31, 2019

Recommendations implemented



Recommendations in progress



Recommendations no longer relevant



Recommendations, implementation of which has not started



Below we will briefly describe issues, which we either have solved or continue monitoring based on each systemic report.

Systemic Report

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

JULY 2015



8

Recommendations implementation issued to state bodies:

Implemented	100%	8
In progress	0%	0
No longer relevant	0%	0
Not started yet	0%	0

In 2015, due to the Russian aggression in the eastern Ukraine and the annexation of Crimea, the Ukrainian business faced problems that had not been previously settled by the legislation. Employers couldn't reimburse costs incurred to pay an average salary to employees who have been mobilized for a "specified term" to the Anti-Terrorist Operation Zone (ATO). Following our recommendation, the Cabinet of Ministers (CMU) fulfilled all financial commitments to businesses whose employees were mobilized. The CMU

also improved the special permits system for transporting goods in and out of the ATO zone using a "one-stop-shop" approach. The state-owned enterprise Ukrzaliznytsia took back Ukrainian-owned wagons which were blocked in the annexed territory of Crimea.

We are proud that all the recommendations from our very first systemic report are already implemented, which resulted in the financial impact for the business of over UAH 2 bn.

Systemic Report

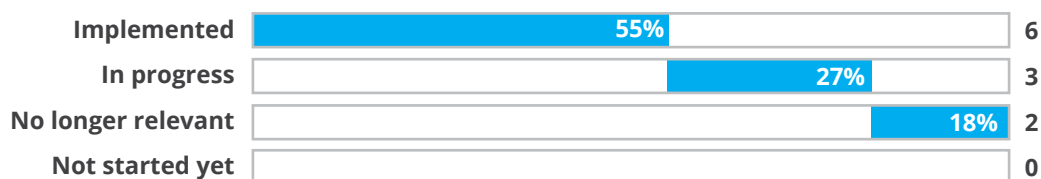
GETTING ACCESS TO ELECTRICITY

JULY 2015



11

Recommendations implementation issued to state bodies:



Back in 2015 — when we selected this topic for our debut report — Ukraine ranked 185th in “Getting Electricity” component of the World Bank’s Doing Business study. As the majority of recommendations were issued to the National Energy and Utilities Regulatory Commission (NEURC), — it is appealing that since 2018 all of them had been implemented by the regulator. In particular, the NEURC introduced fixed rate for getting hooked-up to electricity and ensured that, as a general rule, design documentation is prepared by a power utility. Here the regulator also streamlined approval of design documentation by setting forth fixed timeframes. In addition,

we recommended the Ministry of Energy and Coal Industry (MinEnergy) and the Ministry of Regional Development, Construction, Housing and Residential Services (MinReg) to improve procedure of land plots allotment through expanded use of servitudes; to prepare new and streamline existing zoning/territorial plans; and to improve procurement procedures through wider use of framework contracts by power utilities. Although comprehensive implementation of these recommendations is still pending, Ukraine has, in the meantime, distinctly improved its positions in “Getting Electricity” index — by 57pp to the 128th position in 2020.

Systemic Report

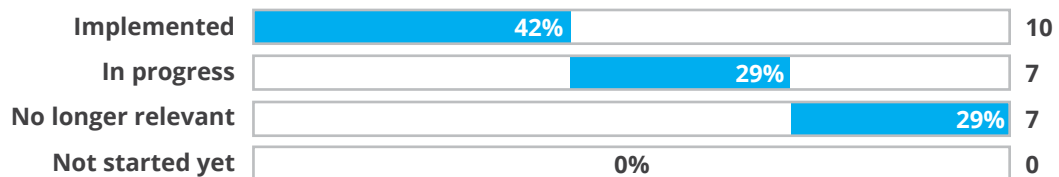
PROBLEMS WITH CROSS-BORDER TRADING IN UKRAINE

OCTOBER 2015



24

Recommendations implementation issued to state bodies:



With this systemic report we aimed to update the obsolete post-soviet legislation in the sphere of international trade. Many significant changes were made based on our recommendations in the area of export-import and related operations (licensing and quotas procedures corresponding to modern world standards and the WTO law, currency regulation, customs issues, etc.).

An important aspect of cross-border trading is regulation of dual-used goods. This is particularly relevant in the light of situation in the eastern Ukraine and the Crimea. In the past period, the State service of export control of Ukraine

optimized internal procedures and established the electronic system for dual-used goods export and security control (EXBS). During 2016-2019, the BOC did not receive complaints regarding the appropriate procedures. Thus, we consider the recommendations fulfilled.

We have also seen progress with export of metal scrap. In particular, on 12 November 2019 a draft Law on the de-shadowing of metal raw materials market and operations with metal scrap No 2426 has been elaborated and passed its first reading by the Verkhovna Rada.

Systemic Report

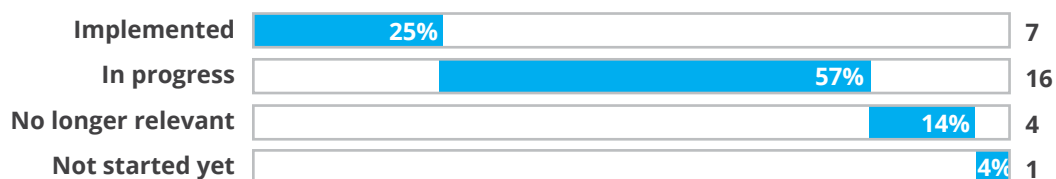
PROBLEMS WITH ADMINISTERING BUSINESS TAXES IN UKRAINE

OCTOBER 2015



28

Recommendations implementation issued to state bodies:



As recommended by the BOC, the former State Fiscal Service of Ukraine (SFS) launched the taxpayer's single electronic office. The tax authority also took into consideration our recommendations and introduced a system of automatic registration of tax invoices, which was substantially improved after the relaunch in Q2 2018, and has largely been properly functioning since then. Driven by a significant number of complaints challenging failure to restore an excessive negative balance on

a taxpayer's VAT account, we recommended the SFS to fix the respective mechanism, which was eventually successfully implemented.

Meanwhile, we continue liaising with the State Tax Service of Ukraine (a successor of the former SFS) to ensure (i) existence of fair and timely administrative appeal mechanism; (ii) prompt enforcement of court decisions; and (iii) existence of effective system of bringing tax officials to various categories of personal liability.

Systemic Report

NATURAL MONOPOLIES VS. COMPETITIVE BUSINESS: HOW TO IMPROVE RELATIONS

JANUARY 2016



32

Recommendations implementation issued to state bodies:



In 2019, the Verkhovna Rada of Ukraine made a great anti-corruption step towards increasing competition in the area of natural monopolies and transparency in construction by canceling obligatory equity contributions. This obligatory equity contribution was nominally intended to improve the infrastructure of the region where the property is being developed, but factually led to serious obstacles due to corruption and increased the cost of construction and getting hooked up to utility networks. Thus on 29 August 2019 the Law of

Ukraine "On Amendments to Some Legislative Acts Regarding Investment Promotion" No1059 has been adopted.

One of the BOC's recommendations was dedicated to regular analysis of consumer complaints by NEURC. On 02 June 2019, NEURC adopted its Resolution No 1333 "On Approval of the Rules for Consideration of Consumer Appeals on the Activities of Energy and Communal Services Operators and Dispute Settlement".

Systemic Report

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

JANUARY 2016



15

Recommendations implementation issued to state bodies:

Implemented	53%	8
In progress	20%	3
No longer relevant	0%	0
Not started yet	27%	4

The famous laws MaskShowStop-1 and MaskShowStop-2 adopted back in 2017-2018 were largely inspired by the systemic recommendations set forth in this report. Noteworthy, these laws were instrumental in eliminating the most brutal attacks by law enforcers on businesses. Now companies rarely deal with law enforcers breaking into premises carrying machine guns and wearing balaclavas. Besides, as contemplated by our recommendations, various procedural rules — to be adhered by law enforcers during searches — became more streamlined. In particular, visits to investigatory judges while seeking rulings authorizing search and searches themselves are now subject to mandatory video and audio recording and advocates are entitled to be present at any stage of this procedural action. Otherwise, it is considered as a violation and evidences collected with the breach of these rules are considered inadmissible in court.

Besides, as recommended by the BOC, the Rada prescribed maximum time limits for conducting pre-trial investigation of criminal proceedings until suspicion notice is furnished. The state body also improved the mechanism for bringing law enforcers to personal liability. Last but not least, as recommended by the Council, in 2019 the Rada substantially increased monetary threshold for bringing to criminal liability for tax evasion.

Among recommendations to the Rada, whose implementation is still pending, is to prohibit launching criminal proceedings based on allegations of tax evasion until tax debt is deemed to be “approved/acknowledged”. Besides, the Rada is expected to introduce maximum time limits for conducting expertize. We also maintain that the Prosecutor General’s Office should develop methodological recommendations to advise persons how to write and lodge notices to report about committed crime.

Systemic Report

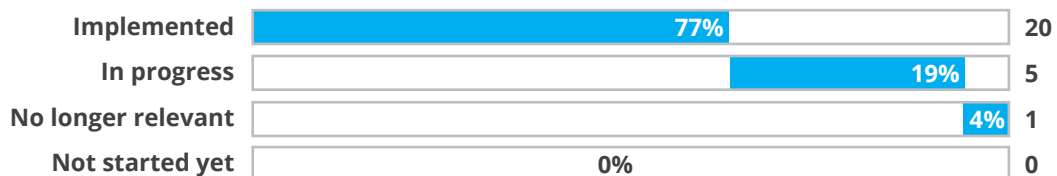
REDUCING THE RISK OF CORRUPTION AND ATTRACTING INVESTMENT TO THE CONSTRUCTION INDUSTRY

JULY 2016



26

Recommendations implementation issued to state bodies:



Since the publication of the BOC's report, the situation in the field of construction regulation has improved significantly. 2019 has been no exception:

On October 17 2019, the Verkhovna Rada adopted the Law No. 199-IX "Law of Ukraine "On Amendments to Certain Legislative Acts Regarding Improvement of the Procedure of Provision of Administrative Services in the Field of Construction and Creation of the Single State Electronic System in the Field of Construction".

This law, in particular, provides for the creation of a unified state electronic system in the field of construction within the city planning cadaster, which will contain in a single information resource all data on the construction market. The information in the system database (except personal data) will be available through the portal of the electronic system. For obtaining administrative and other kinds of services provided for by the law in the construction sector, one can submit documents online, as well as receive such services online. In addition, the electronic system will allow paying for administrative services in the field of construction and fines for offenses in the field of urban development.

Apart from that, the Law provides for the reduction of the list of documents submitted for the receipt of

administrative services in the field of construction; an object under construction and a completed object identifier, which will remain unchanged over the entire object lifetime, and a single procedure for assigning and changing addresses to real estate objects is introduced.

On 29 August 2019, Law of Ukraine No 1059 "On Amendments to some legislative acts regarding investment promotion" canceled obligatory equity contributions.

This obligatory equity contribution was nominally intended to improve the infrastructure of the region where the property is being developed, but actually led to serious obstacles due to corruption and increased the cost of construction and getting hooked up to utility networks

It is envisaged that the implementation of the norms of the Law will enhance Ukraine's position in the World Bank's 'Ease of Doing Business' index in the area of 'Dealing with Construction Permits'.

On 03 October 2019, the Law of Ukraine No 157-IX "On Concession" was adopted envisaging public procurement provisions mentioned by the BOC in its report.

Systemic Report

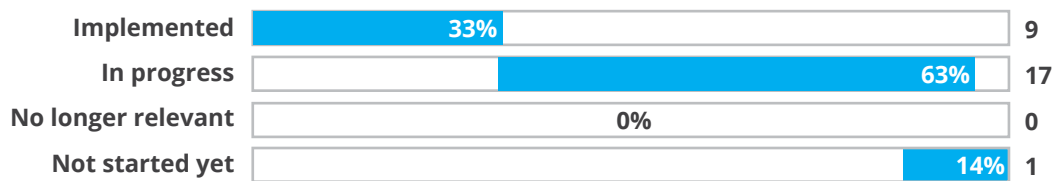
CHALLENGES AND PROBLEMS IN THE SPHERE OF COMPETITION PROTECTION AND OVERSIGHT

NOVEMBER 2016



27

Recommendations implementation
issued to state bodies:



As contemplated by our recommendations, the Antimonopoly Committee (AMCU) has prepared the Draft Concept of the State Policy Aimed at Developing and Protecting Economic Competition in Ukraine. We, therefore, remain hopeful that long-awaited National Competition Development Program will eventually be adopted by the CMU in 2020. It is also noteworthy that the AMCU now specifies main priority areas for the forthcoming year (including markets to be studied) in its annual reports and publicizes the key content of its individual recommendations in selected areas. Besides, necessary secondary legislation in the

sphere of state aid was adopted and the AMCU's respective institutional capacity established and developed.

Key pending recommendations require the Rada to set specific time limits for investigation of cases alleging breach of competition and to introduce modern leniency regime. We also recommend splitting the AMCU's investigatory and decision-making competencies and ensuring that the Methodology for Calculating the Amount of Fines would be documented by the AMCU in the form of a proper legislative act.

Systemic Report

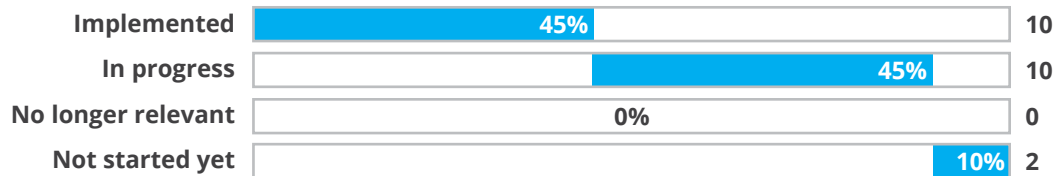
CHALLENGES FOR GOVERNMENT AND BUSINESS IN DEALING WITH LOCAL GOVERNMENT

FEBRUARY 2017



22

Recommendations implementation
issued to state bodies:



In this report we provided recommendations to a wide range of state bodies, many of these recommendations were successfully implemented. Following our advice, state bodies improved the quality and level of administrative services provision, a set of actions have been made to remove legal gaps and foster voluntary unification of territorial communities, etc.

However, the Verkhovna Rada should also establish a constitutional basis for regulating the abuse of powers by local councils.

Systemic Report

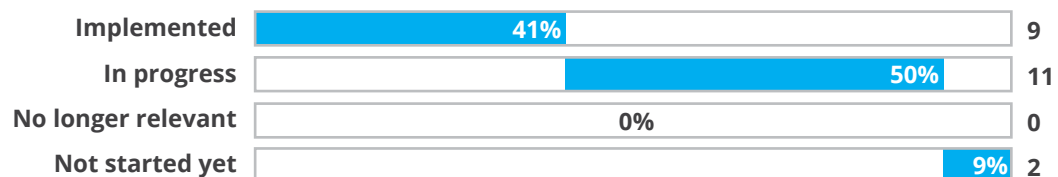
COMBATTING RAIDERSHIP: CURRENT STATE AND RECOMMENDATIONS

JULY 2017



27

Recommendations implementation issued to state bodies:



As suggested in the report, the Rada excluded the possibility of carrying out registration action with regard to immovable property or corporate rights with the breach of territoriality principle. Besides, back in 2018, the Ministry of Justice ensured a full synchronization of data between the Registry of Real Rights and the State Land Cadastre. The long-awaited full technical interaction between the Registry of Real Rights and the Unified State Registry of Court Decisions is yet to be implemented though. In line with our recommendations, the Ministry of Justice

now publicizes results of off-site documentary audits of state registrars. Jurisdictional conflicts in court disputes pertaining to the sphere of state registration were also resolved.

Apart from it, in order to prevent raidership attacks we promote the idea of introducing the system of notifying owners of corporate rights about pending registration actions. The Prosecutor General's Office and the Ministry of Interior are also recommended to develop methodological recommendations for law enforcers to improve investigation of raidership crimes.

Systemic Report

CONTROL OVER CONTROLLERS: STATUS OF CONTROL BODIES REFORM IMPLEMENTATION

JANUARY 2018



11

Recommendations implementation issued to state bodies:

Implemented	27%	3
In progress	73%	8
No longer relevant	0%	0
Not started yet	0%	0

We consider the reform of supervisory authorities as one of successful initiatives of the Ukrainian Government. However, the full implementation of this reform remains considerably behind.

Only 80% of regulatory acts of control bodies are brought in line with the Law of Ukraine "On Amendments to the Law of Ukraine "On Basic Principles of State Supervision (Control)

in the Sphere of Economic Activity Regarding Liberalization of Public Supervision".

Among unfulfilled recommendations, we suggested strengthening the powers of the State Regulatory Service regarding the impact on those government agencies that do not comply with its instructions.

Systemic Report

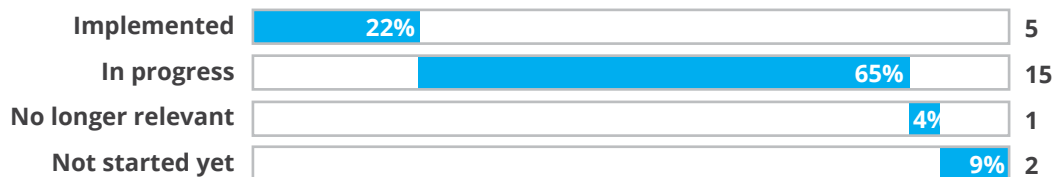
MAIN PROBLEMS FACED BY BUSINESS IN CUSTOMS SPHERE

JULY 2018



23

Recommendations implementation issued to state bodies:



In the course of 2019 a comprehensive legal framework introducing system of authorized economic operators (AEOs) has been introduced in conformity with the requirements of the EU legislation. In the similar fashion Ukraine significantly updated primary legislation governing protection of intellectual property rights while moving goods across the border by implementing requirements set forth in the Regulation (EC) No. 608/2013 of the European Parliament and the Council. Last but not least, the Ministry of Finance implemented our recommendations aimed at

streamlining enforcement of court decisions ordering a refund of excessively paid customs duties and fees.

The Ministry of Finance and the SFS also set as a priority creation of public registry of decisions on goods classification, based on the EU best practices. We also maintain that it is important to ensure a gradual shift from the stage of customs clearance to the post clearance audit as the primary form of customs control. A comprehensive reform of legal framework governing administrative liability for infringing customs rules is also pending.

Systemic Report

BUSINESS FOCUS ON LABOR-RELATED ISSUES

JANUARY 2019



18

Recommendations implementation issued to state bodies:



This systemic report is devoted to the analysis of current labor-related issues and interaction between businesses and respective state authorities. In this report we issued recommendations on how to improve and make more accountable the work of the State Labor Service. Some of the BOC's recommendations were implemented in 2019.

The most notable implemented recommendation was the CMU Resolution No 223 that set Criteria for risk assessment and frequency of control measures in the fields of occupational and industrial safety, hygiene, handling of explosive materials for industrial use, employment of disabled people by the State Labor Service of Ukraine.

Systemic Report

ADMINISTRATIVE APPEAL: CURRENT STATE AND RECOMMENDATIONS

JULY 2019



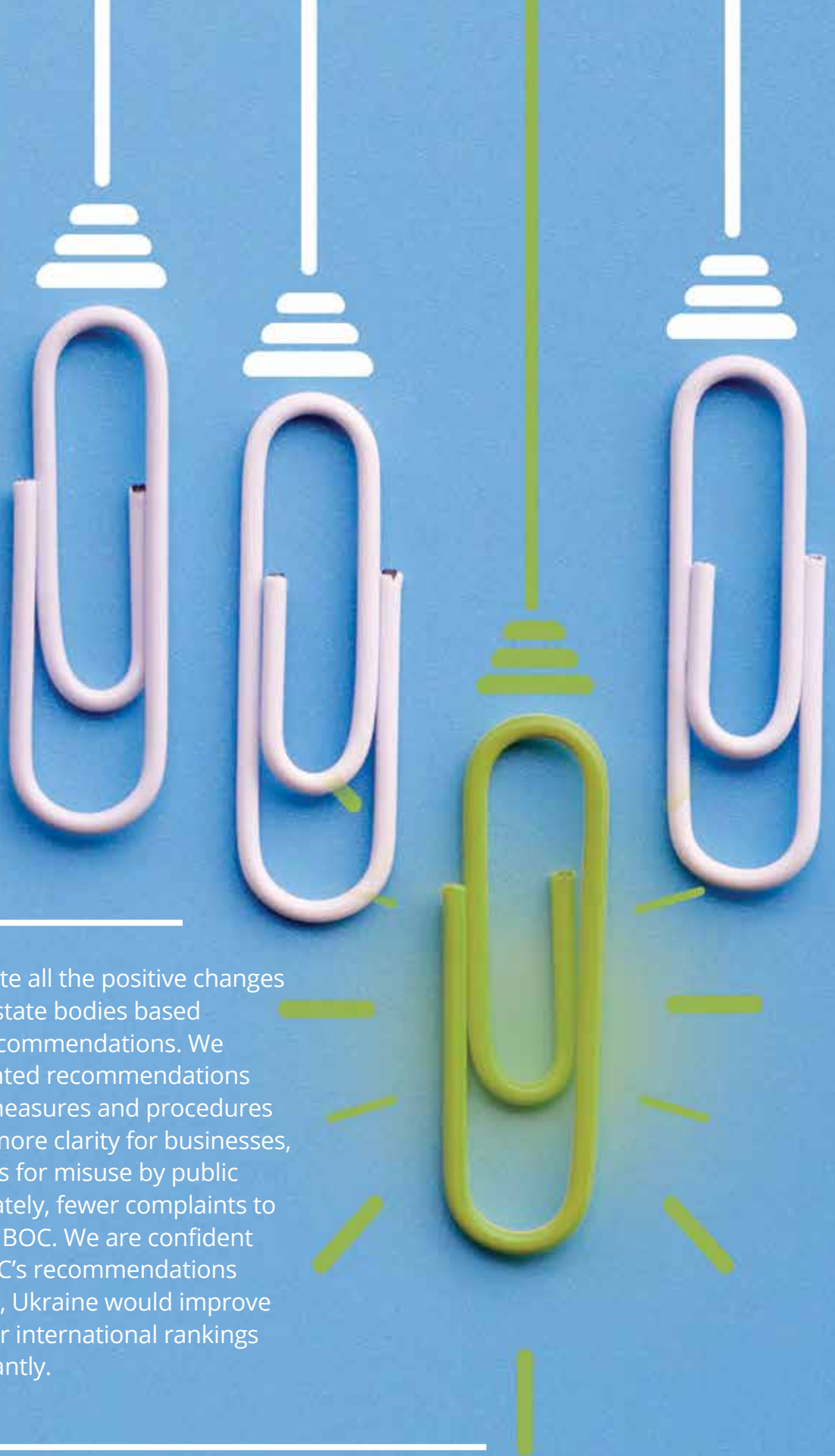
54

Recommendations implementation issued to state bodies:

Implemented	0%	0
In progress	100%	54
No longer relevant	0%	0
Not started yet	0%	0

The report is focused on improving the current state of administrative (internal) appeal procedure. While formulating recommendations we focused on ensuring comprehensive implementation of selected principles of administrative procedure, namely: accessibility and comfort; neutrality (impartiality); openness and transparency; officiality (ex officio); proportionality; timeliness; reasonableness; and efficiency. As the document

calls for systemic, comprehensive and effective approach to resolving the main issues in the field a significant part of our recommendations contemplates adoption of the Law of Ukraine "On Administrative Procedure". We closely cooperate with the Ministry of Justice tasked to prepare the governmental draft to ensure that our recommendations are properly reflected in the text of the law. It is expected that the Rada will adopt this law in the course of 2020.



We highly appreciate all the positive changes introduced by the state bodies based on our systemic recommendations. We consider implemented recommendations as “preventative” measures and procedures aimed at creating more clarity for businesses, fewer opportunities for misuse by public officials, and ultimately, fewer complaints to be lodged with the BOC. We are confident that if all of the BOC’s recommendations were implemented, Ukraine would improve its position in major international rankings even more significantly.

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 government agencies

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, three of them were signed in 2019:



- the Prosecutor General's Office of Ukraine
- the State Tax Service
- the State Customs Service



Previously signed Memoranda with:

- the State Fiscal Service,
- the State Security Service of Ukraine,
- the Ministry of Ecology and Natural Resources,
- the State Regulatory Service,
- the Ministry of Justice,
- the National Anti-Corruption Bureau,
- Kyiv City State Administration,
- the National Police,
- the National Agency on Corruption Prevention.

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.

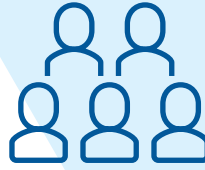
In 2019, we held 63 expert group meetings with the following state bodies:

	Number of expert group meetings	Number of cases addressed
State Fiscal Service	36	33
National Police	5	60
Ministry of Ecology and Natural Resources	8	29
Prosecutor's Office	6	49
State Security Service	4	19
Kyiv City State Administration	2	8
Ministry of Justice	2	5
Total	63	203

4.2. Regional compliance events with USAID and UNIC

UNIC

Jointly with the Ukrainian Network of Integrity and Compliance, we continued the tradition of holding educational events in regions of Ukraine.



With **250**

guests altogether in all cities, we talked about how the Business Ombudsman Council can help entrepreneurs to solve problems with government agencies with a focus on labor law issues.

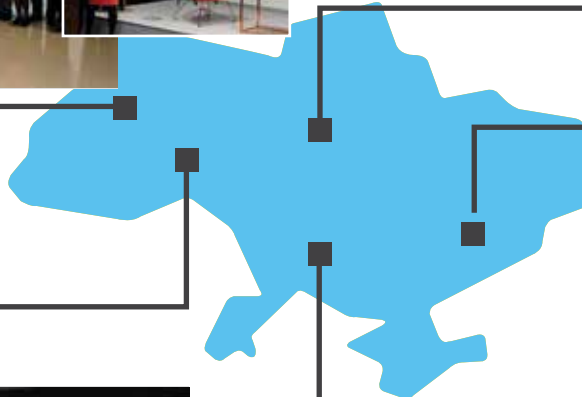


LUTSK
November 13, 2019

In November-December 2019 we visited:



CHERKASY
November 28, 2019



KHMELNYTSKYI
November 11, 2019

MARIUPOL
November 21, 2019



MYKOLAIV
December 3, 2019



Events were organized by the UNIC with the support of the Business Ombudsman Council, the Embassy of the Kingdom of the Netherlands in Ukraine, the Chamber of Commerce and Industry of Ukraine.

The BOC believes that best practices in implementing anti-corruption programs presented by successful companies will encourage state and private enterprises to enhance their business integrity.

In order to get our message to stakeholders throughout the country, we regularly visit various oblasts of Ukraine on business trips. In 2019, we had two series of regional events, co-organized with our partners from the USAID Competitive Economy Program (USAID CEP) in Ukraine and the Ukrainian Network of Integrity and Compliance (UNIC).

USAID CEP

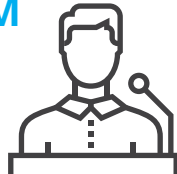


In 2019, the Ukrainian Government had to complete the implementation of the Strategy for SME development until 2020 and develop a new strategic document in this area. That is why the Business Ombudsman Council devoted its new systemic report to evaluation of the Strategy implementation and issue recommendations for further public policy prospects in this area. USAID CEP supported the BOC in assessing the current state of the Strategy implementation and identifying major gaps in policy, regulatory burdens and administrative barriers for SMEs as well as improvements, which can be expected in the respective areas.

During regional seminars

BUSINESS INSPECTIONS: MAIN CHALLENGES AFTER THE MORATORIUM

for small and medium-sized
businesses we



- 1** advised local entrepreneurs how to pass inspections of supervisory authorities,
- 2** discussed how to address recordkeeping and reporting issues
- 3** explained them how to improve the risk management ability inter alia.

300
guests from
various regions

An icon consisting of five stylized human figures arranged in a circle, representing a group of people or guests.

During these events, special focus groups meetings with entrepreneurs were conducted. In a facilitated discussion representatives of business shared their issues in dealing with state bodies.

Focus groups in 7 oblasts were then supplemented by online questionnaires.

In general,

268

entrepreneurs took part in the research.

Results of discussions in focus groups

as well as an additional on-line questionnaire on the same topic conducted after the regional tour were used for shaping recommendations for a new strategic document on SMEs development to be further processed and approved by the Government of Ukraine.



Chernihiv
November 14, 2019



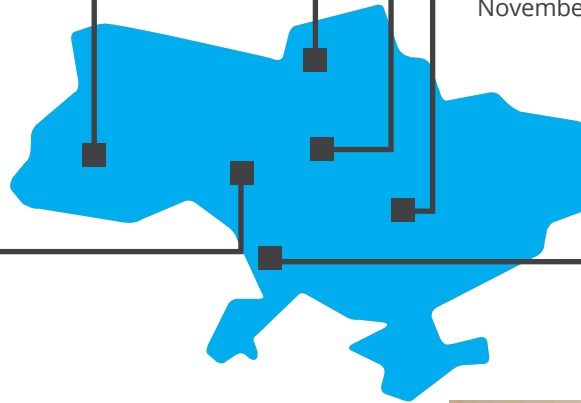
Cherkasy
October 18, 2019



Ivano-Frankivsk
November 4, 2019



Zaporizhzhia
November 19, 2019



The Council visited
6 Ukrainian cities

Vinnytsia
October 28, 2019



Odesa
October 21, 2019



4.3. 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 was cited in the media

24 500+
times

100%
mentions
being positive
neutral

70%
of them –
constructive

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

*based on media
monitoring by ECOSAP*

The estimated advertising value of the BOC publications in 2019 was

UAH
7,1mn

and since launch of operations this figure now exceeds

UAH **23,3mn**
based on newspaper advertising rates, circulation and page displays.

In 2019, we arranged appearances of our speakers on TV



and radio



Our interviews and articles were published in the leading Ukrainian media:

Information agencies



Business media



Legal media



International blogs:



Life-style platform:



SOCIAL NETWORKS

We also actively use social media to get our message through.

We pay close attention to:



Facebook

@BusinessOmbudsmanUkraine)

5000+ followers so far (no paid ads, organic reach only) getting the message in front of around 10,000 people in each post. We use Facebook to share information about our Office, our work, and news of interest in the oversight field.



LinkedIn

@Business Ombudsman Council

We constantly keep the business community updated about our recent developments.



Twitter

@Bus_Ombudsman

We use this channel to quickly get our message out for the English-speaking audience.



YouTube

@Рада бізнес-омбудсмена

We produce useful and emotional videos on submitting complaints, cast success stories of our complainants, share TV slots with our speakers. In 2019, we added 50 new videos to our channel and gained over 2000 views. We believe that this social medium enables us to build trust and authority with our audience.



Instagram

@business_ombudsman_council

Instagram account enables us to display our work environment and gives a great opportunity to connect on a deeper level with our online audiences by sharing with them what's important to our company's core values.



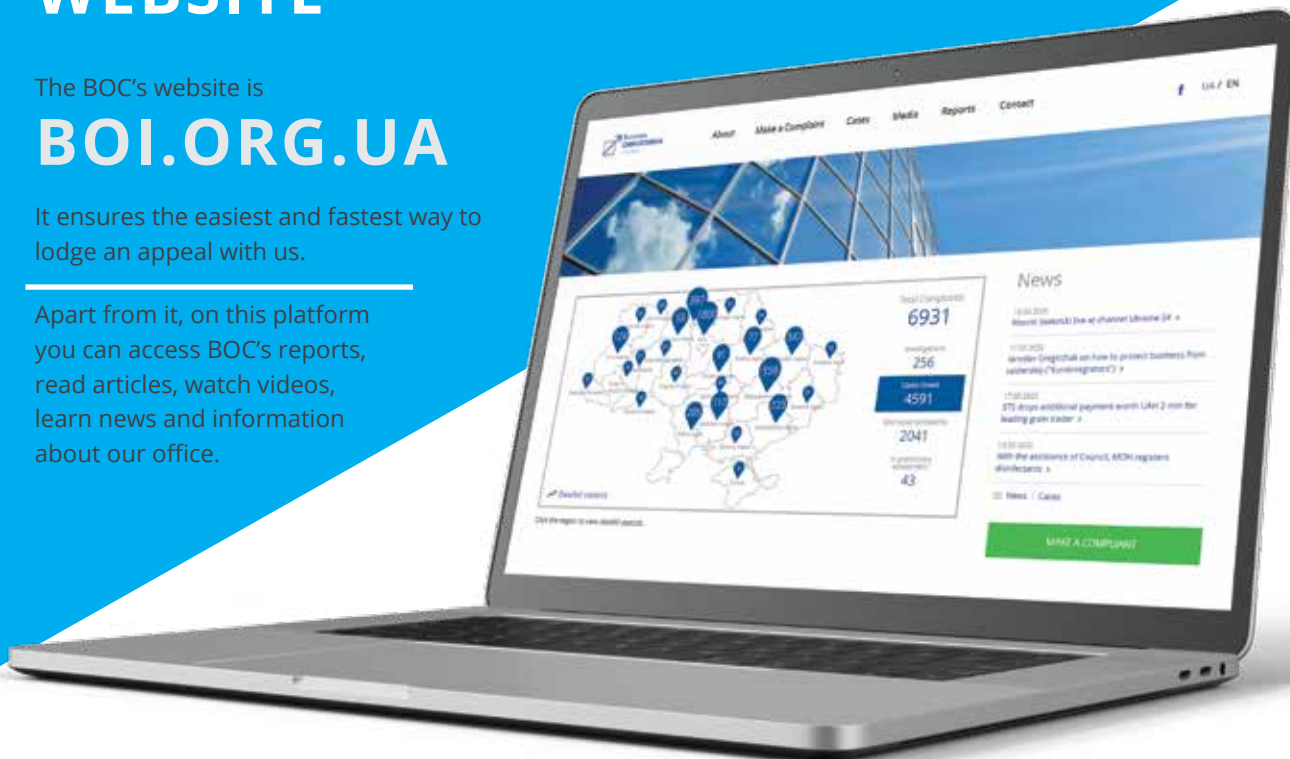
WEBSITE

The BOC's website is

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 2019, Google Analytics recorded over

128 000

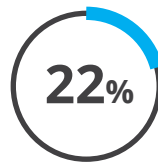
page views

of our website

+4%
compared to
2018



The majority of visitors found us through the web-search



had direct links to the web-site



came from social media (88% of them - from Facebook).

44 182

sessions conducted

+11%
as compared to
2018

Geography of visitors



81%
of visitors were based in Ukraine

19%
came from almost 100 countries

OUTREACH

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

In general, our team attended more than

200

business events

in 2019,

where we:



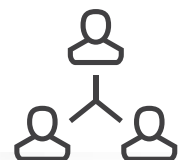
Presented

the activities of the BOC to the business community of different countries, in particular embassies



Participated in topical discussions

on tax issues, activities of law enforcement bodies and other subjects, addressed to us by Complainants



Attended focused

events of international organizations on the formation of a favourable business environment in Ukraine



International events:



8-10/01

Teaching at the Course: “Public and Private Sectors’ Alliances in the Fight Against Corruption in MENA and GCC Countries” organized by the Organisation for Economic Co-operation and Development (OECD) and the IMF’s Middle East Center for Economics and Finance, Kuwait



28/01

Norwegian-Ukrainian Business Forum 2019 organized by the Norwegian-Ukrainian Chamber of Commerce with the Ministry of Foreign Affairs of Norway, in partnership with Oslo Metropolitan University (OsloMet) and the Embassy of Ukraine in Norway



19-21/03

The Global Anti-corruption and Integrity Forum – Tech for Trust organized by the OECD



10/07

Seminar on Anti-Corruption and Business Integrity organized by OECD and Lebanese Economic and Social Council, Beirut (Lebanon)



11/10

International Business Conference: “Creating Enabling Environment for Sustainable Business in Eastern Europe and Central Asia” organized by the Business Ombudsman of Georgia, Tbilisi



30-31/10

Anti-corruption event for Eastern Europe and Central Asia organized by the Organization for Economic Co-operation and Development, Paris

19-20/11

Asia-Europe Regional Seminar, organized by Construction sector transparency initiative, Dubai

Some important events in Ukraine:



26/02

Practical seminar: "Customs Value Correction" organized by the Ukrainian Advocates' Association and Lawyers' union FAMILY LAW LYSENKO



25/03

Seminar on Anti-Corruption and Compliance organized by Advantage Austria



13/03

The Role of Business Ombudsman in Protection of Legitimate Interests of Businesses at National University of Kyiv-Mohyla Academy organized by Transparency International Ukraine, National University of Kyiv-Mohyla Academy and Norwegian school of economics.



28/03

IX Western Ukrainian Legal Forum organized by all-Ukrainian public organization Ukrainian Bar Association

05/04

I Criminal Law Forum organized by Yuridicheskaya Praktika



17/05

How to help a business execute a judgment. Practice of the Business Ombudsman Council organized by Association of Lawyers of Ukraine and the Council of Advocates of Chernihiv Oblast

21/05

A conference "Small Business Act for Europe 2020 Assessment" organized by Organisation for Economic Co-operation and Development (OECD)

29/05

V Ukrainian Antitrust Forum organized by Yuridicheskaya Praktika



07/06

VI International Forum of Corporate Secretaries organized by Professional Association of Corporate Governance and International Finance Corporation



30/08

Tax Fest organized by Ukrainian Bar Association

**20/09**

VIII Tax Forum. TaxCruise organized by the Ukrainian Bar Association

**24/10**

Presenting the Business Ombudsman Council activities to students of Ukrainian Catholic University

**29/10**

RE: think. Entrepreneurial journey with EU4Business programs organized within the International Investment Forum RE: think

**08/10**

Ethics & Compliance Workshop

**25/10**

Business Breakfast with Polish Business Community and Business Support Institutions in Ukraine organized by the Foreign Trade Bureau in Kyiv

**16/10**

Smart Ethics, Security & Compliance Conference 2019 organized by Ethicontrol

**30/10**

II Legal Real Estate Forum organized by Yuridicheskaya Praktika

**18/10**

Second Round of Consultations Ukraine – EU-EBRD Country-specific Investment Climate Reviews and Action Plans for Eastern Partnership countries, organized by the EBRD

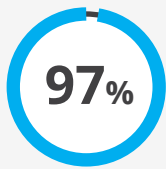
**29/10**

The International Investment Forum RE: think in Mariupol initiated by the President of Ukraine

**21/11**

Roundtable with USA Ambassador William B. Taylor organized by the U.S.-Ukraine Business Council

YOUR FEEDBACK



97% of complainants said they were very satisfied/satisfied with working with us.

"The level of professionalism in exercising its powers by the Business Ombudsman Council's employees gives hope for the real establishment of the principle of freedom of entrepreneurship in Ukraine in interrelations between companies and state bodies."

Igor Tynny,
Founder of Hydroenergoresurs, LLC

"We express our sincere gratitude for active participation and assistance of the BOC in protecting corporate rights of the company. "

Mykola Bliashyn
Director of Mykola Bliashyn law firm

In the reporting year, we received

515

feedback forms from our complainants.

Complainants assess our work based on several criteria:

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


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

"The result of our decision on our case proves that Ukraine adheres to international obligations under the agreement on promotion and mutual protection of foreign investments, as well as creation of a favorable investment environment. We thank the Business Ombudsman Council for supporting the settlement of an investment dispute".

Michalis Alexandrakis,
Managing Director
of Philip Morris Ukraine, PJSC

"The Business Ombudsman Council demonstrates the efficiency and relevance of functioning of this institution in Ukraine taking into account the chosen pro-European direction of the state and development of a legal community. "

Vitalii Shemet
Director of Grand Autotrans Ukraine, LLC



"We express our respect and gratitude to the Business Ombudsman Council"

Valerii Kovalenko

Director of Lentaks-Yug, LLC

"Thank you so much for your support and assistance in combating unprecedented pressure from law enforcement."

Ihor Khonkiv

Director of IVT Investments LLC

"Thank you for your help in protecting our company's rights. Your objectivity, impartiality, and professionalism were key factors in ensuring a positive outcome of our case."

Vitaliy Nakonechnyi

Chairman of the Supervisory Board of Noris PJSC

"The Council confirms with its qualified actions one of its main strategies – an effective representation and protection of business interests in state bodies."

Victor Kozhevnikov

CEO of Mykolaiv Alumina Plant, LLC

"Thank you for your efforts and beliefs concerning honesty and transparency of the business that led to a fair result. We wish development and prosperity to the Business Ombudsman Council in Ukraine."

Volodymyr Zubkov

CEO of Veres, LLC

"We want to confirm that the Business Ombudsman Council proved to be a reliable partner being able to quickly analyze the situation and find legal ways of responding to the tax authority's inaction and malpractice that helped protect the client's legal rights. We would like to acknowledge a high level of professionalism, a thorough understanding of tax law, self-discipline and punctuality throughout our cooperation."

Aleksandr Kyrushun

CEO of Expert Consulting Company



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