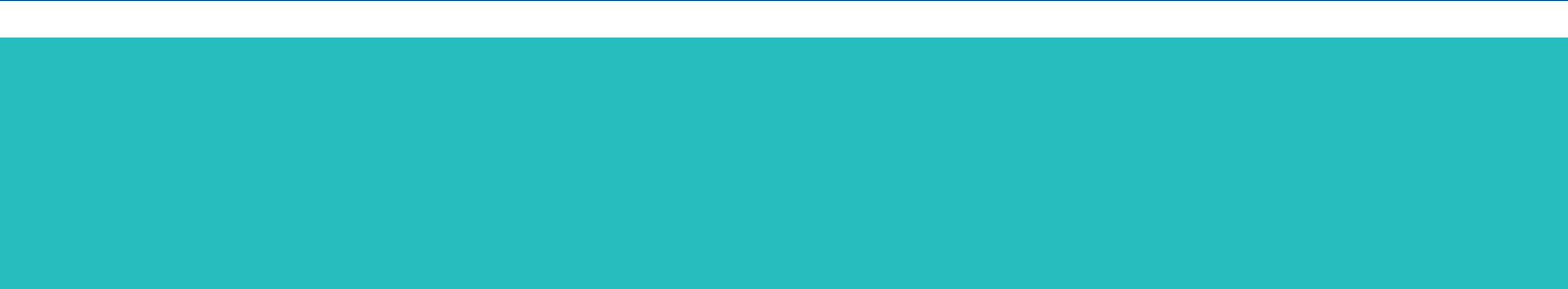
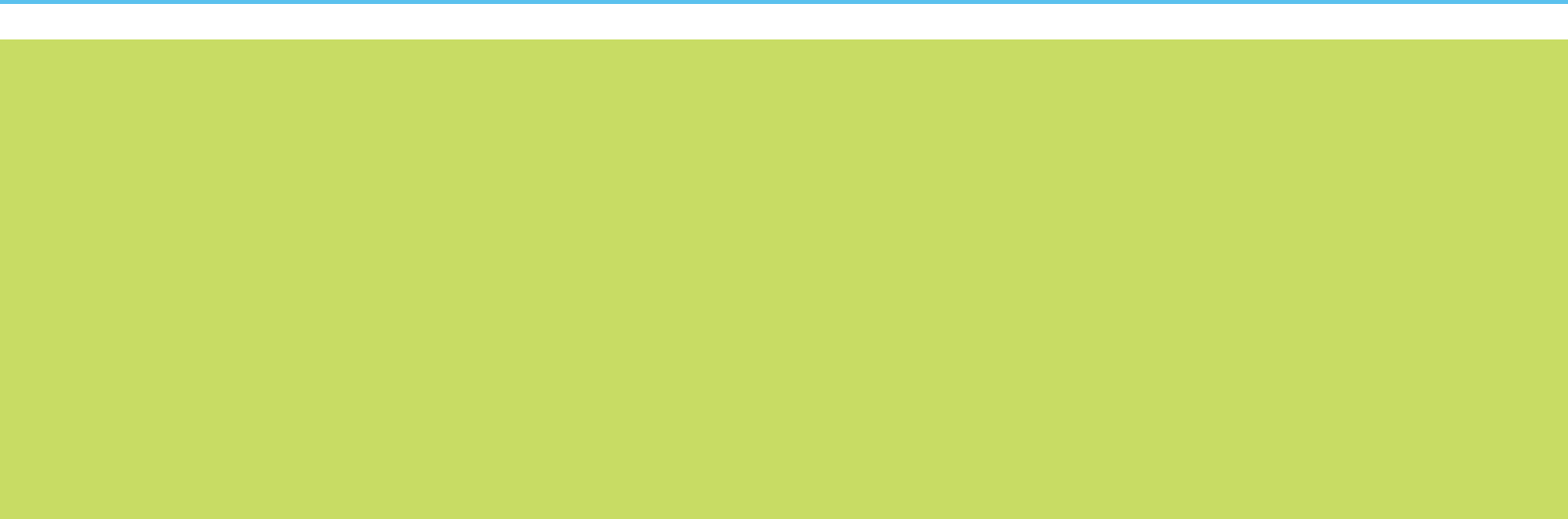


ANNUAL REPORT

2015



CONTENT

Foreword..... 4

1

The Year in Review..... 7

The Office	8
The Team	12
Milestones	14
Key figures for 2015	16

2

Complaint trends 19

Volume of complaints received	20
Nature of complaints received	22
Timeliness of the preliminary review of complaints	25
Number of investigations conducted and reasons for declining complaints	26
Timeliness of conducting investigations	31
Geographical distribution of complaints received	32
Government agencies subject to the most complaints	35
Summary of key matters and results of important investigations	43
Feedback from claimants	75

3

Systemic issues and recommendations 81

Systemic issues identified in the reporting period	82
Recommendations made to relevant authorities	84
Implementation and follow-up of systemic recommendations made to authorities	85

4

Cooperation with stakeholders 93

Working visits	94
Cooperation with government agencies	96
Public outreach and communication	99

FOREWORD OF THE BUSINESS OMBUDSMAN

Dear Friends, Colleagues, and Partners,

It is my pleasure to present the 2015 annual report of the Business Ombudsman Council of Ukraine. Our first year of operations was truly a challenge, both in terms of encouraging Ukrainian businesses to lodge complaints and seek our assistance, and in terms of establishing productive cooperation with the government institutions against whom the most complaints were lodged. Having said that, I am glad to report that we began tangibly delivering on the promise the Council made to the Ukrainian businesses at the beginning of operations: to improve the business climate by easing the regulatory burden and maintaining ongoing dialogue with entrepreneurs and government institutions.

In the reporting year, the Council received 585 complaints from businesses all over Ukraine, almost 60% of which were eligible for our investigation. We successfully closed 151 cases – out of the 342 investigations initiated. Following these investigations, the Council provided 123 recommendations to the respective government agencies, over a half of which was implemented as of December 31, 2015. The cumulative direct financial impact of our investigations in the reporting year was UAH 2.7 billion.

In 2015, we received complaints from all Ukrainian regions. City of Kyiv remained the most active in terms of submitting complaints. We received a considerable number of

complaints from Kharkiv, Dnipropetrovsk, Kyiv, Odesa, and Zaporizhzhya regions. The fewest complaints were lodged in Chernivtsi, Khmelnytskyi, and Rivne regions.

Of all complaints lodged in 2015, the tax issues (dilatatory VAT refund, inspections by state tax authorities, problems with the electronic VAT administration, customs matters) topped the list of problematic areas. The relationships with the law enforcement agencies were also acute for businesses in 2015.

In addition to specific recommendations the Council issued to the government agencies, our team prepared several systemic reports providing practical recommendations and legislation amendment advice on Ukraine's most pressing problems related to business climate. The reports covered the following topics: "Getting Access to Electricity"; "Selected Problems with Business Activity due to the Anti-Terrorist Operation and the Annexation of Crimea"; "Problems with Administering Business Taxes in Ukraine"; and "Problems with Cross-Border Trading in Ukraine". The work on two more reports prepared by us in 2015 – on the activities of natural monopolies and abuse of powers by law enforcement agencies – started in early 2016. I am happy to inform you about substantial progress in all the areas targeted by our systemic reports.



To ensure transparency and reciprocity of cooperation from the government authorities most frequently involved in our investigations, the Council signed the Memoranda of Partnership and Cooperation with them. The Memoranda we signed with the State Regulatory Service of Ukraine, the Ministry of Justice of Ukraine, and the State Fiscal Service of Ukraine are aimed at addressing specific complaints from businesses, improving the business climate, preventing corruption, and eliminating provisions in legislation that restrict business activity.

In order to maintain transparency of evaluating the Council's work, we sent feedback questionnaires to Complainants after closing each case. At the end of the reporting period, 77% of complainants were very satisfied, and 23% said they were satisfied with our work. No negative feedback has been received so far.

We have also encouraged mass media to find out more and spread the word about the Council's operations. Our efforts resulted in more than 3000 media citations, 99% of which were positive and constructive.

During 2015, I paid nine working visits: to Chernigiv, Kharkiv, Lviv, Krasnoarmiisk, Dnipropetrovsk, Odesa, Rivne, Lutsk, and Cherkasy to meet with the local entrepreneurs and state administrations leaders. Following

my visits, several state administration leaders publicly declared their commitment to fight corruption and to participate in the Council's work.

I remember how tremendous the task before us seemed when the Council opened its doors last year. I also remember the cautious optimism I felt and the skepticism the local businesses shared when we were starting our first investigations. I am looking back twelve months later at how our team has grown, at the businesses we helped protect their lawful interests, at the state authorities who became our allies on the journey to improving Ukraine's business climate – and I know we are on the right track. We still have a long road ahead of us: cases to solve, investigations to conduct, legislation to discuss and draft, more government institutions to partner with, more businesses to protect. And standing where I am now, I am confident that we, together, can make the big change happen – one small step after another.

Sincerely,
Algirdas Šemeta
Business Ombudsman

THE YEAR IN REVIEW



1.1. THE OFFICE

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 at the central and local government levels, and in state-owned and state-controlled companies within the scope of their administration. The Council is meant to be the initial point of contact for companies seeking redress against unjust treatment.

IN ITS ACTIVITY, THE BOC ABIDES BY

Constitution
and the laws of
Ukraine

Decrees of the
President

Legislative acts of the Verkhovna
Rada, in line with the Constitution
and the laws of Ukraine

Resolutions
of the Cabinet
of Ministers

BOC OPERATES IN ACCORDANCE

with Cabinet Resolution #691, dated November 26, 2014, and the Memorandum of Understanding with the Ukrainian Anticorruption Initiative, dated May 12, 2014.

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



THE COUNCIL:



reviews complaints by businesses regarding maladministration by state authorities and civil servants as well as state-owned or state-controlled companies;



conducts investigations; liaises with the public and the relevant authorities to share its findings.

THE COUNCIL HAS THREE MAIN OBJECTIVES:



facilitate the battle against corruption and other business abuse;



contribute to greater investment attractiveness in Ukraine;



promote a public service culture of fairness, openness and accountability.

THE SUPERVISORY BOARD,

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

GOVERNMENT AGENCIES:

The Cabinet of Ministers
(represented by **Aivaras
Abromavicius**, Minister
for Economic Development
and Trade)



INDEPENDENT BUSINESS ASSOCIATIONS:

the American Chamber of
Commerce (ACC), European
Business Association
(EBA), the Federation of
Ukrainian Employers (FUE),
the Ukrainian Chamber of
Commerce and Industry
(UCCI), and the Ukrainian
League of Industrialists
and Entrepreneurs (ULIE)
(represented by **Anna
Derevyanko**, Executive
Director of European Business
Association – in Quarter II,
and **Andy Hunder**, President
at American Chamber of
Commerce in Ukraine – in
Quarters III and IV).



INTERNATIONAL FINANCIAL INSTITUTIONS:

the EBRD, Organization
for Economic Cooperation
and Development (OECD)
(represented by **Sevki Acuner**,
EBRD Director in Ukraine)



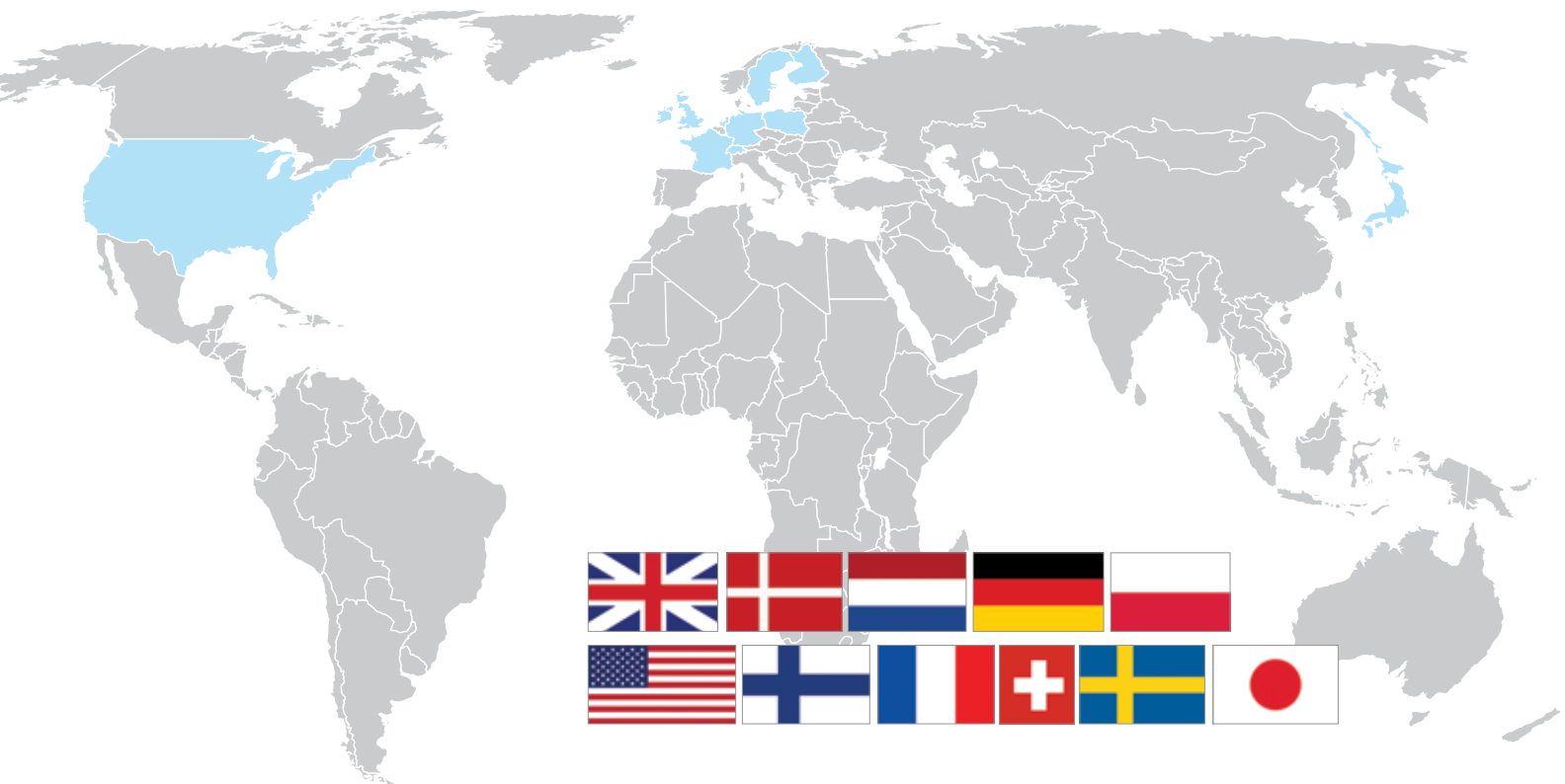
Sevki Acuner,
EBRD Director in
Ukraine, has been
elected to chair the
Supervisory Board.

THE BOC IS FUNDED



through a dedicated multi-donor account set up at the European Bank for Reconstruction and Development (EBRD) in 2014.

Funding is provided by eleven donor countries: Denmark, Finland, France, Japan, Germany, the Netherlands, Poland, Sweden, Switzerland, the UK and the US.



The Council's annual budget

€ 1,5 million

1.2. THE TEAM

The Business Ombudsman Council includes the Business Ombudsman, two Deputies, and other staff that the Council may hire, as the need arises, in accordance with current regulations.



SUPERVISORY BOARD



**Algirdas
ŠEMETA**

BUSINESS OMBUDSMAN



**Tetyana
KOROTKA**

DEPUTY BUSINESS
OMBUDSMEN



**Iaroslav
GREGIRCHAK**



**Yurii
GAIDAI**



**Oleh
KRYKAVSKYY**



**Olena
KUTSAY**

INVESTIGATOR



**Yuliana
REYVUK**



**Oleksiy
SPIVAK**



**Oleksandr
KHOMENKO**



**Olga
PIKULSKA**

COMMUNICATIONS



**Iryna
SYMONENKO**



**Yulia
LEBEDEVA**



**Alla
CHERNIAK**

ADMINISTRATION



**Sergii
LYSENKO**



**Vitaliy
KIRMACH**

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

15
people

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

MILESTONES

2014



MAY 12

Ukrainian PM Arseniy Yatsenyuk, EBRD President Suma Chakrabarti, representatives of business, and international financial institutions sign a Memorandum of Understanding for the Anticorruption Initiative of Ukraine to establish the Business Ombudsman in Ukraine



NOVEMBER 26

The Cabinet of Ministers issues Resolution #691, establishing the Business Ombudsman Council



DECEMBER 22

Algirdas Šemeta, former European Commissioner and Minister of Finance of Lithuania, is appointed the Business Ombudsman in Ukraine

2015



JANUARY 30

BOC announces an open competition to fill the two positions of Deputy Business Ombudsman in Ukraine. A total of 216 resumes is received



MARCH 16

BOC locates itself in Podil Plaza Business Centre



MAY 18

BOC's Rules of Procedure are approved by the Supervisory Board



MAY 20

Two Deputy Business Ombudsmen are appointed by the Cabinet Resolution #513. Core team is formed



MAY 20

The Business Ombudsman Council announces the official launch of operations



MAY 27

50 complaints are received from businesses during the first week of the BOC's operations



JUNE 11

Algirdas Šemeta pays his first working visit to Chernigiv Oblast, launching a series of working visits to Ukraine's regions. Further visits in 2015 include: Kharkiv, Dnipropetrovsk, Odesa, Lviv, Krasnoarmiisk (Donetsk region), Rivne, Lutsk, Cherkasy



JULY 3

First Memorandum of Cooperation and Partnership is signed with the government agency (State Regulatory Service of Ukraine). Further Memoranda signed in 2015 include: State Fiscal Service of Ukraine, Ministry of Justice of Ukraine



JULY 28

First BOC's Quarterly Report is approved by the Supervisory Board. Two systemic reports with recommendations on getting access to electricity and problems of businesses resulting from the military situation in the East of Ukraine and the annexation of Crimea are presented to the Government of Ukraine



OCTOBER 30

Second BOC's Quarterly Report is approved by the Supervisory Board. Two systemic reports with recommendations on administering business taxes and cross-border trading are presented to the Government of Ukraine



DECEMBER 20

Case Management System, an automatized tool for managing complaints, is launched to enable the BOC's team to effectively handle the incoming data and track statistics

1.4.

KEY FIGURES FOR 2015



585

complaints received from
Ukrainian entrepreneurs

151

cases
successfully
closed



123

recommendations
provided to government
agencies

63%

of recommendations
already
implemented

6*

systemic reports prepared
for The Cabinet of
Ministers' consideration



*2 last reports presented in February 2016



3 Memoranda on Partnership and Cooperation signed with government agencies

over
2 700 000 000 UAH

Direct financial impact of BOC's operations



15 staff members hired

3000+ media citations



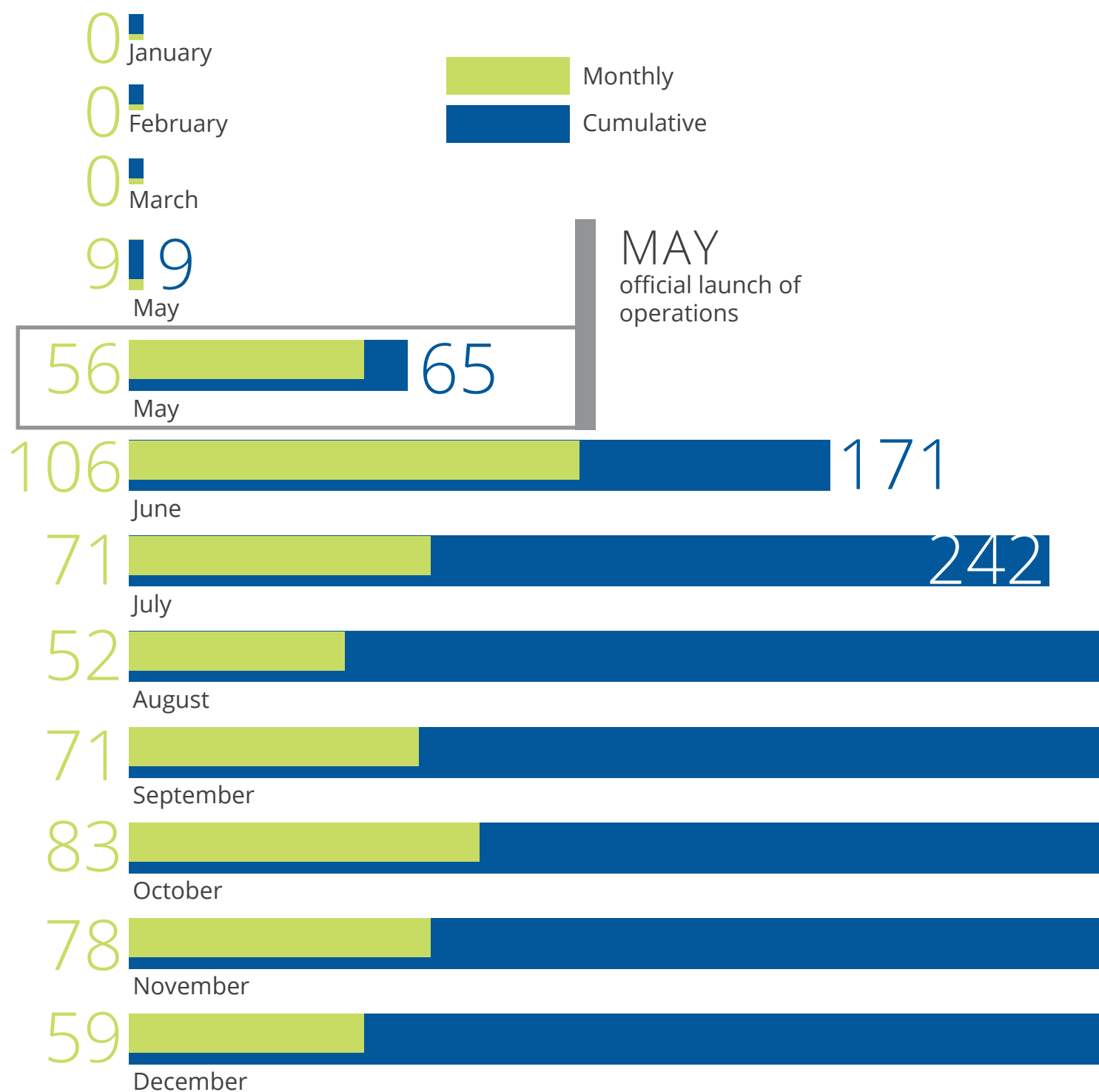
99% being positive and constructive





COMPLAINT TRENDS

2.1.

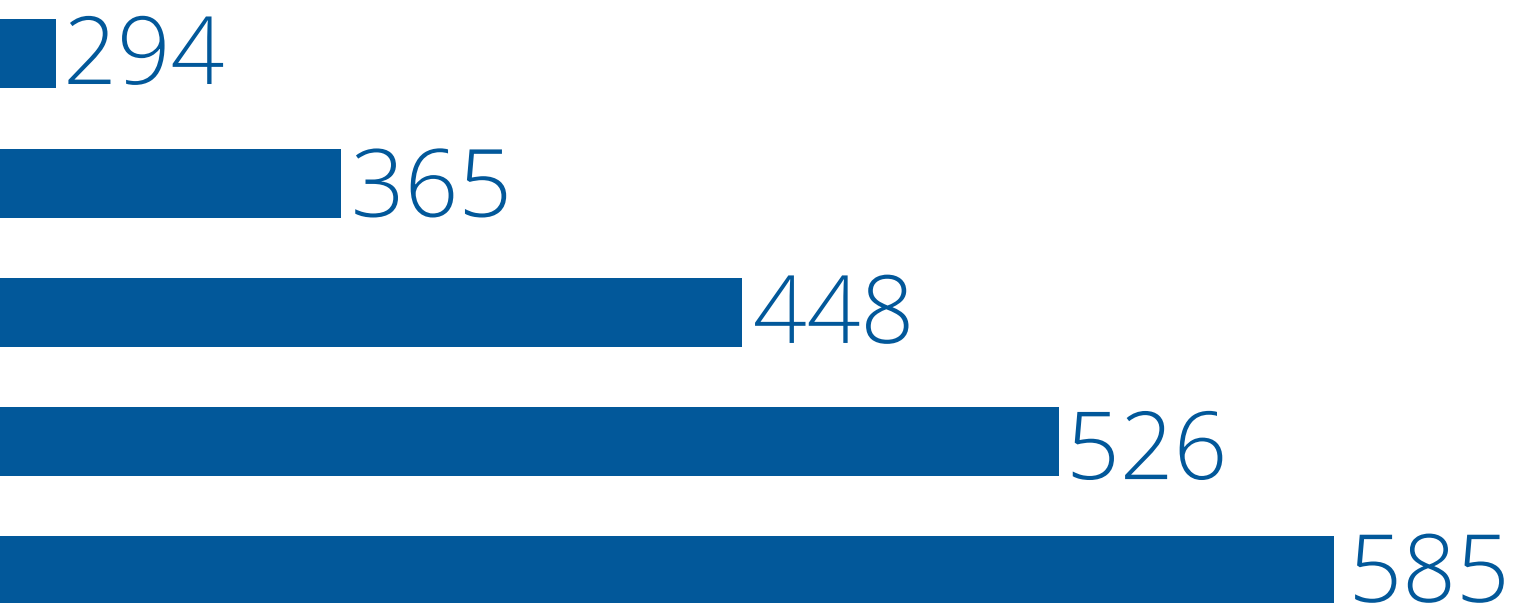
Clause 5.3.1 (a)
of Rules of ProcedureVOLUME OF
COMPLAINTS RECEIVED

In 2015, the Business
Ombudsman Office received

585
complaints

Cumulative number of complaints
grew steadily throughout the
reporting year.

The biggest number of complaints came
in June (106) and October (78). The fewest
complaints were received in August (52).

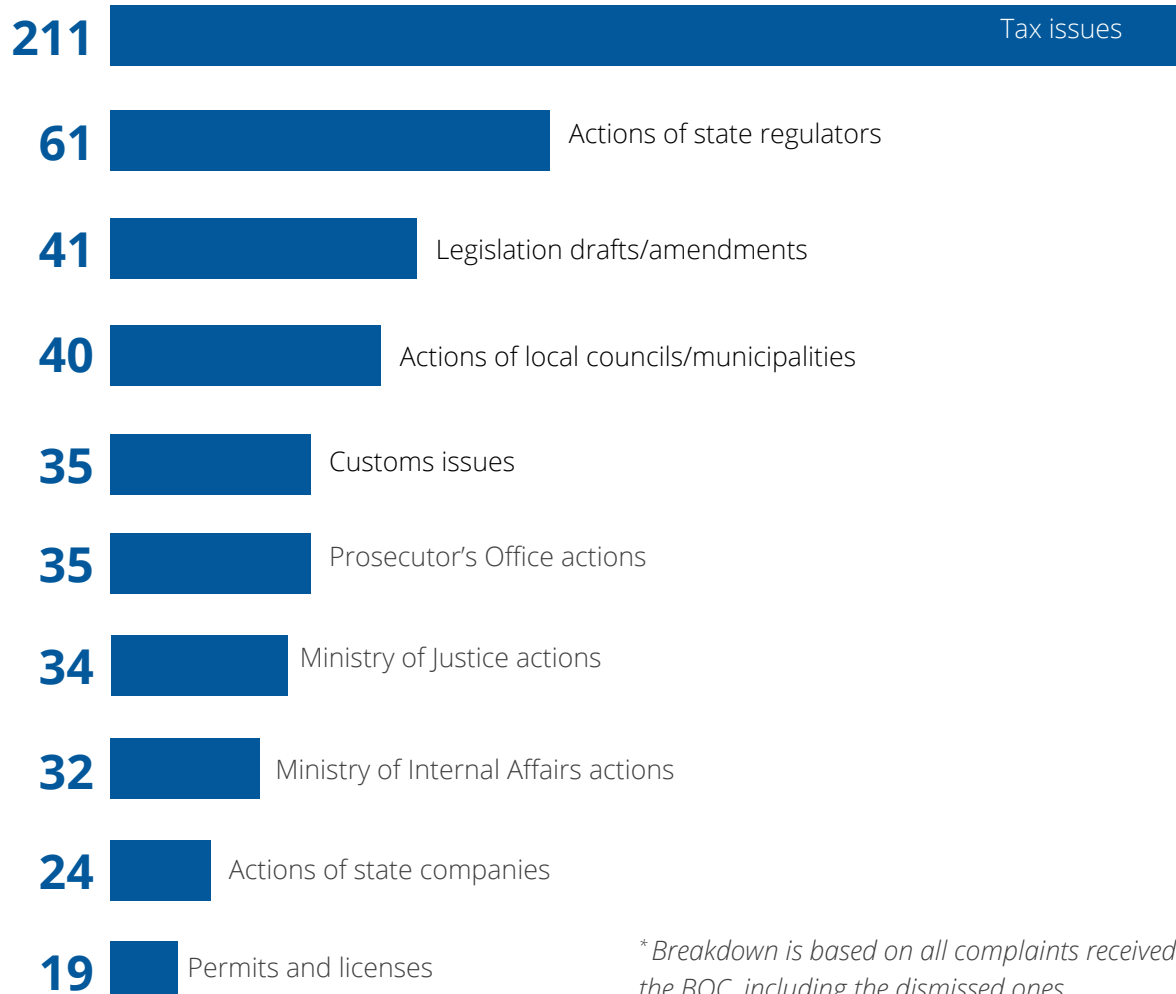


NATURE OF COMPLAINTS

TOP-10

SUBJECT OF COMPLAINTS
RECEIVED IN 2015*

Analysis of complaints received in 2015 demonstrates that Ukrainian businesses most frequently came across such key problems.



* Breakdown is based on all complaints received by the BOC, including the dismissed ones

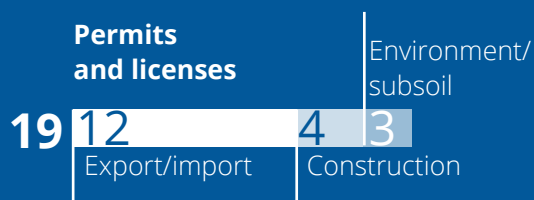
DETAILED BREAKDOWN OF COMPLAINTS' SUBJECT MATTER

211	Tax issues				Tax status 09
	51	39	33	30	8 50
	Inspections by state tax and fiscal agencies	Dilatory VAT refund	Problems with the electronic VAT administration	Criminal proceedings against business initiated by State Fiscal Service	Other issues

Actions of local councils/municipalities				
40	8	8	5	19
	Allocating land plots	Trade rules and permits	Investment disputes	Other actions

35	Customs issues			Administrative proceedings
	12	9	3	1 10
	Clearance delay/refusal	Valuation	Criminal proceedings	Other issues

35	Prosecutor's Office actions	Prosecutors' Office procedural abuse	Other actions
	9	7	6 13
	Criminal proceedings against business initiated by the Prosecutor's Office	Prosecutors' Office corruption allegations	



2.3.

Clause 5.3.1 (b)
of Rules of Procedure

TIMELINESS

of the preliminary review of complaints

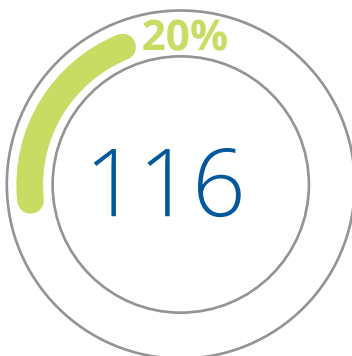
THE AVERAGE TIME
for preliminary review of complaint:

8 working
days

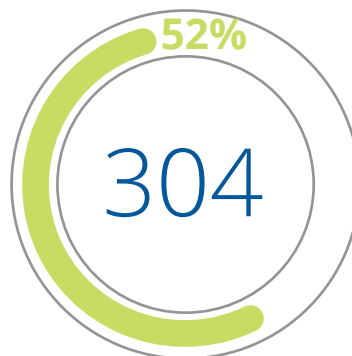
2 days less
than indicated
in the Rules
of Procedure



Number of complaints
reviewed
less than in 5 days:

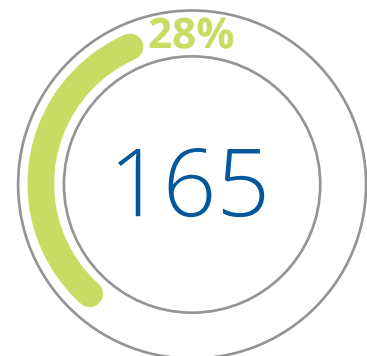


Number of complaints
reviewed
in 5-10 days:



The biggest part of complaints (72%) were reviewed during 10 or fewer working days, which meets the 10-day period for preliminary complaint reviews provided in current regulations.

Number of complaints
reviewed
in more than 10 days:



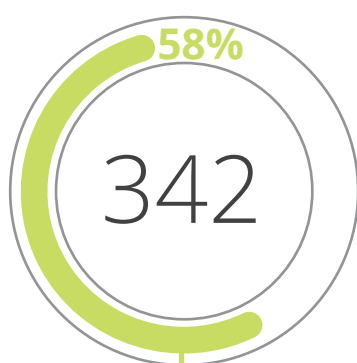
The delay in response was mostly caused by the delay in getting feedback from complainants and necessity to thoroughly analyze additional documents that complainants sent upon responsible investigator's request.

2.4.

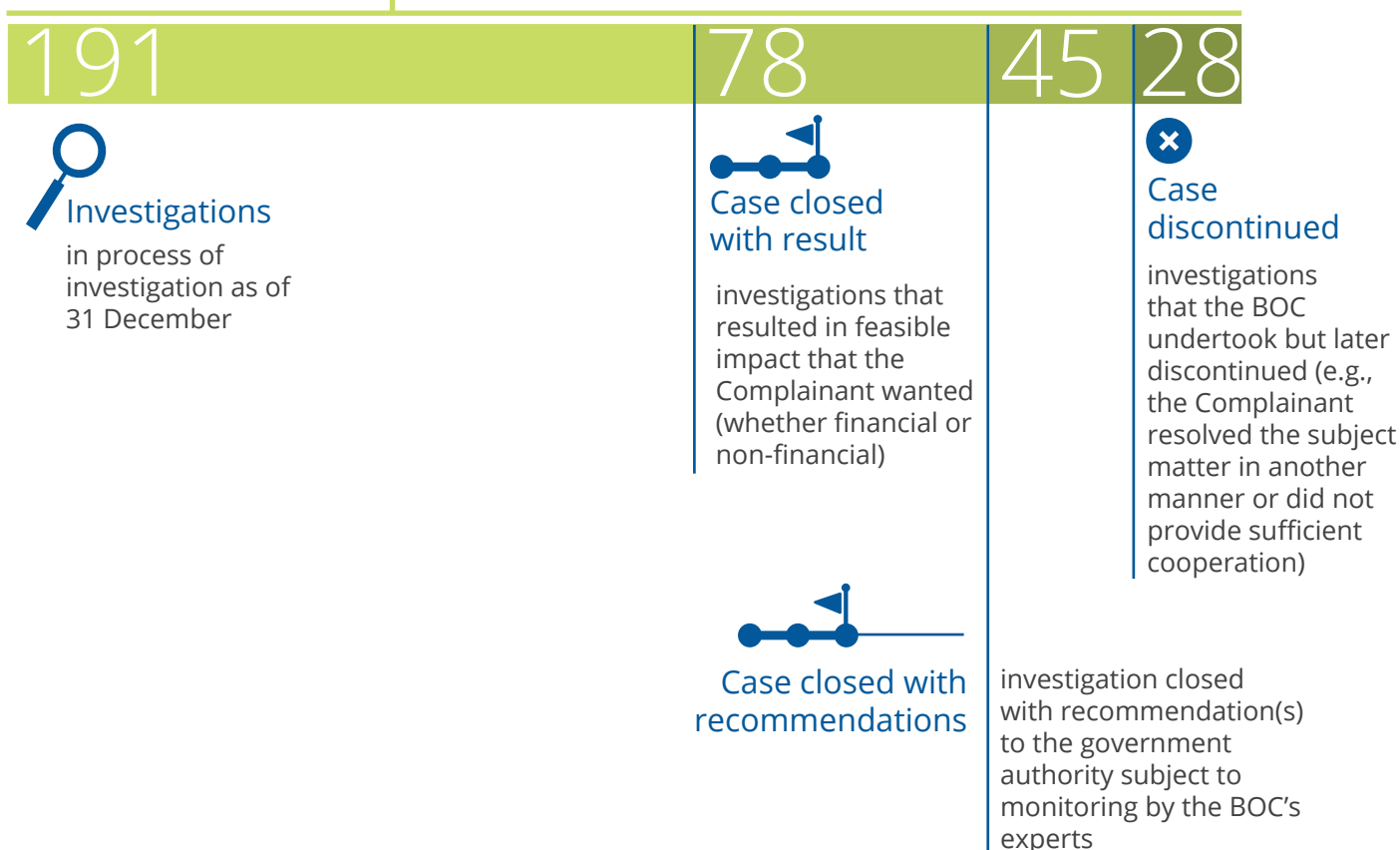
Clause 5.3.1 (c)
of Rules of Procedure

NUMBER OF INVESTIGATIONS CONDUCTED

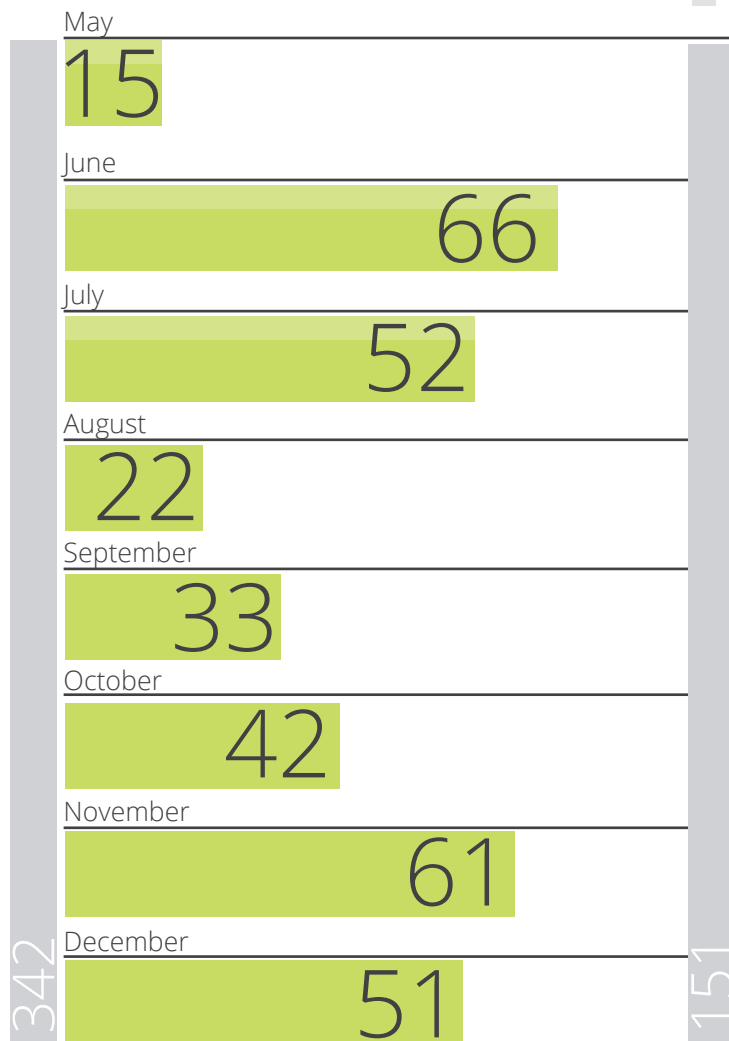
and reasons for declining complaints



In 2015, the BOC undertook 342 investigations out of 585 complaints received (58%). The rest was dismissed as not fitting the Council's eligibility criteria (40%) or remained at the stage of preliminary assessment (2%) as of December 31, 2015.

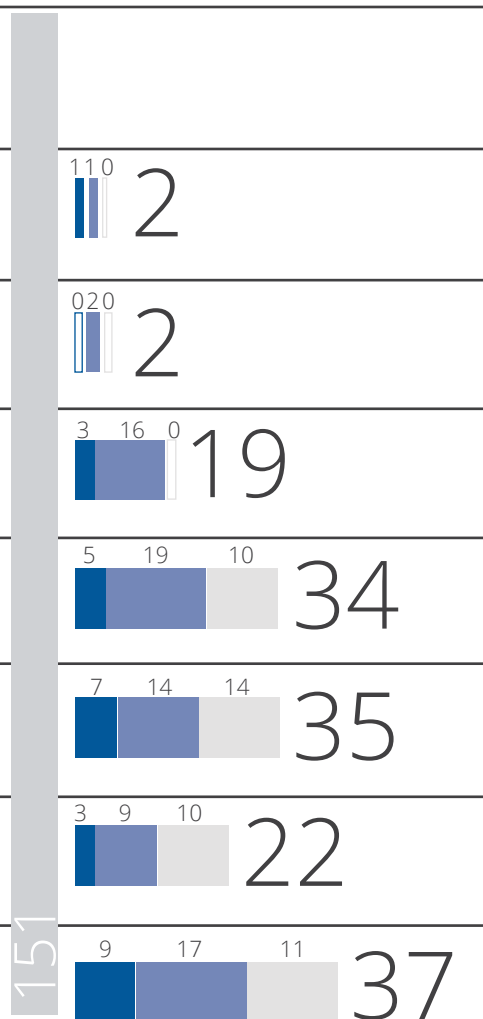


THE BREAKDOWN OF INITIATED INVESTIGATIONS ON A MONTHLY BASIS:



THE BREAKDOWN OF CLOSED INVESTIGATIONS:

- Case discontinued
- Case closed with result
- Case closed with recommendations



THE BIGGEST SHARE of closed cases was in



TOP-10

REASONS FOR COMPLAINTS' DISMISSAL

OVERALL IN 2015

Complaint submitted was subject to court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made

48

Complaints outside Business Ombudsman's competence

43

In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation

35

The party affected by the alleged Business Malpractice did not exhaust at least one instance of an administrative appeal process

30

In the opinion of the Business Ombudsman, the complaint had no substance

20

Complaints arising in the context of private-to-private business relations

18

The complaint failed to comply with the requirements to the form

15

Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings

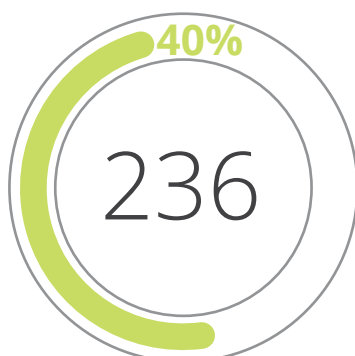
8

Repeated complaints

3

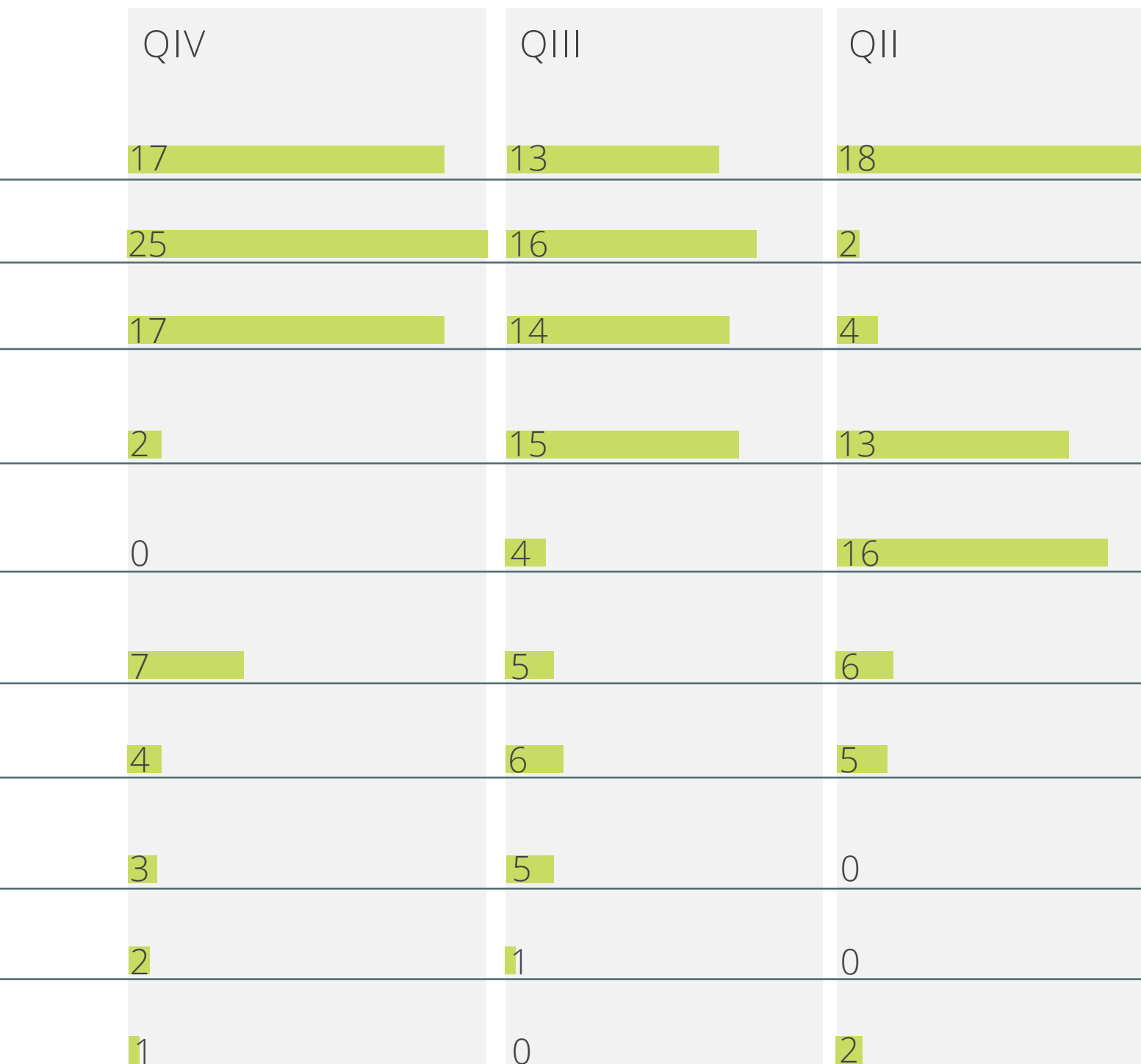
A complaint was filed after the expiry of the limitation period

3

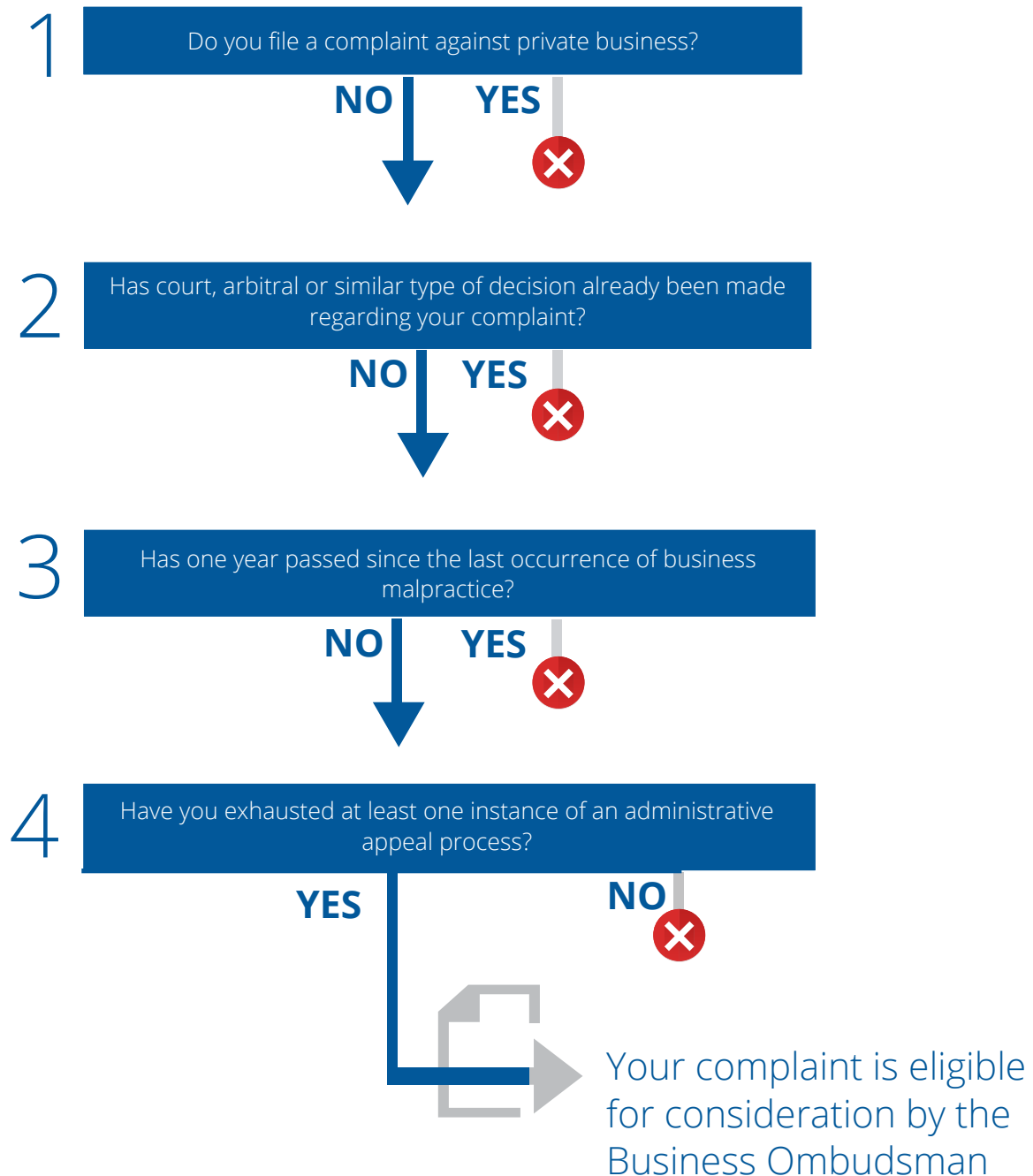


Complaints
were dismissed
in 2015

By the end of the year, the number of complaints with no substance and the ones where the party affected by the alleged business malpractice did not exhaust at least one instance of an administrative appeal process dropped significantly. There is still a big number of incoming complaints subject to court or arbitral proceedings, and the ones that are outside Business Ombudsman's competence. Overall, the trend testifies that awareness about the BOC's eligibility criteria is growing.



CHECK IF YOUR COMPLAINT MEETS THE COUNCIL'S CRITERIA:



2.5. TIMELINESS of conducting investigations

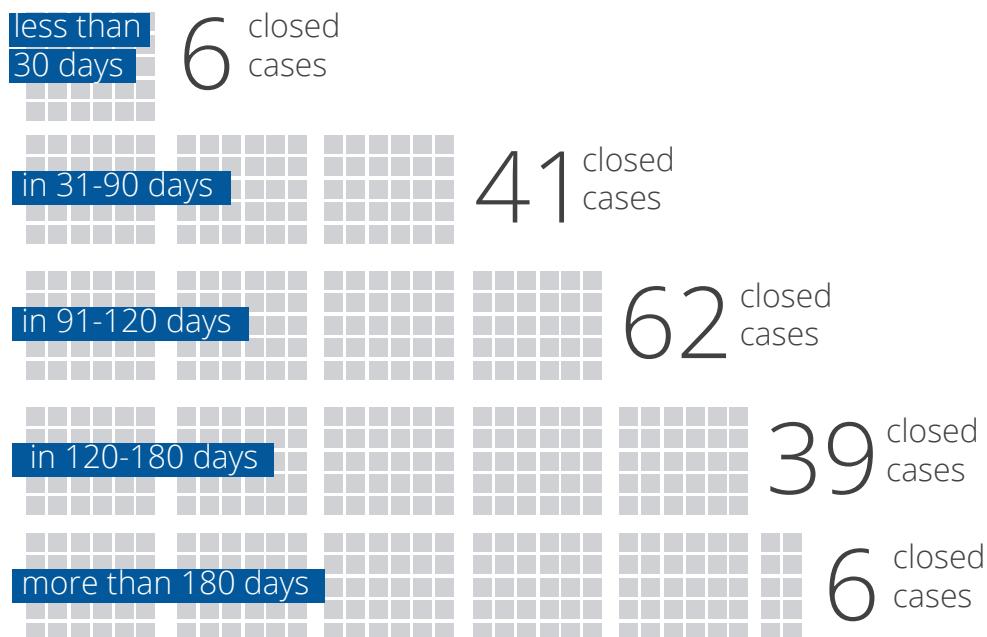
Clause 5.3.1 (d)
of Rules of Procedure

Time for conducting
investigations envisaged
in the Rules of Procedure

3 months

AVERAGE TIME
for conducting investigations

101 days



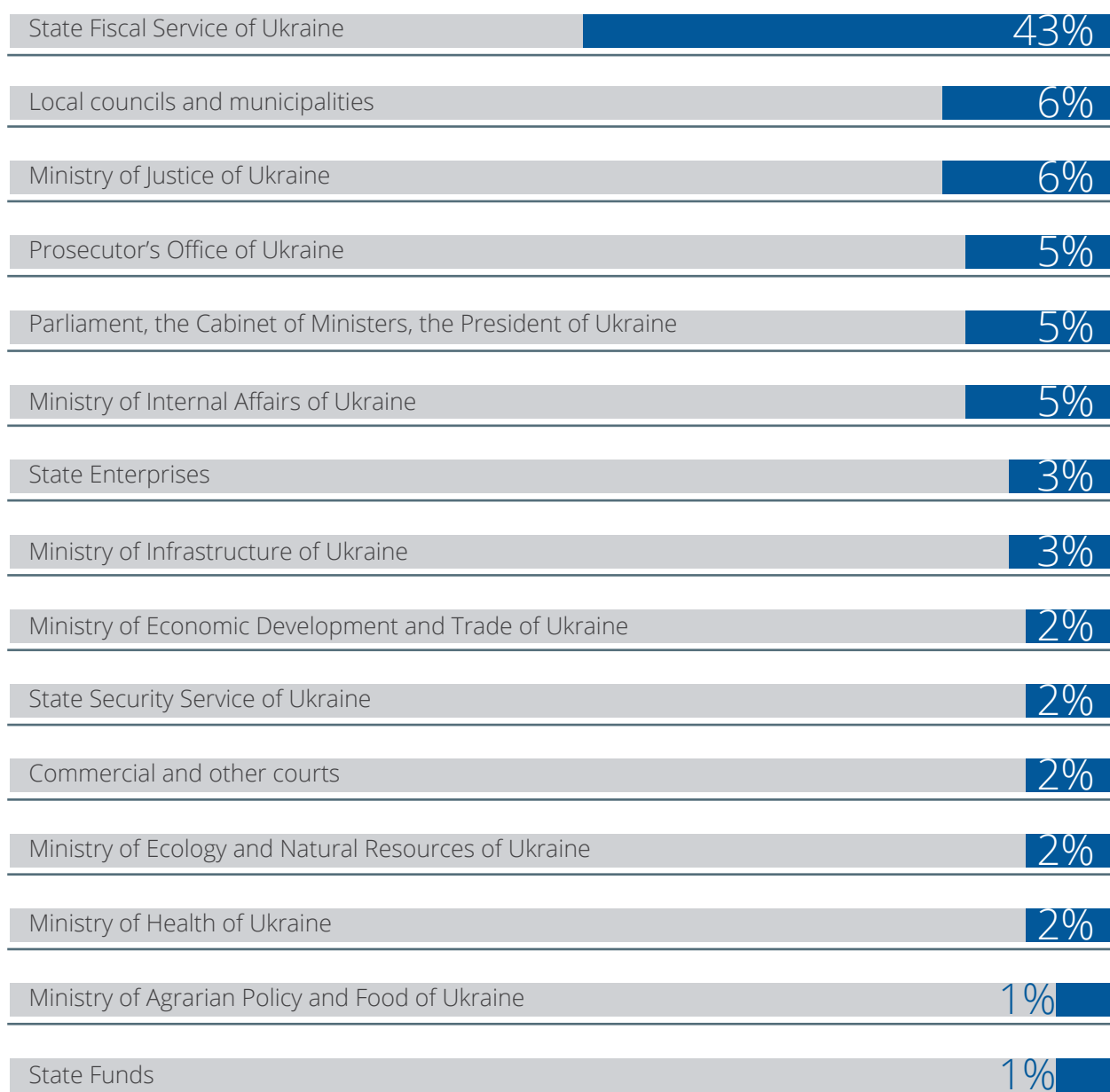
The biggest part of cases (41%) was closed in the course of 91-120 days. The delay in closing investigations was mostly caused by delay in responding to our inquiries on the part of both claimants and government agencies as well as complexity of investigation (i.e. necessity to analyze additional documents, make a number of calls and arrange meetings with officials involved).

2.6.

GOVERNMENT AGENCIES

subject to the most complaints

OVERALL IN 2015





Q4	Q3	Q2
<div><div></div></div> 51%	<div><div></div></div> 43%	<div><div></div></div> 32%
<div><div></div></div> 3%	<div><div></div></div> 7%	<div><div></div></div> 9%
<div><div></div></div> 4%	<div><div></div></div> 6%	<div><div></div></div> 8%
<div><div></div></div> 3%	<div><div></div></div> 5%	<div><div></div></div> 9%
<div><div></div></div> 5%	<div><div></div></div> 4%	<div><div></div></div> 6%
<div><div></div></div> 4%	<div><div></div></div> 7%	<div><div></div></div> 4%
<div><div></div></div> 1%	<div><div></div></div> 4%	<div><div></div></div> 5%
<div><div></div></div> 1%	<div><div></div></div> 5%	<div><div></div></div> 3%
<div><div></div></div> 1%	<div><div></div></div> 2%	<div><div></div></div> 4%
<div><div></div></div> 2%	<div><div></div></div> 2%	<div><div></div></div> 3%
<div><div></div></div> 2%	<div><div></div></div> 1%	<div><div></div></div> 3%
<div><div></div></div> 2%	<div><div></div></div> 1%	<div><div></div></div> 1%
<div><div></div></div> 1%	<div><div></div></div> 1%	<div><div></div></div> 4%
<div><div></div></div> 1%	<div><div></div></div> 2%	<div><div></div></div> 1%
<div><div></div></div> 1%	<div><div></div></div> 1%	<div><div></div></div> 1%

OTHER COMPLAINNEES



National Bank of Ukraine

Antimonopoly Committee of Ukraine

Ministry of Finance of Ukraine

Ministry of Social Policy and Labour of Ukraine

National Police of Ukraine

Ministry of Energy and Coal Industry
of Ukraine

Ministry of Defense of Ukraine

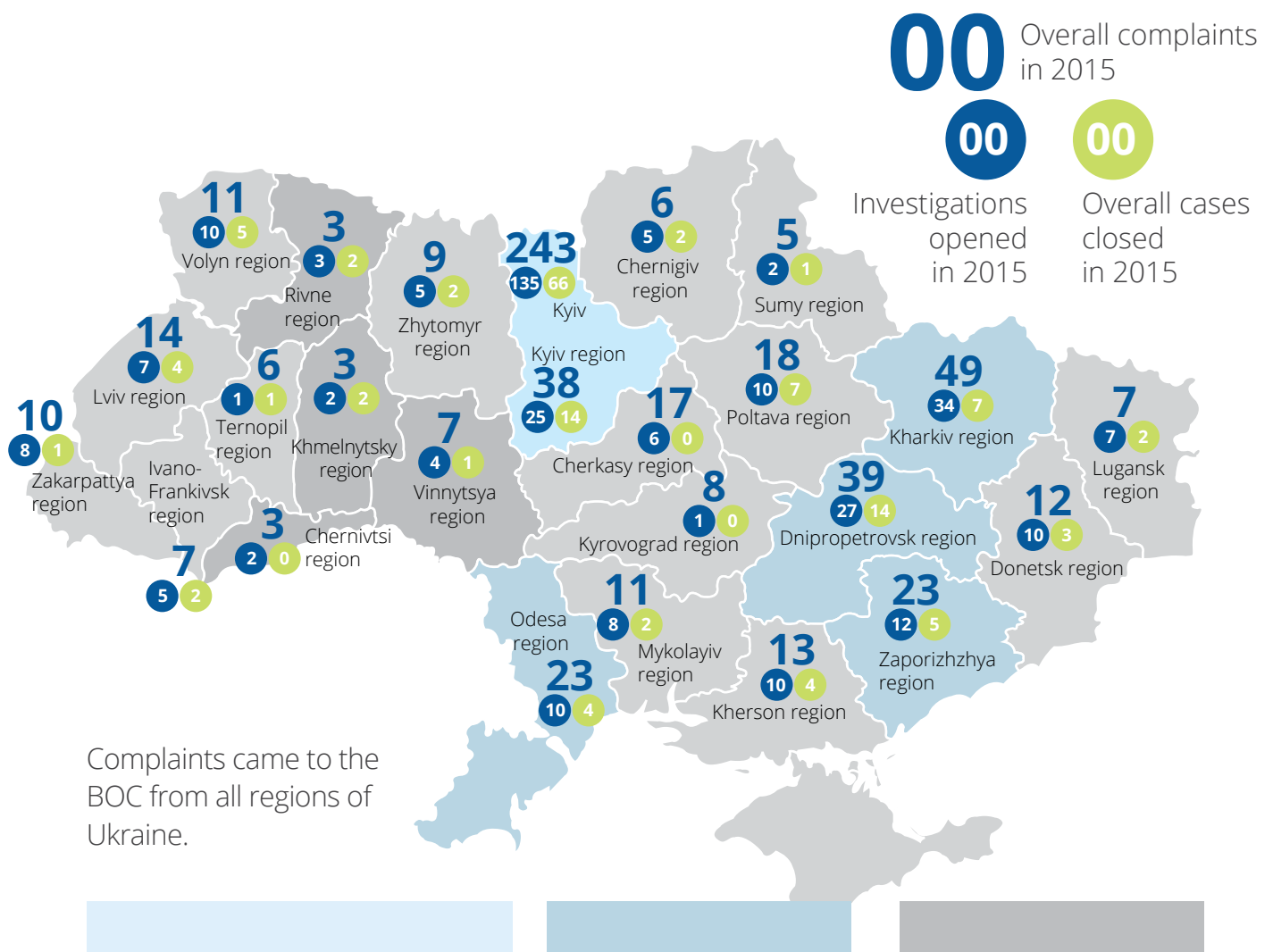
State Emergency Service
of Ukraine

National Commission for
State Regulation
of Energy and Public Utilities

State Border Guard Service of Ukraine

State Service of Ukraine on Food Safety
and Consumer Protection

2.7.

GEOGRAPHICAL
DISTRIBUTION

Complaints came to the BOC from all regions of Ukraine. Kyiv was the most active region in terms of number of submitted complaints (243). This reflects the nationwide geographical structure of registered businesses, most of which are registered in the capital region.

In descending order, complaints also came from **Kharkiv** (49), **Dnipropetrovsk** (39), **Kyiv** (38), **Odesa** (23) and **Zaporizhzhya** (23) Oblasts.

The fewest complaints were lodged in **Chernivtsi**, **Khmelnytsky** and **Rivne** (3 each)

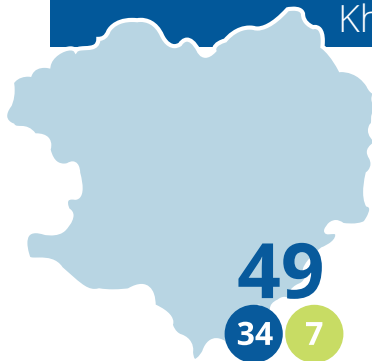
MAIN COMPLAINNEES AND SUBJECTS IN THE REGIONS

REGION	COMPLAINNEE	SUBJECT
Kyiv	<ul style="list-style-type: none"> State Fiscal Service of Ukraine Ministry of Justice of Ukraine Parliament, the Cabinet of Ministers, the President of Ukraine 	<ul style="list-style-type: none"> Inspections by state tax and fiscal agencies Actions of state regulators

243
135 66

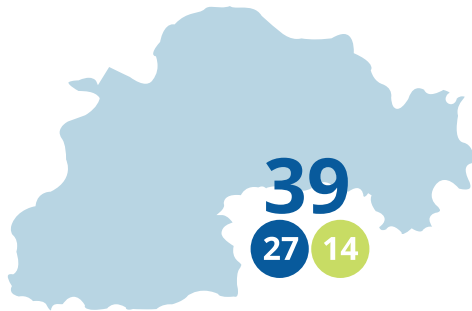


Kharkiv region



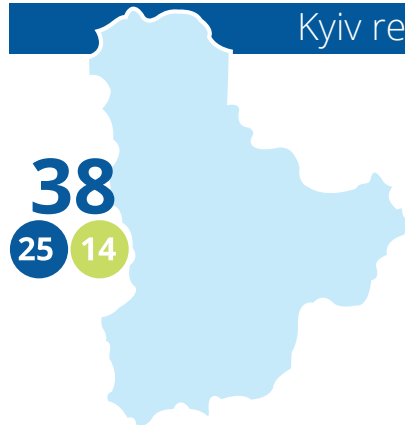
- State Fiscal Service of Ukraine
- State Emergency Service of Ukraine
- National Police of Ukraine
- Problems with the electronic VAT
- Actions of state regulators

Dnipropetrovsk region



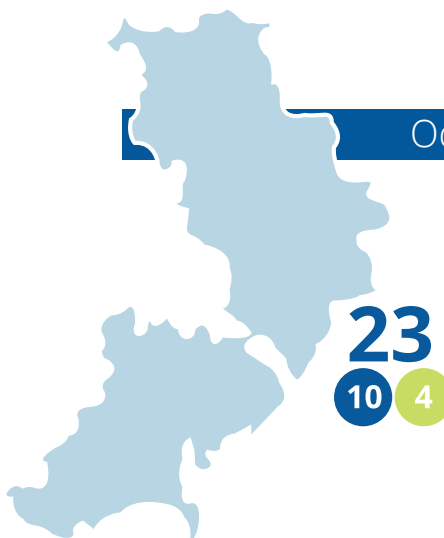
- State Fiscal Service of Ukraine
- Prosecutor's Office of Ukraine
- State Emergency Service of Ukraine
- Actions of state regulators
- Dilatory VAT refund

Kyiv region



- State Fiscal Service of Ukraine
- Prosecutor's Office of Ukraine
- Ministry of Regional Development
- Actions of state regulators
- Inspections by state tax and fiscal agencies
- Criminal proceedings against business initiated by State Fiscal Service

Odesa region



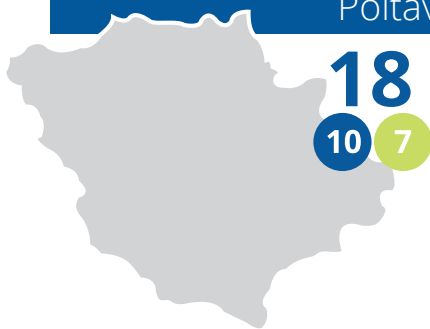
- State Fiscal Service of Ukraine
- Local councils and municipalities
- National Police of Ukraine
- Actions of state regulators
- Criminal proceedings against business initiated by State Fiscal Service

Zaporizhzhya region



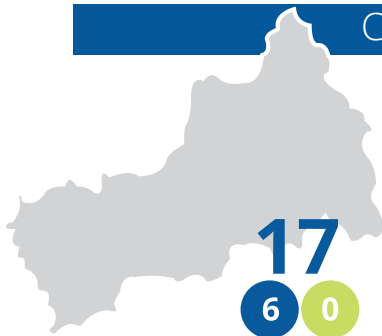
- State Fiscal Service of Ukraine
- State Funds
- Actions of state regulators
- Legislation drafts/ amendments
- Inspections by state tax and fiscal agencies

Poltava region



- State Fiscal Service of Ukraine
- Ministry of Ecology and Natural Resources of Ukraine
- Parliament, the Cabinet of Ministers, the President of Ukraine
- Legislation drafts/ amendments
- Inspections by state tax and fiscal agencies

Cherkasy region



- State Emergency Service of Ukraine
- Ministry of Internal Affairs
- Ministry of Defense of Ukraine
- Actions of state regulators
- Criminal proceedings against business initiated by State Fiscal Service

Lviv region



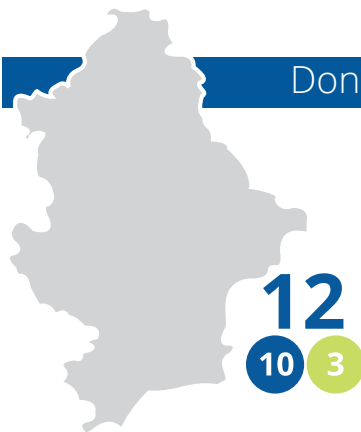
- State Fiscal Service of Ukraine
- Local councils and municipalities
- State Funds
- Dilatory VAT refund
- Actions of state regulators
- Actions of state companies

Kherson region



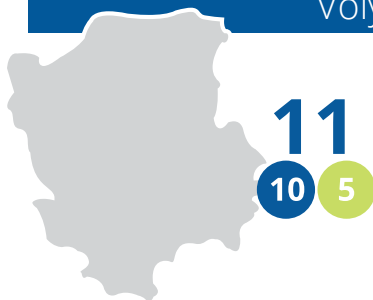
- State Fiscal Service of Ukraine
- State Funds
- Ministry of Health of Ukraine
- Inspections by state tax and fiscal agencies
- Tax status 09
- Actions of state regulators

Donetsk region



- State Fiscal Service of Ukraine
- Local councils and municipalities
- Ministry of Internal Affairs
- Allocating land plots by local councils/ municipalities
- Ministry of Internal Affairs inactivity
- Prosecutors' Office abuse

Volyn region



- State Fiscal Service of Ukraine
- Local councils and municipalities
- Ministry of Agrarian Policy and Food of Ukraine
- Problems with the electronic VAT administration
- Dilatory VAT refund
- Legislation drafts/ amendments

Mykolayiv region



- State Fiscal Service of Ukraine
- State Enterprises
- Parliament, the Cabinet of Ministers, the President of Ukraine
- Dilatory VAT refund
- Legislation drafts/ amendments
- Actions of state regulators

Zakarpattia region



10
8 1

- State Fiscal Service of Ukraine
- Ministry of Justice of Ukraine
- Customs clearance delay/refusal
- Dilatory VAT refund
- MinJustice registration service

Zhytomyr region



9
5 2

- Prosecutor's Office of Ukraine
- State Security Service
- Ministry of Justice of Ukraine
- Allocating land plots by local councils/municipalities
- MinJustice enforcement service
- State Security Service procedural abuse

Kyrovograd region



8
1 0

- State Fiscal Service of Ukraine
- Prosecutor's Office of Ukraine
- State Security Service
- Prosecutors' Office malpractice
- Dilatory VAT refund
- State Security Service malpractice

Ivano-Frankivsk region



7
5 2

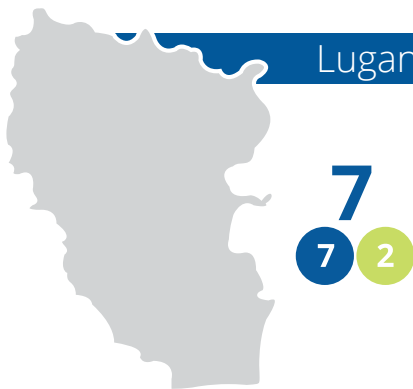
- State Fiscal Service of Ukraine
- Parliament, the Cabinet of Ministers, the President of Ukraine
- Local councils and municipalities
- Legislation drafts/amendments
- Inspections by state tax and fiscal agencies
- Local councils/municipalities investment disputes

Vinnytsya region



- Local councils and municipalities
- State Fiscal Service of Ukraine
- Ministry of Regional Development
- Ministry of Infrastructure of Ukraine
- Inspections by state tax and fiscal agencies
- Local councils/ municipalities trade rules and permits, land plots
- Dilatory VAT refund

Lugansk region



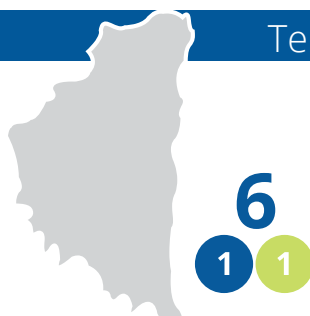
- State Fiscal Service of Ukraine
- Problems with the electronic VAT administration
- Dilatory VAT refund

Chernigiv region



- Ministry of Ecology and Natural Resources of Ukraine
- Parliament, the Cabinet of Ministers, the President of Ukraine
- State Fiscal Service of Ukraine
- Legislation drafts/ amendments
- Permits and licenses export/import
- Local councils/ municipalities trade rules and permits

Ternopil region



- State Fiscal Service of Ukraine
- Local councils and municipalities
- Ministry of Justice
- Inspections by state tax and fiscal agencies
- Other tax issues
- Local councils/ municipalities investment disputes

Sumy region



- State Fiscal Service of Ukraine
- Local councils and municipalities
- State Enterprises
- Local councils/ municipalities malpractice
- Legislation drafts/ amendments
- Natural Monopolies inactivity/delays

Rivne region



- State Fiscal Service of Ukraine
- National Bank of Ukraine
- Dilatory VAT refund

Khmelnysky region



- State Fiscal Service of Ukraine
- Ministry of Justice
- State Enterprises
- MinJustice enforcement service
- State companies investment/commercial disputes

Chernivtsi region

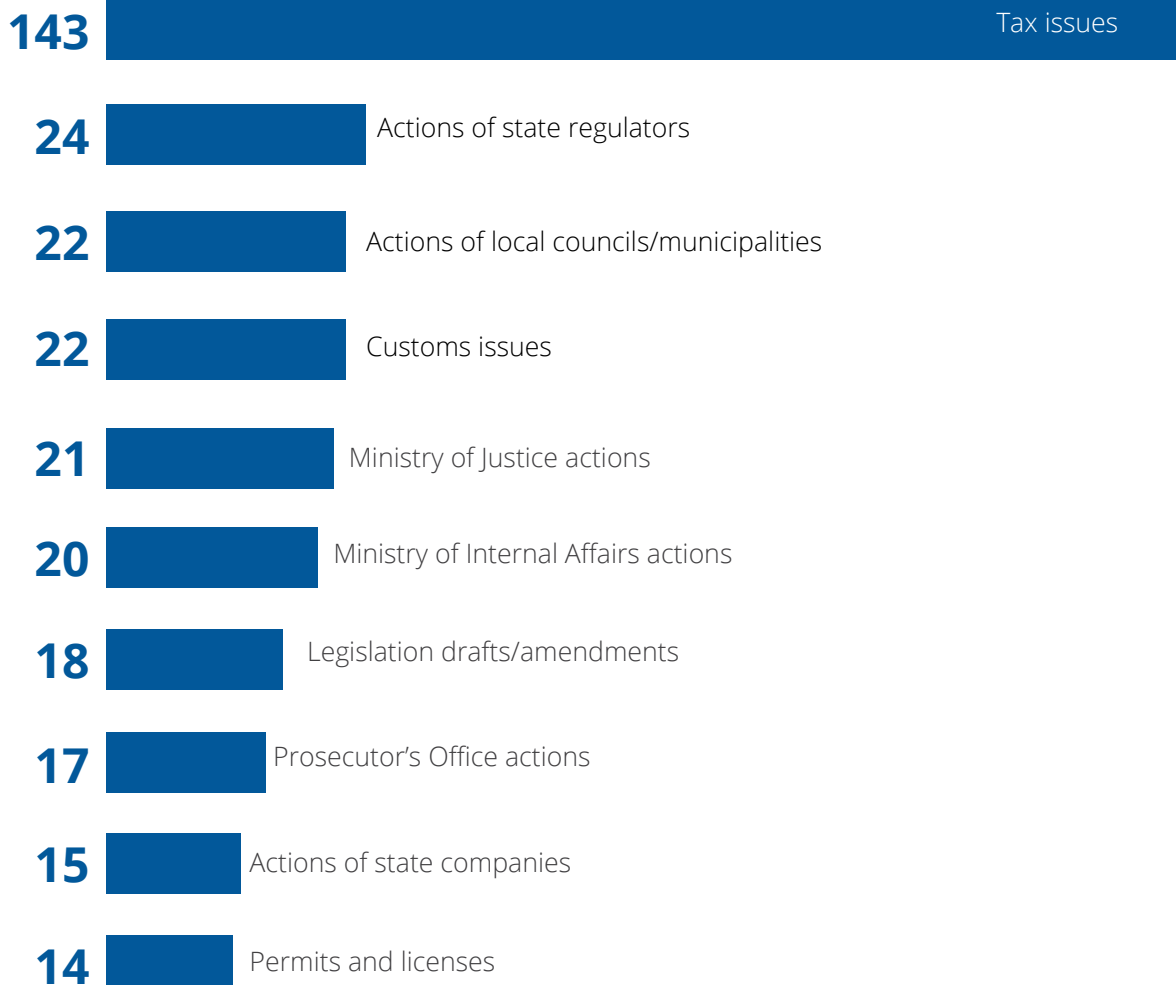


- State Fiscal Service
- Commercial and other courts
- Actions of state regulators
- Dilatory VAT refund

SUMMARY OF KEY MATTERS AND RESULTS

TOP-10

SUBJECT INVESTIGATIONS*
IN 2015:



* Breakdown is based on all investigations undertaken by the BOC (342). Dismissed complaints and cases that were in preliminary assessment as of 31 December 2015, are not included.

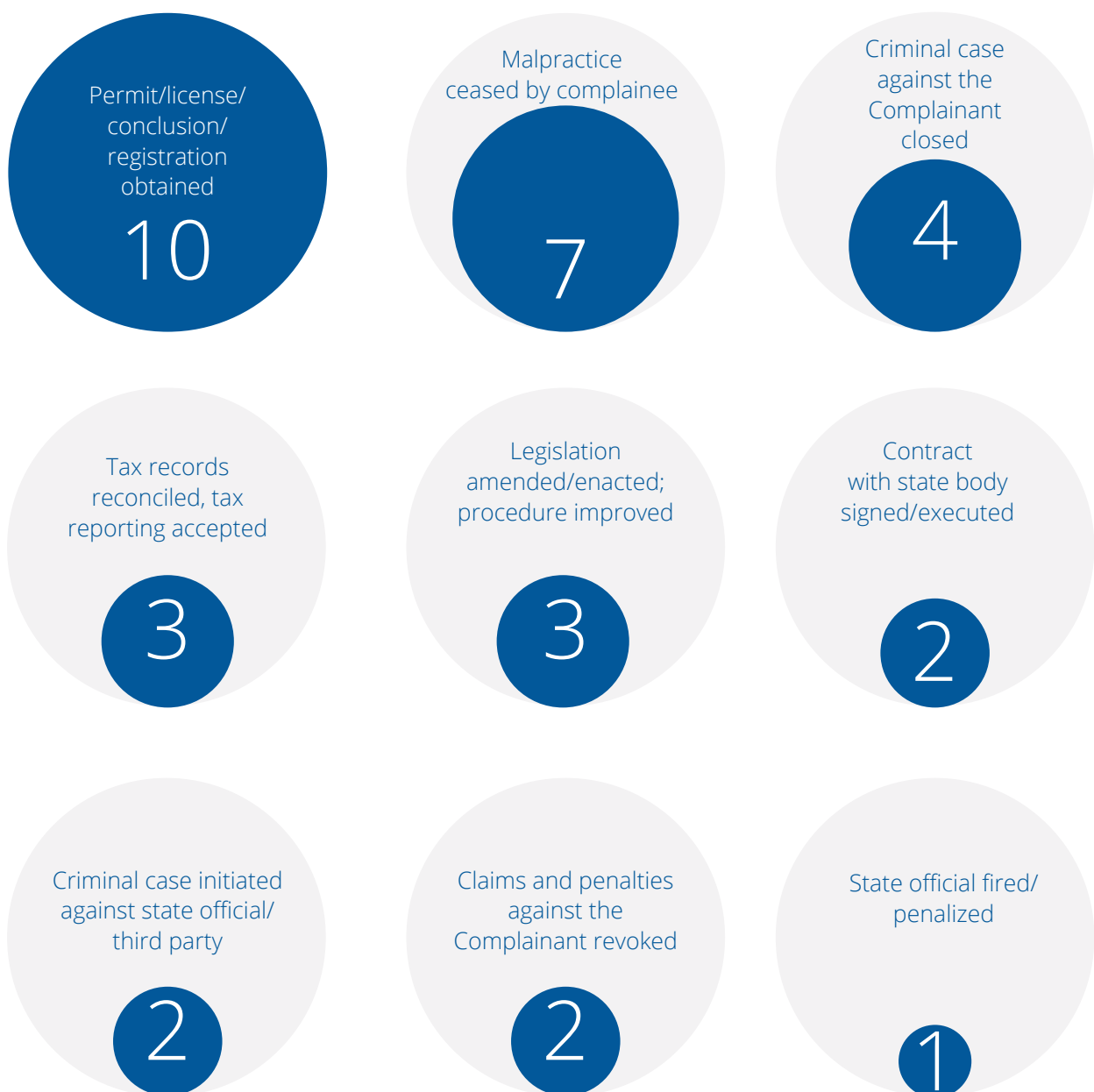
FINANCIAL IMPACT

2 716 373 217,00

UAH

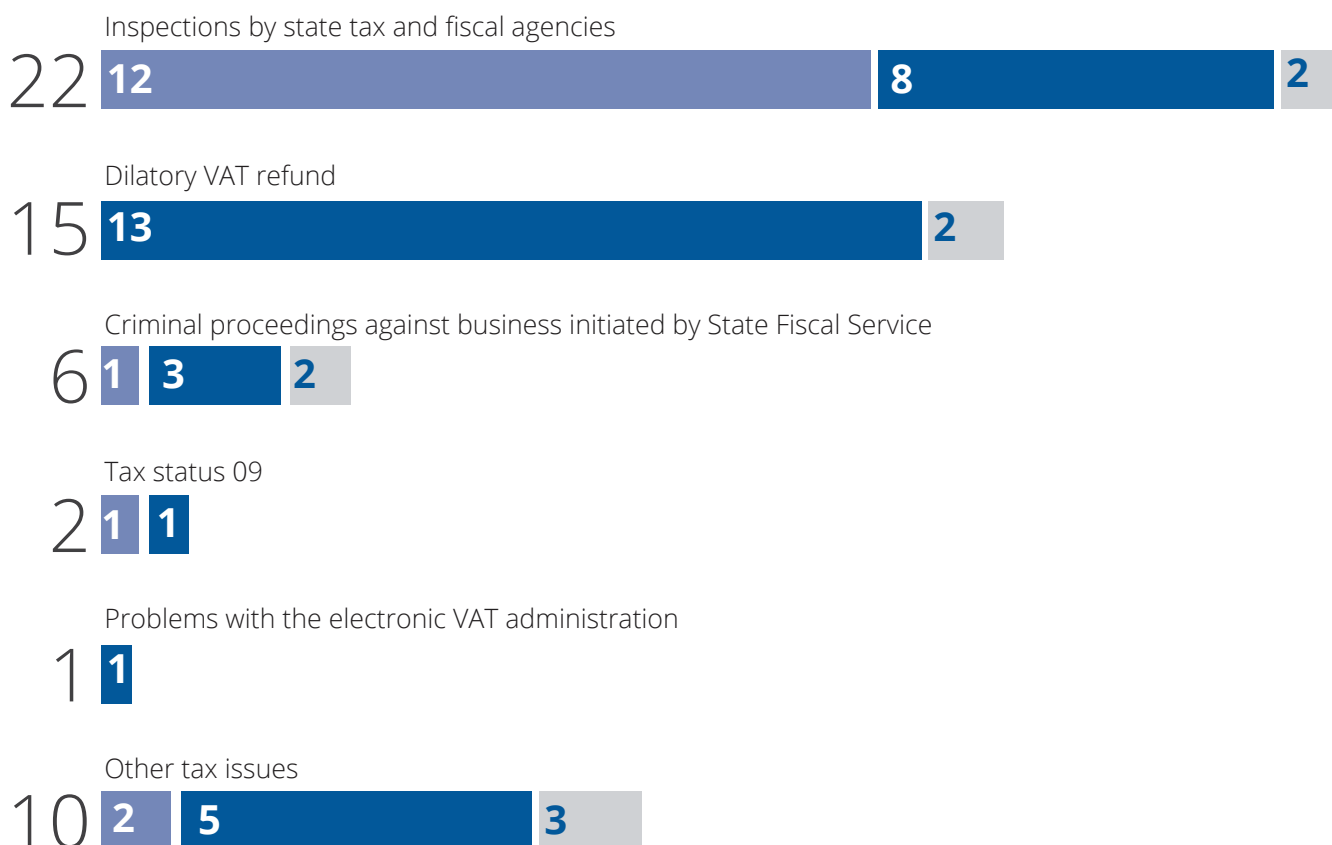
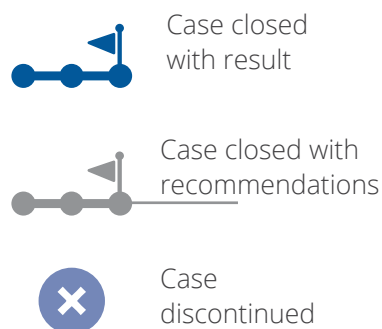
2 094 325 977,00	ATO budget compensations 2014-2015
396 401 395,00	Tax VAT refund
114 444 653,00	Tax deduction of costs
77 082 709,00	Services compensation
13 502 600,00	Return of the amount to E-system of VAT administration
6 036 000,00	Cancellation of tax assessment and penalties
5 000 000,00	Negative meaning of VAT account amended to zero
4 669 458,00	Cancellation the decision to charge additional corporate profit tax liabilities
2 769 322,00	Reconciliation between the records of the taxpayer's card and its VAT returns
2 082 904,00	Payment of outstanding debt owed by the state controlled entity
45 897,00	Payment under Service Agreement
7 503,00	Insurance reimbursement
4 799,00	Single Social Compulsory payment debt cancellation

NON-FINANCIAL IMPACT



SUMMARY OF MOST IMPORTANT INVESTIGATIONS

TAX ISSUES



**Subject matter:
Dilatory VAT refund****Mykolaiv and Kherson
Oblast State Fiscal
Service release UAH 90
million VAT refund****Subject of Complaint:**
State Fiscal Service offices
in Mykolaiv and Kherson
(SFS)**Complaint in brief:**

On August 26-28, 2015, the BOC received complaints from two companies of the same agricultural holding about the systematic VAT refund delays on behalf of the SFS.

The first Complainant's company from Mykolaiv had applied for a refund of UAH 27.0 million VAT in 2014, however, as of July 2015, SFS did not refund UAH 8.5 million of the stated amount.

Another Complainant's company of the stated holding from Kherson Oblast, at the time when they lodged the complaint, had UAH 31.9 million of pending VAT refund for 2014-2015. Of the stated VAT amount, UAH 19.6 million was subject to automatic refund, which the Complainant did not receive. Both Complainant companies also stated that unidentified persons offered them 'facilitation services' to expedite the stated VAT refund, in exchange for bribes.

Action taken:

The BOC experts discovered that the information requests for refunding the Complainants' VAT were declined by the Treasury Department due to the 'exceeded budget allocations for VAT refund'. The BOC investigator then sent a formal inquiry to the Head of the SFS of Ukraine, emphasizing that the stated actions of the Treasury violated the current legislation and asking for the explanation and for the long-overdue VAT refund. Additionally, our investigators processed the stated complaints during the working group meeting between the BOC and the SFS, within the framework of the signed Memorandum of Partnership and Cooperation.

Result achieved:

Following the BOC's intervention, the Complainant's company in Mykolaiv received 100% of the overdue VAT refund accrued during 2014-2015, amounting to UAH 66.7 million. The Complainant's company in Kherson received UAH 37.3 million of the overdue VAT for 2014 and the 8 months of 2015.

Subject matter:
**Problems with
the electronic VAT
administration**

**Oblast State Tax
Inspection accused of
illegal actions**

Subject of complaint:
An Oblast State Tax
Inspection

Complaint in brief:

An Oblast State Tax Inspection was groundlessly hindering the Complainant's ability to file tax invoices electronically. Consequently, the complainant was unable to register its tax invoices.

The Complainant's appeal against the Oblast State Tax Inspection's actions at the relevant tax office was unsuccessful. In addition, the Complainant filed a petition with the Anti-Corruption Bureau of the State Fiscal Service, in which it described the Oblast State Tax Inspection's illegal actions.

Action taken:

The BOC's investigator called the dedicated hotline of the State Fiscal Service with reference to the number of the complainant's petition, inquiring about the petition's status. The employee of the Anti-Corruption Service of the State Fiscal Service failed to provide a clear explanation of the reasons for depriving the Complainant of the ability to file tax invoices electronically. However, he promised that the issue would be resolved as soon as possible.

Result achieved:

Following the intervention of the BOC, the Complainant's issue was resolved within two days. The Complainant's normal business operations and ability to file tax invoices electronically were restored and the case was closed.

Subject matter:
**Inspections by state tax
and fiscal agencies**

**Cancellation of the
decision of State Tax
Inspection regarding
accrual of over UAH 6
million of income tax
and penalties**

Complainee: State
Tax Inspection (STI) of
Holosiivskyi district; Main
Department of State Fiscal
Service of Ukraine

Complaint in brief:

The Complainant is a Company founded by four major banks with the aim to set up classical mortgage refinancing scheme by issuing mortgage-backed bonds. During February-March 2015, the STI of Holosiivskyi district conducted the tax inspection of the Company and issued the act, according to which the Company's operations were recognized as subject to taxation on a common basis. As a result, additional UAH 4.8 million of income tax and UAH 1.2 million of penalties were accrued by STI decision and demanded for payment by the Complainant. Additionally, STI violated the Tax Code condition regarding maximum allowed duration of the tax inspection.

Action taken:

BOC thoroughly analyzed the decision in question, corresponding transitional provisions of Tax Code of Ukraine, standard agreements of the Company, met with Complainant's tax advisor and SFS representatives and received confirmations from the Company counterparties regarding disputed operations reflection in their financial statements. BOC recommended SFS to recognize the facts provided and satisfy the inquiry of our Complainant.

Result achieved:

As a result, SFS of Ukraine decided to cancel STI decision notice and decision of first level appeal, which saved the Complainant over UAH 6 million.

Subject matter: Criminal proceedings against business initiated by State Fiscal Service

Oblast SFS launches groundless criminal proceeding

Subject of Complaint:
Kherson Oblast State Fiscal Service (SFS)

Complaint in brief:

Manufacturing company from Kherson Oblast approached the Council to challenge pressure inflicted on the company by the tax authorities that organized and carried out groundless tax inspections and launched criminal proceedings against the Complainant's managers based on fictitious grounds. The complaint challenged, inter alia, inability to retrieve information from the Oblast Department of the State Fiscal Service related to the details of the criminal proceeding.

Action taken:

After a detailed review of the case, BOC experts concluded that the criminal proceeding was launched by the officials of the Investigatory Unit of the State Fiscal Service in Kherson Oblast (claiming, preliminarily, that Complainant's managers committed acts falling under the scope of Article 15, para 2 and Article 191, para. 5 of the Criminal Code of Ukraine – i.e, an attempt to commit a crime comprising embezzlement of property or acquisition thereto through the abuse of an official power) to effectively bypass moratorium barring tax inspection of businesses. The Council also noted that the criminal investigation had been transferred by the Public Prosecutor's Office in Kherson Oblast for investigation to be conducted by one of the Rayon Public Prosecutor's Offices.

Result achieved:

As the Council drew attention of the prosecutor's authorities that the launching of the criminal proceedings was groundless, the latter was closed two days thereafter. As the facts of pressure on the Complainant on the part of the tax authorities in Kherson Oblast has, in the recent past, been acknowledged and documented by the Main Department of the SFS, the Council issued recommendation to the law enforcement bodies and the SFS to carry out the respective official investigation of the situation.

Subject matter:
Tax status 09

“Status 9” cannot be used to prevent the registration of VAT invoices

Subject of Complaint:
Krasnohvardiysk
District Tax Inspection,
Dnipropetrovsk

Complaint in brief:

On July 9, 2015, the Complainant turned to the BOC with regard to multiple instances of malpractice by the tax office. The Complainant accused the tax office of 1) regularly assigning “Status 9” to the company (absence of the taxpayer at its registered location) and 2) refusing to register the Complainant’s VAT invoices in the Unified Register because it had been assigned “Status 9.”

Action taken:

The BOC investigator held a number of conference calls with the supervisor of Krasnohvardiysk District Tax Inspection in Dnipropetrovsk and determined that the Complainant was being treated by the tax office as an “unreliable taxpayer.” The Complainant had been identified as such based on internal information at the tax office’s and criteria about which the Complainant had no knowledge. The BOC investigator also communicated to the tax officials that, according to law, “Status 9” is not a valid basis for refusing to register the Complainant’s VAT invoices.

Result achieved:

Following a number of telephone conversations with tax officials and a letter with recommendations from the BOC, the Krasnohvardiysk District Tax Inspection ceased its malfeasance. At this time, the Complainant is carrying out its business operations in a normal fashion.

Topic: Other tax issues**Oblast SFS ignores court ruling to return property**

Subject of Complaint:
Poltava Oblast State Fiscal Service (SFS) Investigative Department

Complaint in brief:

manufacturing company complained to the BOC that the Investigative Department of Financial Investigations at the Poltava Oblast State Fiscal Service had failed to enforce the ruling of an investigative judge in the Zhovtneviy District Court in the City of Poltava that an SFS investigator was to return property that he had temporarily seized from the Complainant.

Action taken:

In response to its appeal, the Council received letter issued by the Main Department of the SFS in Poltava Oblast, where, despite the fact that in the text of the Ruling the Complainant was acknowledged as the owner of property, the Council was informed that it was impossible to return temporarily seized objects to the Complainant until the actual owner will be identified. Having analyzed circumstances of the case, the Council recommended both Main Department of the SFS in Poltava Oblast and the investigator of the Investigatory Department for Criminal Investigations of the Main Department of the SFS in Poltava Oblast, to undertake immediate actions to ensure return of the Complainant's property objects, as foreseen by the Ruling. The Council also drew attention of the Head of Main Investigatory Department for Financial Investigations of the SFS of Ukraine to the facts of inadequate fulfillment of professional duties at the part of the Main Department of the SFS in Poltava Oblast and recommended carrying out official investigation to ascertain grounds and motives for such a behavior to prevent occurrence of similar failures to fulfill court decisions, which is the crime.

Result achieved:

As a result of the BOC's intervention, previously seized property objects were returned to the Complainant and criminal proceeding was launched against the investigator of the Main Department of the SFS in Poltava Oblast for his failure to fulfill decision of the court.

**Systemic problems
comprising failure to
fulfil court decisions**

Object of the complaint:
The State Tax Inspection
of the Holosiyivskiy District
in Kyiv (STI)

Complaint in brief:

On June 5, 2015, the Business Ombudsman Council received a complaint from individual entrepreneur about the failure of STI office in the Holosiyivskiy District of Kyiv to cancel illegal accruals as ruled by the Administrative Court of Appeal back in February 2015.

Action taken:

BOC specialists addressed director of the STI of the Holosiyivskiy District of Kyiv asking that immediate actions be taken to correct the violated rights of the Complainant. On July 21, a telephone conversation took place between the supervisor of the relevant department of the STI of Holosiyivskiy District of Kyiv and a BOC's investigator, during which, in addition to a written response, oral assurances were provided that the court decision had been carried out.

Result achieved:

The Council received a written response and oral assurances that the decision had been fulfilled and the case was prepared to be closed.

ACTIONS OF STATE REGULATORS



Regulators cause problems for major Ukrainian meatpacking company

Subject of Complaint:
Deputy Unit Supervisor of the Poltava Oblast Prosecutor's Office, Poltava Oblast State Ecological Inspection, State Price Control Inspection (SPCI), Ministry of Ecology and Natural Resources (MENR), State Geology and Subsoil Office (SGSO)

Complaint in brief:

On June 22, 2015, the BOC received a complaint from Globyno*, a Ukrainian meatpacking company. Firstly, the Complainant claimed that the regional Prosecutor's Office had exceeded its authority in the course of an environmental investigation. This included several illegal searches of company property and that of its managers.

Secondly, the Complainant alleged that the SPCI was delaying approvals of price increases on the company's products. The products in question required state approval because of their status as "essential goods", which made them subject to strict price controls. The Complainant requested an increase in the final prices because of a significant increase in the cost of pork. But its requests either went unanswered or were denied without explanation, leading the company to increase prices without the approval. The Complainant believes that the SPCI has deliberately delayed its increase approvals in order to be able to fine the company.

Thirdly, the Complainant stated that MENR and SGSO officials were delaying approvals of subsoil utilization permits. These permits should have been obtained before drilling wells to provide water for meat processing. The Complainant believed these delays were also calculated to justify fines.

Action taken:

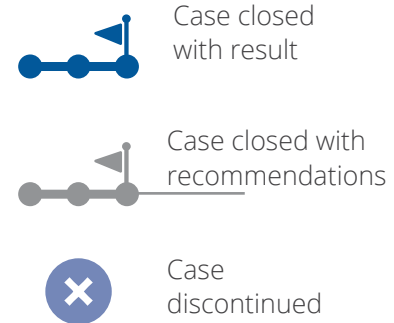
Shortly after BOC experts began to gather supporting data and details regarding the three issues, the Complainant informed the BOC that all of their complaints had been resolved by the various regulatory agencies. The price increases and permits were approved, and legal charges against Globyno were dropped.

Result achieved:

All issues were resolved shortly after the BOC started its investigation. The Complainant sent a letter of thanks to the BOC, saying that its investigation and feedback were crucial in bringing the state agencies around.

**The Complainant kindly agreed to be disclosed for communications matters*

ACTIONS OF LOCAL COUNCILS/ MUNICIPALITIES



3 **1** **2** Trade rules and permits

2 **1** **1** Investment disputes

1 **1** Allocating land plots

4 **2** **1** **1** Other issues

Subject matter: Allocating land plots

The right to lease the land

Complainee:
Kyiv City State
Administration (KCSA),
Kyiv Municipal Council
(KMC)

Complaint in brief:

On 16 June 2015, a big private enterprise with foreign investment turned to the BOC. Allegedly, since 2007 the Complainant has been making numerous attempts to reenter into the land lease agreement with the KMC, but these attempts failed due to the bureaucracy and inactivity of the Kyiv municipal officials. Besides, BOC had grounds to consider that the officials from the KCSA intended to "speed up" the resolving of the case by means of "extra remuneration".

Action taken:

After examining the regulatory base and all the supporting documents the BOC investigators determined that the Complainant had all legal rights to prolong the land lease of the land plot. The BOC representatives conducted negotiations with the Land Department of the KCSA. On 10 July 2015, BOC submitted recommendations to the head of KCSA asking to include the issue on granting the land plot into the lease into the agenda of the nearest session of the KMC and support it.

Result achieved:

On 26 May 2015, the Land Department of the KCSA approved the draft decision of the KMC on granting the land plot into the lease. Later on, during the session of the KMC on 10 September 2015, deputies supported the decision on granting the land plot into the lease to the Complainant.

Subject matter: Investment disputes

**Odesa Foreign Economic
Activity office refuses
to register foreign
investment**

Object of the complaint:
Department for Foreign
Economic Activity and EU
Integration, Odesa Oblast
State Administration

Complaint in brief:

On June 25, 2015, the shareholder of a Ukrainian engineering service company filed a complaint with the BOC. The Complainant had made a share capital contribution in foreign currency. However, the Department for Foreign Economic Activity in Odesa refused to register this share capital contribution as a foreign investment on the ground that the UAH equivalent of the foreign currency contribution amount exceeded the declared UAH share capital contribution amount by UAH 250. This discrepancy arose because of UAH currency fluctuations and constituted a difference between the UAH equivalent of the contribution declared by the shareholders on the date of the corporate protocol and UAH equivalent of the contribution calculated based on the NBU official exchange rate on the date of the contribution. In order to proceed with the registration of this foreign investment, the Department required from the Complainant to adjust its corporate documents by amending the Charter and protocol on increasing share capital so that the UAH equivalent of the share capital contribution was calculated on the date of the contribution, as stated in the information card on foreign investment contributions. The Complainant filed an appeal unsuccessfully. The intercession of the Embassy did not help, either.

Action taken:

The BOC investigator determined that, according to Article 5 of the Law "On the Foreign Investment Regime," the UAH conversion of foreign investment amounts is to be performed according to the official NBU exchange rate. The law does not specify the date when the conversion should be calculated. Pursuant to the law, the Complainant performed the UAH conversion calculation as of the date of the protocol on increasing share capital. Once the

investment arrived in Ukraine and was converted into UAH by the servicing local bank, the positive difference arising because of currency fluctuations was included in the Complainant's taxable income. In support of its position, the Department referred to the Rules for Filing an Information Card, approved by Cabinet Resolution #139 dated March 6, 2013, where the UAH conversion of a foreign investment amount should be deemed as of the date of the investment.

However, the BOC investigator determined that, in practice, it may be quite difficult for an investor to adjust corporate documents as required by the Department since, from the viewpoint of Ukrainian corporate legislation, such change/adjustment may appear unacceptable to the State Registrar, the agency responsible for registering changes to charter documents. The BOC investigator had a number of telephone conversations to discuss the case with a Department official and the Ministry of Economic Development and Trade, to which the Department is subordinate. The conclusion was that the Department was not justified in requiring the Complainant to change its corporate documents. The BOC did not issue formal recommendations to the Department since it was quite cooperative and was willing to find an amicable solution.

Result achieved:

On July 20, 2015, the Department informed the BOC that the foreign investment had been registered. The case was closed.

Subject matter:**Other issues****The City Council
breaches the law on
economic competition****Subject of Complaint:**
Novovolynsk City Council

Complaint in brief:

The Complainant, a civil organization, addressed the BOC with a complaint about malpractice on the part of the City Council. The Council failed to execute the Decision of the Administrative Collegium of the Volyn Territorial Department of the Antimonopoly Committee of Ukraine dated December 30, 2014. According to the Decision, the Council was obliged to bring the "Order of the Lease of the Commune Property by the Territorial Community" in line with the norms of the law of Ukraine "On the Lease of State and Commune Property" dated April 10, 1992. Thus, the Council should have reconsidered the approach to calculating the lease payment methodology but failed to do so thus breaching the law on economic competition.

Action taken:

The BOC addressed the Volyn State Administration and Novovolynsk City Council with a call for explanation and received the acknowledgement that the law on economic competition had actually been breached. The BOC issued a number of recommendations to renew all land lease agreements and drew attention of the Complainee to the fact that it should strictly abide by the law on fair economic competition.

Result achieved:

In less than a three month's term since launching investigation, all BOC's recommendations were implemented.

CUSTOMS ISSUES



2 **1** **1** Valuation

1 **1** Criminal proceedings

2 **1** **1** Clearance delay/refusal

1 **1** Administrative proceedings

3 **1** **1** **1** Other issues

Subject matter: Valuation

**Goods cleared by
customs at the contract
price**

Subject of Complaint:
Mykolayiv Customs Office
of State Fiscal Service (SFS)

Complaint in brief:

The BOC received a complaint regarding unreasonable adjustment of customs value of the frozen fish cargo, imported to Mykolayiv Marine Trade Port. Having examined the complaint, the Council found out that:

- The argument, provided by the customs regarding refusal to perform customs clearance at the price of the agreement, was essentially formal application of Customs Code and was not relevant for estimation of goods customs value
- Customs authorities indicated that the value of transaction with similar goods was used for customs valuation. But, the same month the Complainant had successfully performed clearance of similar goods at the same contract price on Kyiv Customs

Subject matter: Criminal proceedings**Complainant's property illegally retained by customs****Subject of complaint:**

(1) Odesa Customs Office of the State Fiscal Service of Ukraine (2) Investigation officer of the Investigation Department of the Security Service of Ukraine in Odesa Region

Action taken:

The BOC sent a request to Mykolayiv Customs drawing attention to the facts identified and recommended to perform the customs valuation of goods objectively.

Result achieved:

After BOC request, the Complainant's goods were cleared by customs at the contract price.

Complaint in brief:

The Complainant challenged the illegal retention of his property (i.e., coal with the total value of over USD 200,000) by the Complainee. The property was retained further to the request of the State Security Service of Ukraine investigating a terrorism financing case. The Complainant claimed multiple breaches of the criminal law procedures by the Complainees in the course of retention of the coal. Complainees also left the Complainant without any official response to his request to approve customs clearance of the cargos.

Action taken:

The BOC addressed Odesa Customs Office requesting to provide explanations what the ground for retention of the Complainant's property was. The BOC drew attention to the multiple procedural violations committed by both Odesa Customs Office and investigation officer.

Result achieved:

In a month's term after BOC's involvement, the retained coal was released and was loaded on ship for export.

Subject matter: Customs clearance delay/refusal**Customs refuses to set up temporary zones for cargo clearance****Object of complaint:**
Kyiv City Customs, under the State Fiscal Service

Complaint in brief:

On July 1, 2015, a river transport company turned to the BOC and claimed that Kyiv City Customs had refused to establish a temporary customs zone in the Kyiv River Port. A temporary zone was necessary to carry out certain customs clearance procedures. In the absence of a permanent customs zone, every time the Complainant transported cargo on the Dnipro River, it had to request the establishment of such a temporary customs zone.

Although the law allows for temporary customs zones to be set up, as the case may require, but despite the fact that such zones had been set up in the past in response to the Complainant's requests, this time Kyiv City Customs refused. Instead, the agency advised the Complainant to undertake customs clearance of the cargo in another port, where a permanent customs zone is set up.

Action taken:

The BOC investigator determined that, based on the law, Kyiv City Customs was not empowered to refuse to set up a temporary customs zone if this was requested and justified by the Complainant and the necessary approval of the State Border Service for cargo transportation had been obtained. The BOC investigator had a number of telephone conferences to discuss the case with the Kyiv City Customs officials. On July 8, 2015, a letter with BOC recommendations was submitted to the Kyiv City Customs Office.

Result achieved:

On July 14, 2015, in response to the Complainant's request and the BOC letter of recommendations, the Customs office established a temporary customs zone and the Complainant was able to clear its cargo. The case was closed.

MINISTRY OF JUSTICE ACTIONS



10 8 2 MinJustice registration service

2 1 1 MinJustice enforcement service

Subject matter:
MinJustice enforcement service

Performing enforcement procedures in an efficient manner

Subject of Complaint:
Ministry of Justice of Ukraine Department of State Executive Service of the Podil District in the City of Kyiv

Complaint in brief:

The Complainant was awarded with court order for compensation of UAH 14,193.82 from Private Joint Stock Company. However, in violation of the statutory terms and procedures, the Complainee did not launch enforcement proceedings. Thus, the Complainant requested the BOC assistance with enforcement of the court order.

Action taken:

The BOC investigator identified that, by virtue of the law, the Complainee was obliged to accept the court order for enforcement or provide a substantiated refusal. However, the Complainee effectively provided no response (positive or negative) to the Complainant. The BOC recommended that the Complainee provides proper confirmation regarding acceptance of enforcement document and to ensure performance of all proceedings starts in a timely manner. The BOC also brought the case for consideration at an expert working group established within the framework of the Memorandum of Cooperation signed between the BOC and the Ministry of Justice of Ukraine.

Result achieved:

As of December 31, 2015, all BOC's recommendations on the matter were implemented.

Subject matter:
**MinJustice registration
service**

**Successful registration
of ownership right over
portfolio of assets**

Subject of Complaint:
State Registration
Department of the
Ministry of Justice of
Ukraine

**The Complainant kindly
agreed to be disclosed for
communications matters*

Complaint in brief:

On July 20, 2015, the BOC received complaint from the ALC "Perechyn Wood-Chemical Plant"* regarding numerous refusals to register ownership to the portfolio of assets.

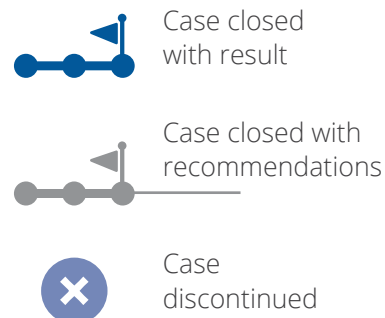
Action taken:

The BOC scrutinized all the data of the Complaint and recommended to the State Registration Department of the Ministry of Justice to register the title in case of absence of the grounds for denial. In order to verify possible grounds for denial the BOC organized the working meeting between the Complainant and State Registration Department of the Ministry of Justice of Ukraine.

Result achieved:

As a result of BOC's actions, the successful registration of title to the portfolio of assets was made on December 23, 2015.

MINISTRY OF INTERNAL AFFAIRS (MIA) ACTIONS



33 MIA procedural abuse

211 MIA inactivity

Subject matter: MIA procedural abuse

Investigative agencies exceed authority to pressure business

Subject of complaint:
Main Investigative Bureau of the Ministry of Internal Affairs

Complaint in brief:

The officials of an international company in Ukraine complained that the company's premises had been searched, its employees interrogated, and company documents seized as part of an ongoing criminal investigation. According to the Complainant's sources, the criminal investigation into its activities was launched for alleged VAT evasion by paying two local companies for fictitious delivery charges. The Complainant's authorized representatives denied the allegations as malfeasance, citing court rulings in their favor. They said a criminal investigation had been launched and the investigators' actions were intended to put pressure on the company.

Action taken:

BOC experts analyzed the information in the complaint, reviewed related legislation, in particular the Criminal Procedural Code, and met with the authorized representatives of the Interior Ministry's Main Investigative Bureau and the investigator in charge of the case.

The Council's experts determined that the criminal investigation was legitimate and the allegations of the Ministry's Main Investigative Bureau were within its competence. Following the proper procedures, however, the Council concluded that the investigator's actions were

**MIA's Kharkiv Oblast
Investigation Office
fails to launch criminal
proceeding**

Subject of Complaint:
Kharkiv Oblast
Investigation Office of the
Ministry of Internal Affairs'
Main Department

excessive and, possibly, intended to put pressure on the company, its management and employees.

Given this, the Council proposed that the Main Investigative Bureau to issue a formal apology to the Complainant and abstain from such unwarranted pressure in the future.

Result achieved:

After the Main Investigative Bureau's investigators were informed that they were expected to strictly abide by the Criminal Procedural Code in their actions, a formal letter of apology was issued by the Bureau, and positive feedback was received from the Complainant. The Council then closed the case.

Complaint in brief:

On June 25, 2015, the BOC received a complaint from a shareholder of a joint stock company challenging rejection of the Investigatory Unit of the Main Department of the Ministry of Internal Affairs of Ukraine to launch criminal proceeding following his respective application. As prescribed by law, the Complainant approached Investigatory Unit of the Main Department of the Ministry of Internal Affairs in Kharkiv Oblast with application referring to the fact of raider's attack initiated by another shareholder, who reportedly enjoyed "protection" from the member of the Ukrainian Parliament. Nonetheless, the investigatory authority refused to register the application.

Action taken:

The Council's experts ascertained that in accordance with the requirements of the Criminal Procedural Code, the Investigatory Unit was obliged to register the Complainant's application with the Unified Register of Pre-Trial Investigations and commence investigation within 24 hours from the moment of their receipt of application about committed criminal offence.

The investigator then formally requested the Ministry of Internal Affairs in Kharkiv Oblast seeking confirmation that the Complainant's application has been received and registered. Another inquiry was sent to the Kharkiv Oblast Prosecutor asking him to look into and monitor the case.

Result achieved:

The BOC sent its recommendations to both the Ministry and the Kharkiv Oblast Prosecutor. The Council's recommendations were fulfilled in course of the complaint's consideration. Currently the criminal proceeding is at the pre-trial investigation stage.

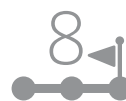
LEGISLATION DRAFTS/AMENDMENTS



12
Cases
closed



Case closed
with result



Case closed with
recommendations

Difficulties in collagen casings importing due to discrepancy in legislation

Subject of Complaint:
Ministry of Agrarian Policy and Food of Ukraine; the Cabinet of Ministers of Ukraine

Complaint in brief:

On May 25, 2015, a private enterprise turned to the BOC. The complaint was about issues with importing collagen casings from Poland to Ukraine. Currently, according to the Cabinet of Ministers of Ukraine, import of such goods is subject to mandatory veterinary checks, requiring, respective veterinary certificate of the producer. As Poland does not require veterinary checks of such products, there is a great problem to get collagen casings in Ukraine. The Complainant addressed this matter to various state authorities. As a result, the idea to exempt collagen casings from the veterinary control was backed up by the State Regulatory Service and the Ministry of Agrarian Policy and Food of Ukraine. Subsequently, the Ministry of Agrarian Policy elaborated draft amendments to the Resolution of the Cabinet of Ministers of Ukraine, but there was no progress.

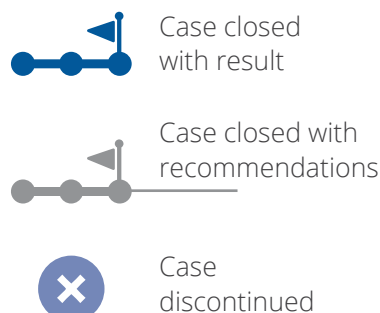
Action taken:

The BOC held some meetings with officials from respective ministries and State Consumer Protection Service. As a result, the Draft Legislation was published on the web portal of the State Veterinary and Phytosanitary Service of Ukraine for public discussion.

Result achieved:

On August 24, 2015, the Ministry of Agrarian Policy submitted the draft law for the approval of the central state authorities. At this stage, the BOC monitors how the work on advancing Draft Legislation will progress.

PROSECUTOR'S OFFICE ACTIONS



5 **1** 4 Prosecutors' Office procedural abuse

2 **2** Prosecutors' Office corruption allegations

2 **1** 1 Prosecutors' Office criminal case initiated

2 **1** 1 Prosecutors' Office other

Subject matter:
Prosecutors' office procedural abuse

Illegal actions of the Prosecutor's Office employee

Subject of Complaint:
Kyiv City Prosecutor's Office

Complaint in brief:

The Complainant lodged a complaint to the Council in summer 2015 claiming that he was receiving invitations for interview from the employee of the Prosecutor's office in Kyiv City. Such invitations did not meet formal requirements and were sent by e-mails.

Action taken:

The Council drew attention of the Prosecutor's Office in Kyiv to such illegal actions of its employee and asked to conduct an official check to prevent similar cases in future.

Result achieved:

In autumn 2015, the Council was notified that the employee of the Prosecutor's office in Kyiv was fired and the criminal proceeding was closed due to the lack of the elements of the crime.

**Subject matter:
Prosecutors' Office
corruption allegations**

**Rayon Public
Prosecutor's Office
refused to launch
criminal proceeding**

Subject of Complaint:
Rayon Public Prosecutor's
Office

Complaint in brief:

The Council completed investigation of complaint lodged by a Private Entrepreneur from Kyiv Oblast challenging several violations committed by the pre-trial investigation bodies in Kyiv Oblast (Rayon Unit of the Ministry of Internal Affairs and Rayon Public Prosecutor's Office) that refused to launch criminal proceeding against the Village Head's failure to fulfill court decision. The decision ordered removal of certain physical obstacles that prevent the Complainant to carry out normal business activity.

Action taken:

Following successful court challenge of the Rayon Public Prosecutor's Office refusal to register data with the United Register of Pre-Trial Investigations, during May-June 2015 the Complainant 10 (!) times approached investigatory judge to challenge refusal to grant her status of a "victim" as well as resolution to close criminal proceeding made by investigator of the Rayon Department of the Ministry of Internal Affairs (MIA).

Result achieved:

As a result of the Council's intervention, the criminal proceeding was transferred to a different Rayon Department of the MIA and the Rayon's Public Prosecutor has been stripped of his bonus for August 2015. Yet, several days after transfer of the proceeding to another Department of the National Police, it was closed again. In December 2015, the closure of this criminal proceeding was once again successfully challenged by the Complainant with the court.

Subject matter:
**Commencement of
criminal proceeding
by public prosecutor's
authorities**

**Non-proportional
nature of the scope
of procedural
measures, employed
by the Investigatory
Department of the
General Prosecutor's
Office of Ukraine**

Subject of Complaint:
Investigatory Department
of the General
Prosecutor's Office of
Ukraine

Complaint in brief:

The Council received complaint from the company - user of mineral resources challenging groundless arrest of its property to secure possible lawsuit within criminal proceeding investigated the Investigatory Department of the General Prosecutor's Office of Ukraine. The Complainant contended that the scope of the employed procedural measures (comprising arrest of bank accounts, finished commodities, mineral wells and means of production) has been excessive and, in its aggregate volume, exceeded the value of the possible lawsuit against the Complainant by more than 10 times.

Action taken:

The Council approached the General Prosecutor's Office twice seeking additional information on the matter. In particular, the Council requested information about materials or other evidences, which would prove that the scope of procedural measures (authorized by the investigatory judge in response to the investigator's requests to impose arrests against the Complainant's property) has indeed been appropriate. Only with the third attempt, with the assistance provided by the Parliamentary Committee On Ensuring Law-Enforcement Activity, the Council received timely response from the General Prosecutor's Office, albeit rather formal in nature.

Result achieved:

Currently, the BOC expert are representing the Council in the Inter-Ministerial Working Group created under the auspices of the Ministry of Justice, tasked to settle possible international investment arbitration claim that is being contemplated by the Complainant against the State of Ukraine.

ACTIONS OF STATE COMPANIES



33 Investment/commercial disputes

422 Other issues

Boryspil International Airport fails to fulfill financial obligations

Subject of Complaint:
Boryspil International Airport

Complaint in brief:

On June 20, 2015, the Business Ombudsman Council received a complaint from a private enterprise that Boryspil International Airport, a state enterprise, had failed to fulfill its financial obligations under a service contract.

Action taken:

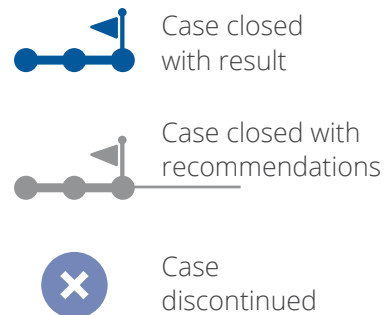
Having examined the documents and been assured that the private enterprise was justified in demanding proper payments including penalties, BOC specialists wasted no time in addressing the management of the state enterprise directly, requesting to fulfill its financial obligations.

For a period of time, BOC Secretariat specialists tried to establish effective communication with the management of Boryspil International Airport but the enterprise's employees did not engage in constructive dialogue and the issue was not addressed substantially.

Result achieved:

As a result of persistent efforts by the Business Ombudsman Council, the state enterprise eventually fulfilled its financial obligations under the service contract and the Complainant received all outstanding amounts due.

PERMITS AND LICENSES



Subject matter: Construction

Architecture and construction agency delays issuing permit

Object of the complaint: The State Architecture and Construction Inspection (SACI)

Complaint in brief:

On June 23, 2015, a wholesale and retail distributor of liquefied petroleum gas and gasoline filed a complaint against malpractice in the part of SACI. SACI was apparently putting the issuance of building permits on hold, which had led to financial and reputational losses on the part of the Complainant.

The Complainant had submitted an application package three times to SACI, but each time the reasons for refusing to issue the permit were changed by the controlling authority.

Action taken:

On August 15, the BOC submitted an official note to the State Architectural and Construction Inspection with a request to issue the permit.

Result achieved:

Two days after the BOC's official request, SACI issued the building permit. The case was closed.

Subject matter:
Environment/subsoil

**State monopolies delay
issuing permits without
offering reasons**

Subject of Complaint:
Kharkivvodokanal, a
municipal water supply
and sewage utility

Complaint in brief:

On June 25, 2015, the BOC received a complaint from an enterprise stating that Kharkivvodokanal's utilization permits department had failed to approve their water management permit without giving a clear reason why. The Complainant was told to request permit preparation services from a secondary company whose prices were much higher than the market average. The Complainant also stated that it was being pressured to hire consultants who were connected to the Kharkivvodokanal permits department. Meanwhile, the Complainant was also fined for not meeting waste water standards, despite having lab analysis results that showed otherwise.

Action taken:

The Complainant supplied the BOC with numerous documents supporting its claims. The BOC investigator reviewed the case and determined that the municipal utility was violating competition laws and abusing its power. However, Kharkivvodokanal refused to answer questions over the telephone, so the investigator wrote a letter asking the company for an explanation and requesting it to cease its malfeasance. The letter was not given a proper response. The BOC followed up with an inquiry with the Kharkiv Territorial Department of the Antimonopoly Committee of Ukraine (AMC) asking them to investigate the case.

Result achieved:

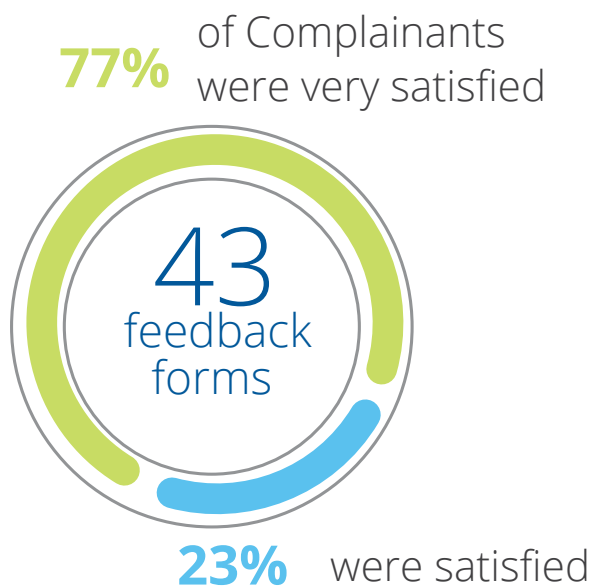
The AMC Department informed the BOC investigator that it had indeed found evidence that Kharkivvodokanal was in violation of market competition rules. Still, the utility failed to properly respond to the BOC's recommendations. Finally, the BOC recommended that the Complainant file suit against Kharkivvodokanal. The BOC also published systemic report with recommendations on regulating behavior of state monopolies in QIV of 2015.

2.9.

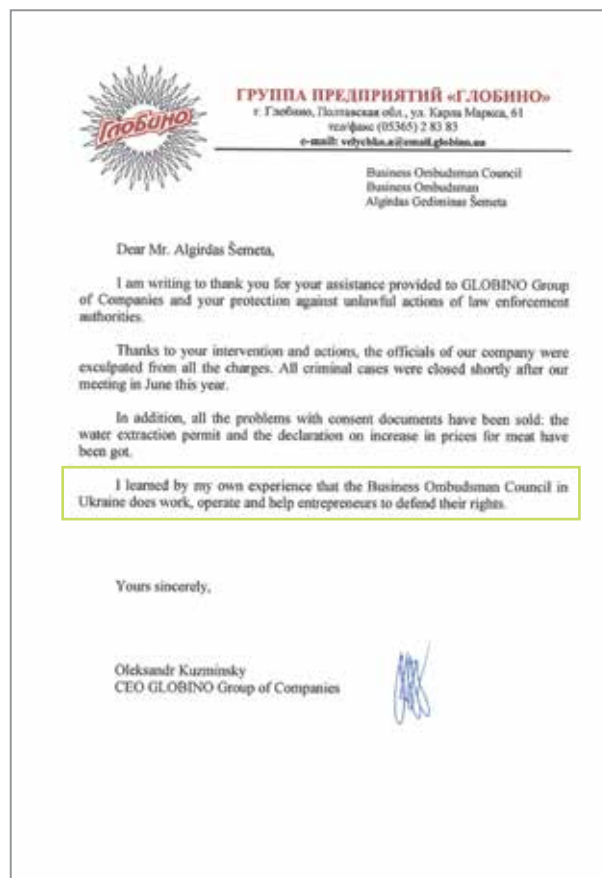
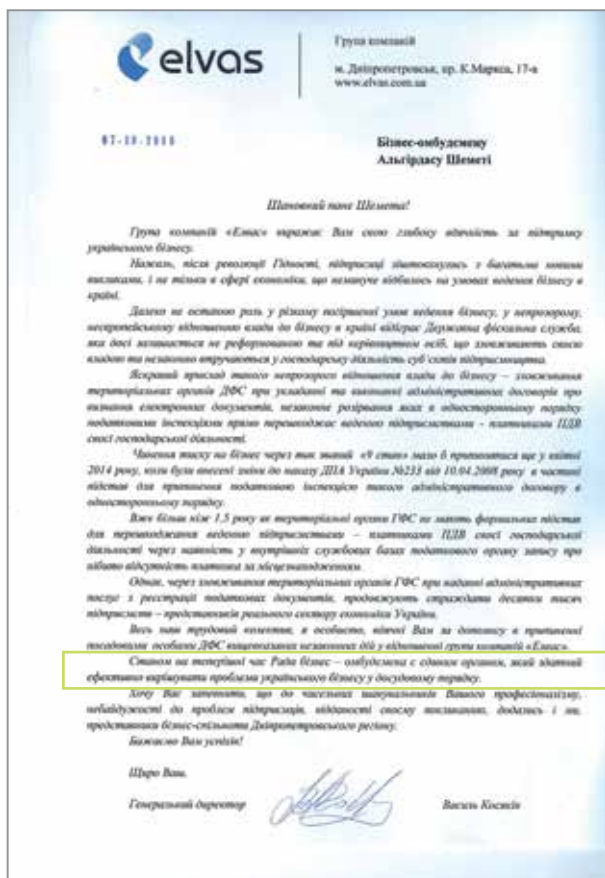
Clause 5.3.1 (e)
of Rules of Procedure

FEEDBACK FROM CLAIMANTS

At the end of the reporting year,
we received 43 feedback questionnaires.

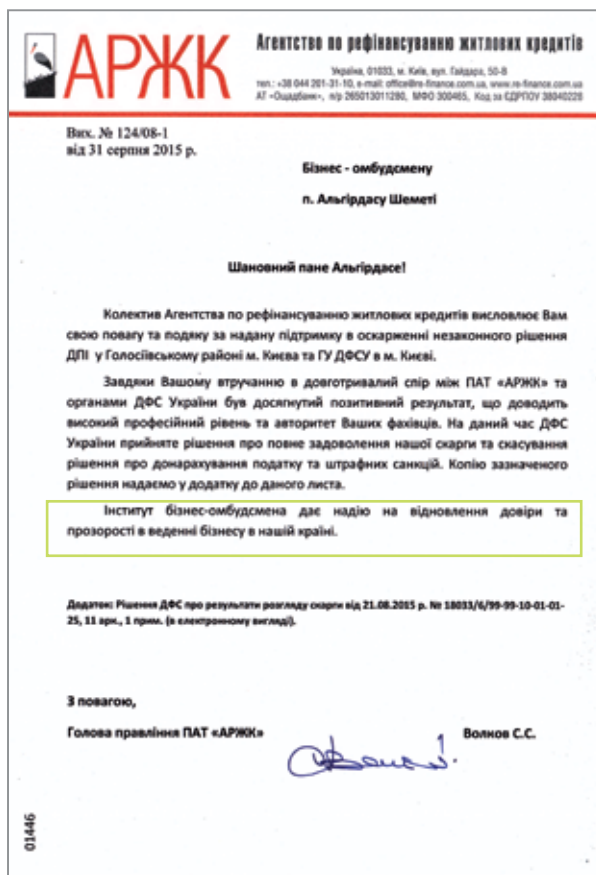


The
Complainants
especially
were grateful
for “speedy
reaction”,
BOC’s team
professionalism,
positive mindset,
openness and
transparency of
organization



At the moment, the Business Ombudsman Council is the only body in Ukraine capable of effective pre-court problem-solving."

I learned by my own experience that the Business Ombudsman Council in Ukraine does work, operate and help entrepreneurs to defend their rights."

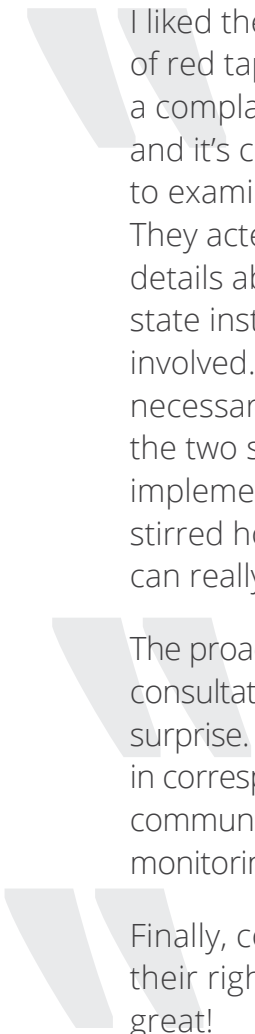


Business Ombudsman Council gives hope in restoring public trust and transparency of doing business in Ukraine."

Your decision is a landmark that gives confidence that Ukraine chose the right path – the path of attractiveness to foreign investors."

OTHER COMMENTS FROM FEEDBACK QUESTIONNAIRES

WHAT COMPLAINANTS PARTICULARLY LIKED ABOUT DEALING WITH US:



I liked the Business Ombudsman Council for its lack of red tape and formalities. The procedure for filing a complaint online is simple and easy to understand, and it's clear that the BOC team takes the trouble to examine the subject of the complaint in depth. They acted quickly and actively to get the necessary details about the case and to connect with the state institutions or organizations and companies involved. They even travelled to the locale when necessary and met with key representatives of the two sides in the complaint, and supported the implementation of their conclusions. All this really stirred hope that the business climate in the country can really become healthier.

The proactive response to queries and the consultations about the next steps were a pleasant surprise. What's more, the staff was courteous both in corresponding and in conversation, and reliable in communicating about the steps already taken and in monitoring the progress of my case.

Finally, companies have an opportunity to protect their rights and to be heard by someone. That's great!

From the minute our complaint was submitted, the BOC was continually in contact by phone and e-mail, and the staff always found time to provide an answer related to our complaint.

I was particularly impressed by the readiness of the BOC team to help business and not just engage in passing the buck like government agencies.

The professionalism and sincere desire to help were a relief. People responded quickly and, most importantly, they were results-oriented and resolved our case fairly quickly.

The BOC team very quickly figured out the specifics of our case in depth, although it's a very specialized area. They had a clear plan of action and a desire to work for results. Nothing superfluous.

What pleased me the most was that the support of the BOC team really helped at the initial stage when the tax office reviewed our case. In my experience, this was a first case in nearly 10 years of interacting with the tax service.

WHAT COMPLAINANTS WOULD LIKE TO IMPROVE IN DEALING WITH US:

There needs to be even more power to take perpetrators to court, up to and including criminal prosecution.

The BOC needs to have more power and rights in interacting with government agencies.

The BOC possibly need stricter oversight over the work of officials in the State Fiscal Service and to consider instituting some proposals to increase their personal liability for making decisions or for failing to act.



SYSTEMIC ISSUES AND RECOMMENDATIONS



SYSTEMIC ISSUES

identified in the reporting period

The complaints that are submitted to the Business Ombudsman Council reflect the entire spectrum of systemic problems related to business conditions in Ukraine today. What's more, we are particularly aware of the urgency of the situation, knowing that behind every complaint we receive stands a real problem for a real company or entrepreneur. We do not attempt to prioritize complaints based on the jurisdiction of a company or the size of its assets. Every case is different and we hope to be able to use our reputation and expertise to resolve the conflicts and, if necessary, to demand that the Government of Ukraine take the necessary measures.

Complaints the Council received and meetings with business owners from different sectors demonstrated two types of systemic problems:

- (1) Urgent issues due to gross violations of entrepreneurial rights typically involving tax, customs, regulatory and oversight bodies, and various abuses and pressure on the part of law enforcement agencies.
- (2) Historical problems arising from a flawed regulatory environment.

Based on this reasoning, the BOC began to work on systemic recommendations that the Council has presented to the government of Ukraine.

Given the considerable visibility it has had socially and politically, during its first operational quarter the Council prepared a systemic report on the topic of **hooking up commercial entities to the power grid**, a problem that is one of the most basic hurdles to developing business in Ukraine. The urgency of this issue is evident from the fact that Ukraine was only 185th on the World Bank's 2015 Doing Business report for the indicator "Hooking up to power grids." In this report, we analyzed the relation between the number and duration of procedures that were used to determine Ukraine's rating in 2015, and domestic legislation in mid-July 2015. The result, based on recommendations presented by the Council, was that the World Bank reduced the number of procedures for Ukraine from 10 to 5 in its 2016 Doing Business rating. Our report also contained a series of further recommendations that, in our opinion, will not only make the procedure of being hooked up to the grid faster and cheaper than it now is, but will also minimize

the corruption component that currently manifests at various stages of setting up service.

The BOC could not ignore the **new realities that currently face businesses in Eastern Ukraine and Crimea**. Problems with the movement of cargo, transport flows and payment settlements with the loss of part of the country's territory and the Anti-Terrorist Operation (ATO) have had serious repercussions for domestic and international business alike. Security issues aside, the BOC began to prepare recommendations for the Government of Ukraine and the relevant enforcement agencies and published a systemic report called "Problems for business as a result of the military situation in Eastern Ukraine and the annexation of Crimea" in July 2015.

Unquestionably, the main source of problems with Ukraine's business climate lies in **tax administration**, interaction with tax agencies, corruption at all levels of management in the tax administration system, and criminal cases brought against businesses by fiscal agencies. Because the BOC focuses on this problem all the time, it was decided to provide well-grounded proposals for improving the situation through a bill to amend the Tax Code, collaborating on it and promoting it at the highest level of government and international organizations. In October 2015, the BOC published a systemic report called "Problems with administering business taxes in Ukraine." Meanwhile, the BOC works on such issues every day as part of its Memorandum of Cooperation with the State Fiscal Service.

As of 2016, the Agreement on a Deep Comprehensive Free Trade Area (DCFTA) with the EU came into effect and Ukraine joined the Union's trade space. The BOC reviewed **a number of issues related to the regulation of foreign economic activities**, focusing its attention on factors that significantly affected operating costs for businesses and published a report in October 2015 called "Problems with cross-border trading in Ukraine."

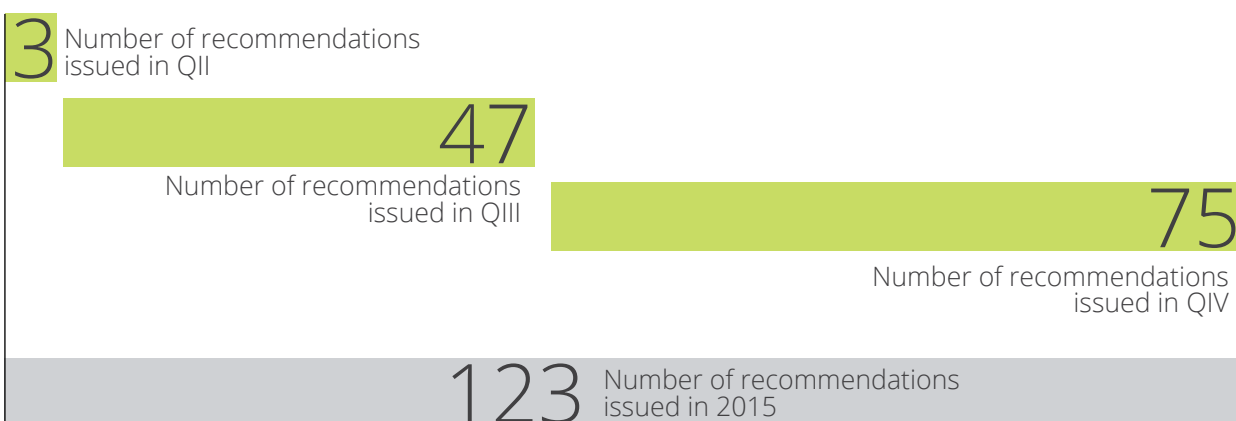
The Business Ombudsman Council quite often receives complaints related to the **activities of natural monopolies in Ukraine**, mainly utilities providing power, water, heat and gas. In addition to problems caused by the monopolist companies themselves, this also affects Ukraine's international rating for investment appeal, especially the issue of access to the power grid.

The cost of utility services can amount to over 30-70% of production cost for a business. Because natural monopolies are not constrained by competition in raising prices for their services, they have little incentive to reduce their own costs by modernizing their facilities, introducing new technologies, streamlining, and controlling unjustified costs in the value of their services. This leads to even greater inefficiency and growing depreciation in the networks that allow them to deliver those very services. Better regulation of relations between customers and providers is one of Ukraine's commitments within the framework of the Association Agreement with the European Union and the conditions under which Ukraine joined the Treaty establishing the Energy Community and the implementation of the Third Energy Package.

One of the most painful problems for business is the **abuse of power on the part of law enforcement agencies**, which are known to pressure domestic businesses. The scale of this problem, among others, is confirmed by the fact that, of the 621 complaints received by the BOC as of February 1, 2016 (at the moment of compiling this report), 112 or 18% of them involved various abuses on the part of pre-trial investigation and public prosecutor's authorities. The Council's recommendations call for a fundamental change in the approach to launching and carrying out criminal proceedings and for amendments to Ukraine's Criminal and Criminal Procedural Codes. The Council hopes and anticipates that, after this report is published, the Cabinet of Ministers and Verkhovna Rada, together with representatives of the judiciary and law enforcement agencies, will initiate the establishment of an Expert Group to draft the necessary changes to legislation.

3.2.

RECOMMENDATIONS MADE TO RELEVANT AUTHORITIES



78 are already implemented

63%



36%

45 subject to monitoring

IMPLEMENTATION AND FOLLOW-UP OF SYSTEMIC RECOMMENDATIONS MADE TO AUTHORITIES

3.3.



SYSTEMIC REPORT “Getting Access to Electricity”

Ukraine's ranking in Doing Business for “Getting Electricity” index

On October 27, 2015 the World Bank updated its Doing Business ranking. Although Ukraine's ranking for “Getting Electricity” index in the 2016 study has improved for one point only (137th place now), it was appealing to see that [the country's ranking for 2015 has been retroactively revised from 184th to 138th place.](#)

We understand that while contemplating such a

revision the World Bank should have taken into account various findings the BOC experts were insisting on while liaising with Doing Business team in Washington DC during preparation of the report. In particular, as suggested in the Report, the number of procedures required to be followed by a customer to hook-up its power unit has indeed been decreased from 10 to 5.

It is worth noting that if such progress were to be reflected straight in the 2016's ranking (i.e., without retroactively revising 2015), Ukraine could have jumped from 184th to 137th place, resulting in 47 positions progress, which would be the country's best improvement vis-à-vis all other Doing Business indexes in comparison with the previous year.

Amendments to the Law of Ukraine “On Electricity”

During reporting quarter, the BOC's experts participated in the work of the Working Group tasked to prepare Draft Law of Ukraine “On Amending the Law of Ukraine On Electricity”.

The Draft Law is aimed at improving the procedure of hooking up customer's power units to power network and constitutes part of the Coalition Agreement focused at deregulation.

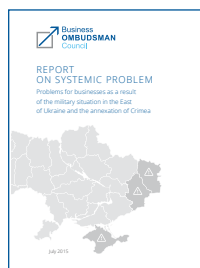
Our team participated in several meetings of the Working Group, which took part at the Cabinet of Ministers of Ukraine under chairmanship of Mr. Gennadiy Zubko, Vice Prime Minister

of Ukraine and the Minister of Regional Development, Construction and Communal Services, with participation of representatives from the key ministries, the National Commission for State Regulation of Energy and Public Utilities of Ukraine, international organizations, energy utilities and construction companies.

Following this work, we prepared amendments to the text of the Draft Law promulgated by the Ministry for Regional Development and Construction, which substantially reflect the Council's main recommendations set forth in the systemic report.

On February 24, 2016 (at the moment of preparing this report) the Cabinet of

Ministers of Ukraine approved Draft Law "On introducing amendments to the Law of Ukraine "On Introducing Amendments to Certain Legislative Acts of Ukraine Regarding Simplification of the Procedure of Getting Hooked Up to Electricity Grids". As of the date of this Annual Report, this Draft Law has not yet been officially registered with Verkhovna Rada.



SYSTEMIC REPORT on Selected Problems with Business Activity due to the Anti-Terrorist Operation and the Annexation of Crimea

1. Compensation to firms for employees mobilized for a specified term for the entire period starting March 27, 2014, with the adoption of Law #1169-VII.

The BOC undertook thorough work with the Government of Ukraine and international organizations to resolve this issue. As a result of these joint efforts, Cabinet Resolution #105 dated March 4, 2015, was amended to regulate the procedure for issuing such payments and to expand the categories of individuals who are eligible under this resolution. The Ministry of Social Policy and Ministry of Finance were clearly determined to resolve this issue.

According to official information regarding funding through Budget Program 2501350 "Compensation to companies, institutions and organizations in the amount of an average salary for employees called up to serve in the military during mobilization for a specified term," as of December 30, 2015, Ukrainian businesses had received UAH 2.09 billion, including UAH 552.27 million for 2014 (Letter #8/0/04/16-3В from MSP dated January 2, 2016).



Other recommendations (to institute “targeted” payments to mobilized employees, including setting up a single register to track budget payments to employees

mobilized for a specified term and establishing electronic exchange of information among the State Fiscal Service, the Pension Fund, the Labor Ministry and the

Defense Ministry) are in the process of being carried out as part of the overall process of reforming the country's state benefits and social support system.

2. Transporting goods (freight) to and from uncontrolled ATO territory.

After analyzing the complaints submitted to the BOC, the Council's systemic report recommended improving the existing procedure for transporting goods to and from areas temporarily uncontrolled by Ukraine and the zone of the Anti-Terrorist Operation, which is regulated by the Temporary Procedure to control the movement of people, vehicles and goods along the line of contact within Donetsk and Luhansk Oblasts, confirmed in Order #27 dated January 22, 2015 by the commander of the ATO.

After reviewing the BOC recommendations, consulting with business entities and applying Point

1 of the Premierial Order #33025/1/1-15 to the Law “On amending certain legislation regarding the procedure for the transport of goods to/from the ATO zone,” the Security Bureau of Ukraine (SBU) drafted a Cabinet Resolution that establishes a Procedure for transporting goods to/from the ATO zone.

At this time, this draft resolution has been agreed by the SFS, the Finance Ministry, the Economic Development Ministry, MIA, the Fuel and Energy Ministry, the Social Policy Ministry, the State Border Service Administration, and the Infrastructure Ministry.

The Ministry of Justice is undertaking a legal audit. The new Procedure was submitted for Cabinet approval in March 2016 (at the moment of preparing this report).

The new version of the Procedure not only establishes the provisions of temporary rules for transporting goods and freight to/from the ATO zone, but also significantly improves the procedures themselves by establishing terminology and timeframes, and extending the range of commercial entities to whom the procedure applies.

3. Returning Ukrainian-owned train cars from annexed Crimea to mainland Ukraine as regards cars that were de facto loaded at the time the moratorium on rail movement came into effect.

The BOC undertook efforts to resolve the issue of withdrawing the moratorium on the movement of Ukrainian-owned train cars, including removing Ukrainian assets from the

territory of the annexed peninsula of Crimea. This work was seriously complicated because of security issues in this region that remain an issue to this day.

Nevertheless, the BOC has been informed that the owners of Ukrainian train cars that remained on Crimean territory have already removed them from Crimea via other transport corridors.



SYSTEMIC REPORT on Problems with Administering Business Taxes in Ukraine

Based on complaints processed by the BOC against the malpractice of regulatory bodies, the Council elaborated systemic recommendations for improving the tax administration system in Ukraine and, for this purpose, proposed amendment of the Tax Code of Ukraine (the "Tax Code") and supporting by-laws.

In order to arrange for implementing respective amendments to the Tax Code, the BOC held a meeting with Finance Minister Mrs. Natalie Jaresko and the Head of the State Fiscal Service (SFS) Mr. Roman Nasirov. Further to the arrangements achieved

in the course of the meeting, and based on its Systemic Report, the BOC furnished the Ministry of Finance of Ukraine with draft amendments to the Tax Code. A significant part of the proposed amendments has been agreed with the authorized representatives of the Ministry of Finance of Ukraine in the course of the work on the updated draft of the Tax Code.

With the purpose to ensure comprehensive discussion of the proposed amendments with all stakeholders, the BOC established cooperation with the Tax and Customs Policy Committee of the Ukrainian

Parliament. Thus, the BOC representatives attended sessions of the Committee in order to discuss the proposed amendments with the national deputies of Ukraine.

Given the political arrangements of the Ukrainian high-level public officials reached at the end of 2015, adoption of the new version of the Tax Code has been postponed, while selected amendments have been introduced based on the Law of Ukraine "On Amending the Tax Code of Ukraine and Certain Legislation to Ensure a Balanced Budget for 2016," dated December 24, 2015.

The following BOC recommendations have been reflected:

Systemic issue:

VAT budget refund

What has been done:

The BOC welcomes the amendment of the Tax Code with the requirement to return budget refund in chronological order (Article 200.7.2 of the Tax Code) and ensuring that the process is public. However, the BOC also believes that Disciplinary Statute for Regulatory Bodies (see below) shall be another important tool to ensure strict discipline in the timely and smooth VAT budget refund. The need to implement the Disciplinary Statute was agreed as part of negotiations with the Ministry of Finance of Ukraine and the State Fiscal Service of Ukraine.

The BOC also welcomes changes to the Tax Code that specify the date as of which any non-reconciled VAT refund shall be deemed reconciled. This shall help establish the date as of which penalties start accruing on the outstanding VAT refund. Specifically, Article 200.15 of the Tax Code states that, in case the regulatory body fails to reconcile the VAT refund amount, the obligation to perform budget refund arises on the date when the administrative or court appeal in favor of the taxpayer is over.

Meanwhile, the BOC will continue work on amendments to the Tax Code to also establish a direct rule, whereunder penalties shall be paid to the taxpayer irrespective of payment of actual budget refund.

Systemic issue:

VAT electronic
administration

What has been done:

The BOC recommendation to include the figure of $\Sigma \text{Овердрафт}$ as a permanent component in the formula for calculating the registration amount for which the taxpayer has the right to register tax invoices and/or adjustments thereto in the Single Register of Tax Invoices has been implemented.

The implemented amendments also account for the BOC recommendations regarding specific aspects of applying the formula by taxpayers who are obliged to use cash method. Thus, as an exemption from the general rule, taxpayers who apply cash method by virtue of Article 187.10 of the Tax Code, shall be allowed, for purposes of calculating the figure of $\Sigma \text{Накл}$ of the formula, to account for VAT reflected in tax invoices issued before 1 July 2015, provided that the right to tax credit based thereon arouse after 1 July 2015.

The BOC recommendation to supplement the Tax Code with the rule that minor errors in primary documents should not deprive the taxpayer of the right to tax credit, budget refund or a tax discount was partly implemented. Specifically, Article 201.10 of the Tax Code was supplemented with the provision, whereunder tax invoice that contains an error in the requisites that does not hinder the identification of the operation involved, its content (goods/services provided), timeframes, the parties, and the amount of the tax liability, shall be deemed sufficient for the buyer to account VAT paid as VAT credit.

Based on the complaints processed in the last quarter of 2015, the BOC considers it worthwhile to note a reduction—albeit still not a significant one—in the number of complaints with respect to functioning of the electronic VAT administration system. We consider this a positive trend resulting from the efforts to improve the systemic flaws inherent to the system at start.

Systemic issue:

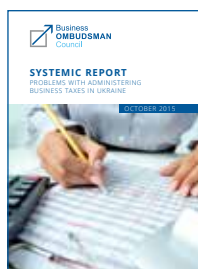
"Tax status 09"

What has been done:

The BOC is pleased that changes have been made in Article 184.1 of the Tax Code eliminating "state 9" (absence at the taxpayer's location) from the list of grounds for withdrawing the registration of VAT taxpayer. However, the BOC will continue working on further changes to the Tax Code of Ukraine and the Procedure for Keeping Record of Taxpayers approved by Order No. 1588 of the Ministry of Finance of Ukraine, dated December 9, 2011 in order to limit the discretionary powers of regulatory bodies in terms of checking the taxpayers' location.

This issue was also discussed during working meetings with the representatives of the State Fiscal Service of Ukraine. The BOC and the State Fiscal Service of Ukraine established a constructive dialogue on problematic issues arising in the course of exercising respective powers by regulatory authorities.

According to the arrangements made, the BOC will continue to work with the Ministry of Finance of Ukraine, the State Fiscal Service of Ukraine and the Tax and Customs Policy Committee of the Parliament of Ukraine in 2016 in order to ensure that all its systemic recommendations are reflected in the new version of the Tax Code. The necessary changes to the by-laws will also be implemented, as may be necessary. It is anticipated that the new version of the Tax Code will be elaborated in the first half of 2016.



SYSTEMIC REPORT on Problems with Cross-Border Trading in Ukraine

Drafting and adopting a new version of the Law "On Foreign Economic Activity"

On receiving the BOC recommendations, the Ministry of Economic Development engaged BOC experts under an

international technical assistance program and [began to prepare a new version of the Law "On Foreign Economic Activity."](#)

Expectations are that the new version of the law will be drafted and public hearings held to debate the bill.

Reviewing and reducing the number of commodities being traded across the border that are subject to licensing.

As part of its efforts in this area, the Government submitted Bill #2498a "On amending legislation to reduce the number of permit procedures in foreign economic activity" to the Verkhovna Rada, which should [cancel import and export licenses for alcoholic beverages and tobacco](#)

[products](#). In November 2015, this bill passed first reading and was passed to committee for further revision.

According to foreign economic activity legislation, the list of goods subject to licensing and restriction via quotas is supposed to

be approved annually. On December 30, 2015, Cabinet Resolution #1176 [approved the list of goods that require import and export licenses, and established quotas for 2016 in which certain commodities have been removed](#), including non-ferrous metals and anthracite.

Improving export-import administration practices

According to the BOC, law enforcement agencies are in the process of a large-scale anti-corruption investigation of the State

Export Control Service, which is complicating interactions with the SECS and the implementation of Council recommendations. We plan

to continue to monitor the situation and to keep working to ensure that the BOC recommendations are implemented.

Applying the law and penalties.

The Ministry of Economic Development and Trade drafted [technical changes to the Law "On Foreign Economic Activity"](#) that affect the way that the law and

penalties are applied. It is anticipated that the bill will be submitted to the Verkhovna Rada in the spring of 2016.

At this time the MoEDT is working at a joint decree

with other agencies to [ease penalties for violations involving foreign trade](#) as a temporary measure prior to adopting changes to the actual legislation.

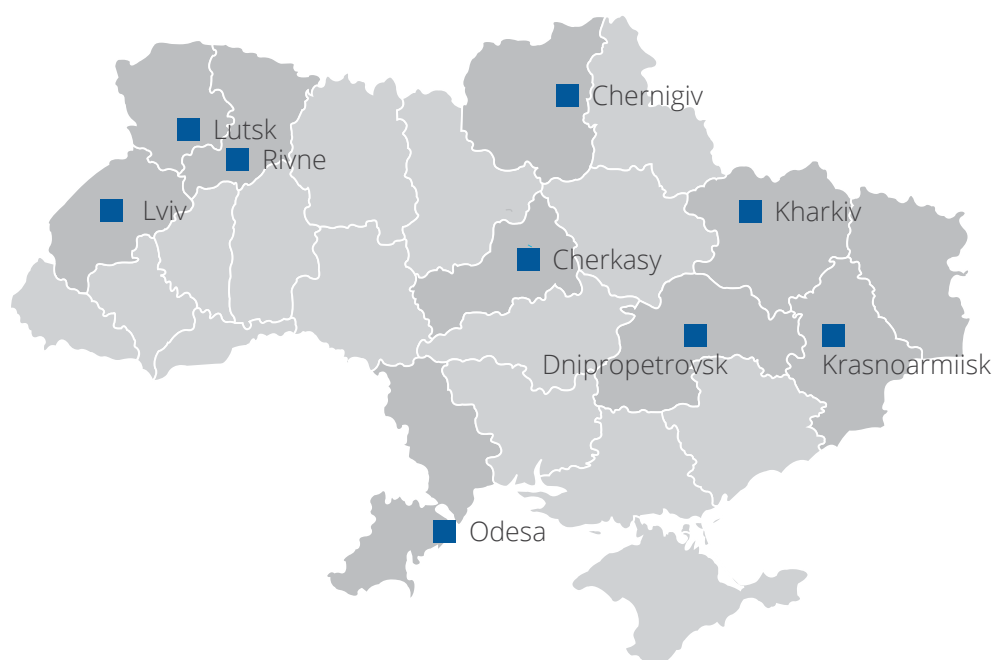
The work on implementing recommendations included in two last systemic reports "ABUSE OF POWERS BY THE LAW ENFORCEMENT AUTHORITIES IN THEIR RELATIONS WITH BUSINESS" and "NATURAL MONOPOLIES vs. COMPETITIVE BUSINESS: how to improve relations" started in early 2016.

COOPERATION WITH STAKEHOLDERS



4.1. WORKING VISITS

In 2015, the Business Ombudsman launched a series of working visits to Ukraine's regions where he met with the leaders of the Regional State Administrations and the representatives of public and business environment. He discussed problem issues existing in the regions and requiring Business Ombudsman's intervention.



These are part of the Business Ombudsman's regional working visit series, designed for Mr. Šemeta to meet with business and government representatives and discuss current problems and opportunities to expand the investment potential of the regions.





**Ihor
RAYNIN**
Kharkiv
Governor

Fighting corruption is one of Kharkiv Oblast's priorities. I'm convinced that setting up the Business Ombudsman Council is a significant step in building mutual understanding that corruption must be eradicated. We will cooperate closely with the Council and are determined to help Kharkiv businesses that currently experience pressure from local agencies to come forward and protect their legal rights. For our part, the Kharkiv Oblast State Administration pledges to pay close attention to and, where appropriate, participate in, the Council's work".



**Oleg
KUZHMANN**
Vice-Governor of
Dnipropetrovsk region

Supporting business and investment climate is a top priority for Dnipropetrovsk Regional State Administration. We are glad to cooperate with the Business Ombudsman Council and facilitate solving problems that small and medium business encounters. The country is going through hard times now. Everyone faces difficulties, namely entrepreneurs. As never before do entrepreneurs need the government's support, and our task is to provide it, because prosperity of the region and wellbeing of its citizens depends on that".



**Volodymyr
GUNCHYK,**
Head of Volyn State
Administration

Our position towards cooperation with business is clear: if you cannot help, don't interfere. Of course, there is a lot to be done both in Ukraine and in Volyn region in particular to overcome the shameful phenomenon of corruption. We are happy to join our efforts with the Business Ombudsman Council to reach our common goal – to eradicate corruption and create favourable investment climate in the region".

4.2. COOPERATION WITH GOVERNMENT AGENCIES

The Business Ombudsman Council actively cooperates with government agencies, especially those that are most frequently named in complaints from business. To make this kind of cooperation official, the Council signed Memoranda of Partnership and Cooperation with the government agencies that are most often involved in its investigations.

THE STATE REGULATORY SERVICE OF UKRAINE

On July 2, 2015, the Council signed a Memorandum of Partnership and Cooperation with the State Regulatory Service to provide central and local government agencies with recommendations as to the implementation of business deregulation policy.

The main objectives of this cooperation include simplifying related legislation, improving the business climate, and preventing corruption and other violations of the lawful interests of private business.

As part of our work with the SRS, three meetings took place: two at the management level involving both institutions. The BOC and SRS jointly prepared an appeal to the Prime Minister of Ukraine about the need to maintain consistent policy positions regarding the moratorium on business inspections and the need for the regulators to intensify efforts to revise licensing terms and conditions.



As the institution responsible for implementing deregulation policy, the State Regulatory Service views signing a Memorandum of Partnership with the Council as the most effective way of fostering a positive business environment and protecting the lawful rights of businesses to develop.

As an institution, the Business Ombudsman is a new mechanism for protecting entrepreneurial rights. We believe that only coordinated effort among related institutions is the path to ensure effective decision-making.” – says **Ksenia Liapina**, Director, State Regulatory Service.

THE MINISTRY OF JUSTICE OF UKRAINE



On September 15, 2015, Justice Minister Pavlo Petrenko and Business Ombudsman Algirdas Šemeta signed a Memorandum on Partnership and Cooperation.

The two sides cooperate in providing recommendations to departments that are part of the Ministry, as well as to public and municipal authorities with the aim of simplifying conditions for doing business and preventing corruption. They cooperate in preparing proposals for improving legislation on the enforcement of court decisions, the state registration of legal entities and individual entrepreneurs, the state registration of rights to movable and immovable property, bankruptcy, the use of electronic signatures, and other issues that fall within the purview of the Ministry. In addition, the two sides work towards identifying and eliminating provisions in legislation that restrict business activity, and monitoring violations of business interests by government officials.

Signing a Memorandum on Cooperation with the Business Ombudsman Council is a guarantee for entrepreneurs that each complaint from business will be reviewed by an independent panel. If evidence is provided of illegal actions on the part of a Ministry official, that individual will be dismissed immediately. As a liaison between the government and business, the Business Ombudsman will also provide us with recommendations on how to improve services to make life easier for business owners,” – says Justice Minister **Pavlo Petrenko**.

In order to carry out the provisions of the Memorandum on Partnership and Cooperation, the BOC experts met twice with senior officials at the Ministry of Justice in the format of an expert working group. As a result of these meetings, 10 complaints filed by commercial entities were reviewed: 7 regarding enforcement and 3 regarding registration procedures. The two sides also agreed to carry out in-service reviews regarding a slew of enforcement issues, as a result of which guilty officials were subject to disciplinary hearings for violating the timeframes for carrying out decisions.

THE STATE FISCAL SERVICE OF UKRAINE



On 12 October SFS Head Roman Nasirov and Business Ombudsman Algirdas Šemeta signed a Memorandum on Partnership and Cooperation.

The Memo envisages information exchange between departments, expert help for eliminating problems that restrict business activity.

Over the reporting period, two meetings took place with the specialized expert group within the framework of the Memorandum and a series of separate meetings of specialists from the Business Ombudsman Council with SFS management.

The two sides worked on complaints filed with the BOC and agreed to implement the recommendations contained in the systemic reports the Council presented in previous quarters. It is worth noting that SFS is open and ready to cooperate with the BOC.

We will continue to work to expand our collaboration with the State Fiscal Service at the regional level across Ukraine, to work more closely with regional customs offices, and to stimulate SFS departments to undertake internal transformations and reforms.

Signing the Memo is an impetus towards creating a platform to discuss the specifics of complains we receive on SFS and find a way to solve them. Cooperation should lead to improvement of the business climate that Ukrainian entrepreneurs long for so much," says Business Ombudsman **Algirdas Šemeta**.

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.

WEBSITE

The BOC's website **www.boi.org.ua** was launched on May 20, 2015. It is a one-stop shop for anyone who needs to submit a complaint, access BOC's reports, articles, find news and information about our Office, or contact us through social media.

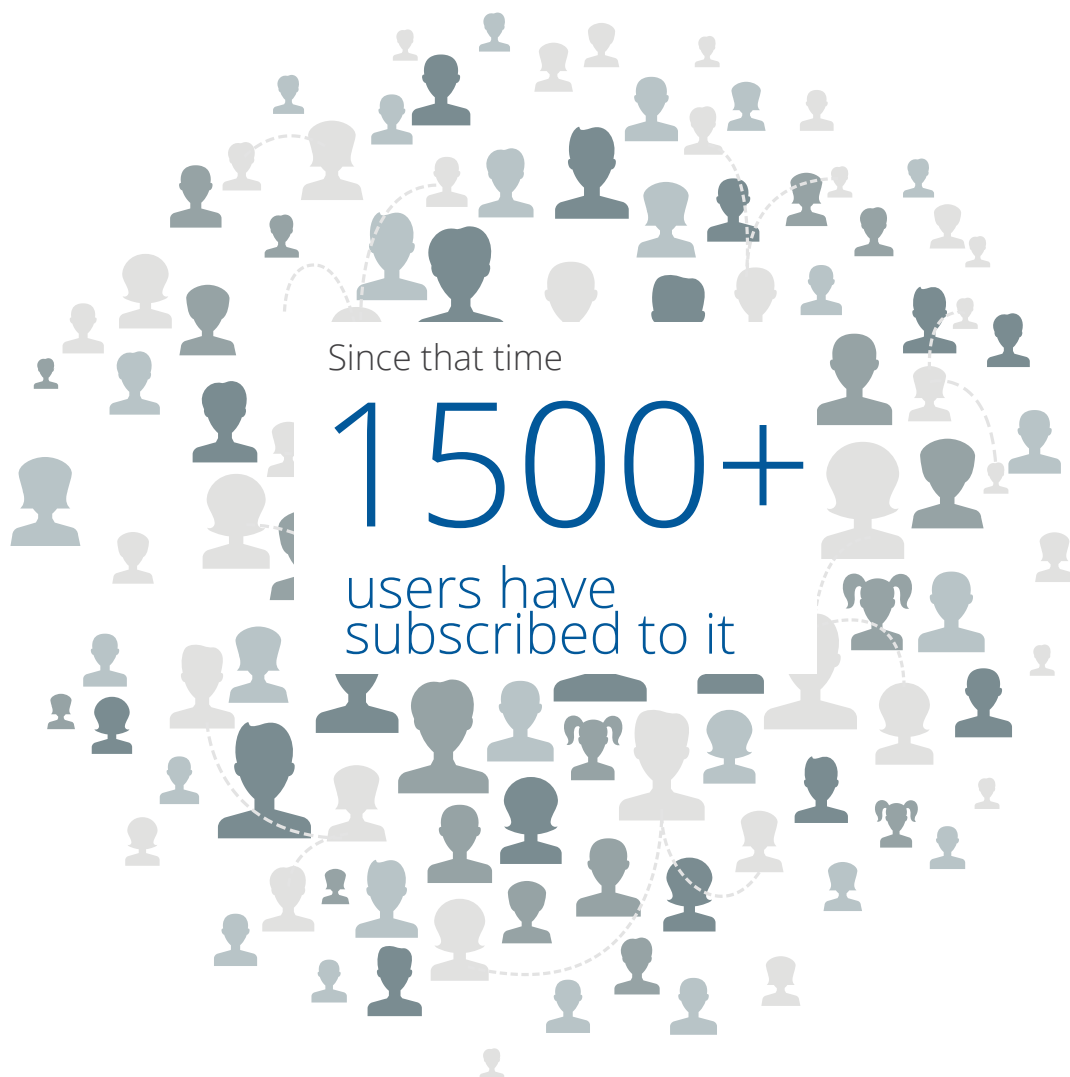


SOCIAL NETWORKS



On June 15, 2015, the Council's Facebook page was set up

www.facebook.com/BusinessOmbudsmanUkraine



The BOC did not resort to any advertising campaigns in 2015 and focused on qualitative content in social media.



OUTREACH

On 17 July, Algirdas Šemeta participated in the round table “Anti-Corruption Reform and Business Security in Ukraine” in London. Together with colleagues from EBRD, international consulting companies, think tanks and media, Mr. Šemeta joined the discussion on the conditions of doing business in Ukraine.

On 2-4 September, Algirdas Šemeta presented Ukraine’s experience in launching the Business Ombudsman Council at the 16th International Anti-Corruption Conference in Malaysia. Over 800 participants from 100 countries gathered to discuss methodologies of controlling corruption worldwide. The conference serves as the premier global forum for the networking and cross-fertilisation among civil servants and

business representatives on a global and national level. The IACC takes place every two years in a different region of the world. It was a great honour for us to be invited and to present Ukraine’s achievements in fighting corruption based on almost 6-month long history of BOC’s functioning.

OUR EXPERTS ALSO SPOKE AT A RANGE OF IMPORTANT EVENTS, NAMELY:

- 
- International Conference “National Dialogue in Ukraine: Review of Efforts and Prospects for Enhancing Country’s Stability and Promoting Reforms” under the auspices of OSCE
 - The 10th Anniversary Adam Smith Ukrainian Investment Summit “Building on the first wave of reform as a platform for growth” in London
 - International Anti-Corruption Conference in Kyiv
 - Citi ThoughtClub
 - Kiev International Economic Forum
 - Pharmaceutical Summit 2015
 - Winter school MUTE@Corruption in Odesa
 - International conference “Industrial parks and industrial development: chances and challenges
 - A range of events for foreign business community, including the US, Switzerland, Benelux, Denmark and others.

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.



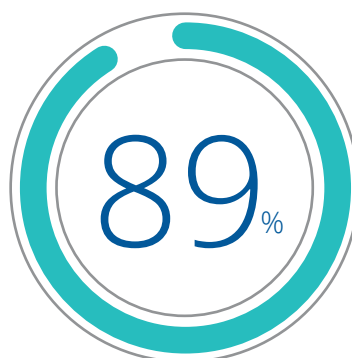
Since launch of operations
in May 2015 Business
Ombudsman and his Office
were cited in the media

3100
times

*based on media
monitoring by
Context Media*

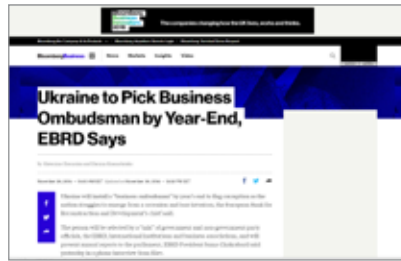


mentions being positive
and constructive



of mentions
was online

While the remaining citations were
evenly distributed among the national
press, television, and information
agencies (3-4% for each medium).



Our interviews were published in the leading Ukrainian media:

Novoye Vremya (New Time), a weekly magazine; Delo.ua portal; the KyivPost, a weekly newspaper; Biznes, a business weekly, Livyy Bereg portal, the Den' newspaper; Forbes, a monthly magazine; the Platforma portal; the LigaBusinessInform portal; the HUBs portal; Kompanion, a weekly magazine; the Ekonomichna Pravda portal; RBC Ukraine, a news agency; Ukrinform, a news agency, and others.



We provided a dozen of interviews to international broadcasters, such as the Bloomberg and Reuters news agencies; Ukraine Today, an information channel; as well as a range of foreign media, such as a Dutch newspaper Trouw and the Deutsche Welle.



We also made a range of TV (Pershyi Nationalnyi Channel (Persha Shpalta), Channel 5, UBR, ICTV, 1+1) and radio appearances (Golos Stolytsi, Hromadske and Arystokraty radio stations).

In the fourth quarter of 2015 we launched a media project called "The Right to do Business"

together with the



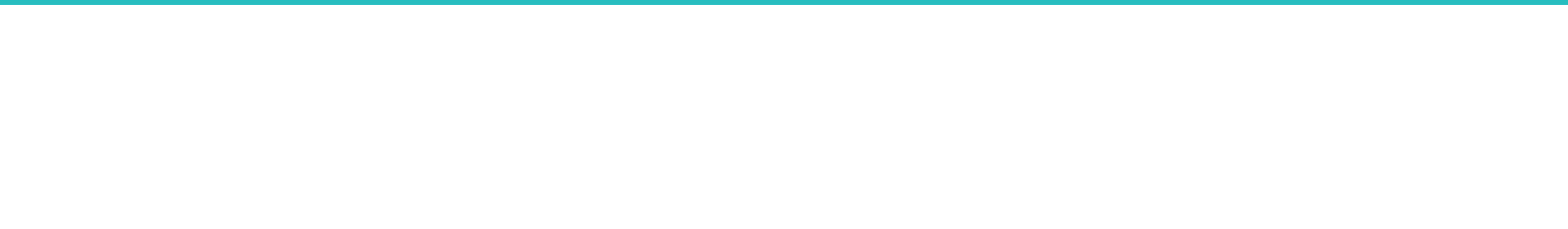
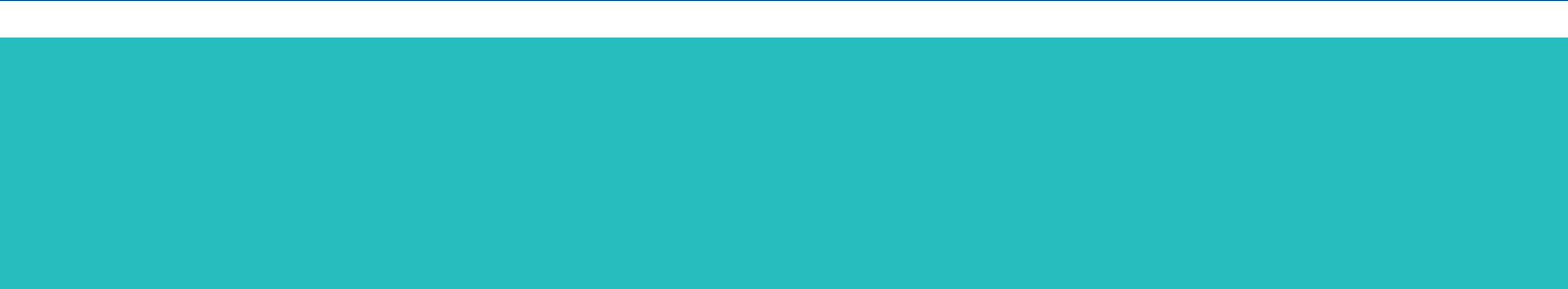
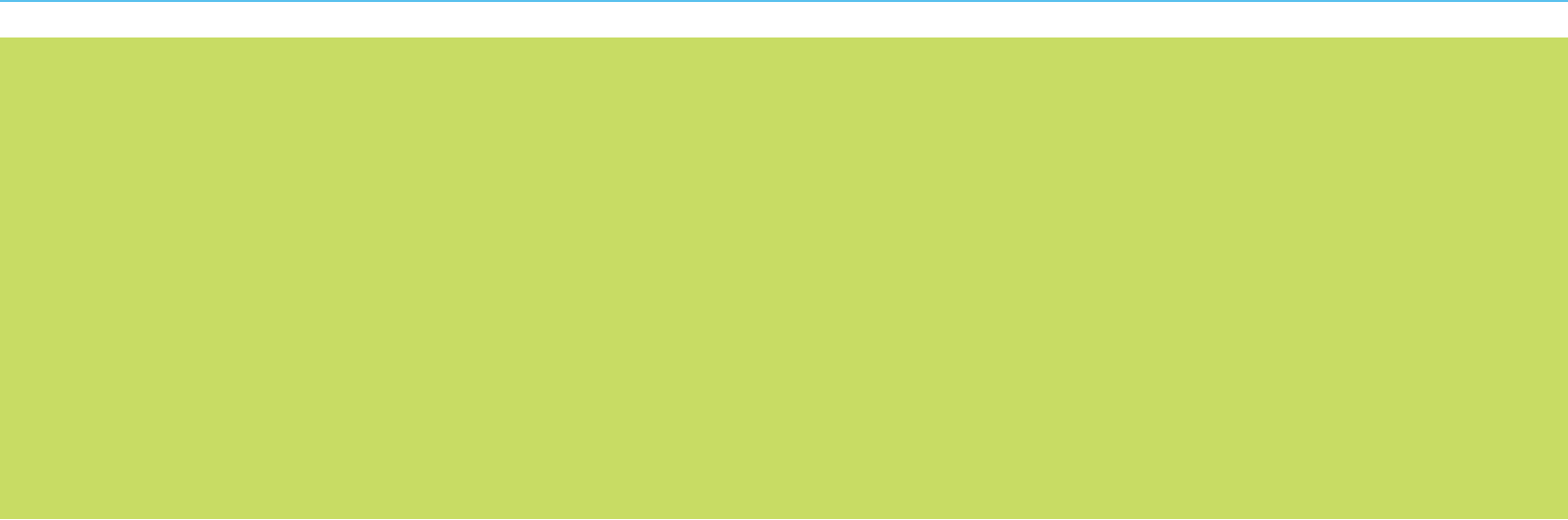
Vlasnyky [Owners] program on Aristokraty [Aristocrats] Radio and



the Delo.ua portal

Every Thursday, we set up discussions between businesses who have filed complaints from all over Ukraine and journalists. The topics include doing business and its ups and downs, how government agencies work with business, and the progress of reforms in Ukraine.

Over 4,000 listeners tune in to our live broadcast. BOC podcasts and interviews are available for listening, reading and downloading. Our goal is to attract attention to serious issues and show the real face of business in Ukraine.





Podil Plaza Business Centre,
30A Spaska St.,
04070 Kyiv, Ukraine
(entrance from 19 Skovorody Str.)

Phone: +380 (44) 237-74-01
Fax: +380 (44) 237-74-25
E-mail: info@boi.org.ua

www.boi.org.ua
www.facebook.com/BusinessOmbudsmanUkraine