




Business
OMBUDSMAN
Council

QUARTERLY REPORT

APRIL-JUNE 2015





State authorities
should serve their
people instead
of acting as their ruler»

Algirdas Semeta,
Business Ombudsman for Ukraine

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Dear Friends, Colleagues and Partners,



It is my pleasure to present to you the first public quarterly report of the Business Ombudsman Council of Ukraine. The Council was set up in November 2014, and since the start of our activities on 20 May 2015, we have received more than enough proof that businesses in Ukraine perceive the Council as an effective tool designed to help improve the business climate in Ukraine. During the first week alone, we received 50 complaints from businesses all over the country, and by the end of the reporting quarter this number grew to 172.

When I accepted this job, I was convinced I could contribute in a practical way to a transformation that many consider impossible: a sharp enough reduction in Ukraine's endemic corruption to spur private investment and improve living standards. As challenging as this task may seem, the first reporting quarter has shown that the Council's team is more than up for this task and we have already begun to see the first results.

Ukraine's business climate is currently far from favorable. I am convinced that the biggest, most deeply ingrained problem with doing business in Ukraine is, of course, corruption. Until the state authorities serve their people instead of acting as their ruler, until their oversight bodies help business meet regulatory requirements instead of punishing it, much-needed economic growth will remain difficult for Ukraine to attain. We believe we are capable of furthering progress towards attracting foreign investment to Ukraine and easing the regulatory burden on local business—provided that we maintain ongoing dialogue with both sides: entrepreneurs and government institutions.

For instance, the Council recently signed a Memorandum of Partnership and Cooperation with the State Regulatory Service on implementation of business deregulation policy. Our team will provide practical recommendations on how and where

to simplify legislation, improve the business environment, and prevent corruption and other abuses of legitimate private business interests.

During the past quarter, I traveled to Chernihiv and Kharkiv Oblasts and I have plans to travel to Dnipropetrovsk, Odesa, Lviv, Mykolayiv, and Kherson Oblasts next. During these trips, I spoke with business owners, directors, and heads of local governments, and was glad to see that we all want the same thing: to live in a prosperous, economically stable country. Following my working visit to Kharkiv Oblast, local businesses proposed—and the Oblast State Administration supported—setting up an ongoing dialogue of local entrepreneurs with the Council to work closely with the government to identify and resolve the most pressing regulatory issues in the region. The Council and the Kharkiv Oblast State Administration also agreed on specific practical steps to improve the oblast's investment potential.

Though we have seen the first signs of improvement in terms of business-government dialogue as result of our meetings and interventions, there are systemic problems that need to be resolved, for Ukraine's economy and investment climate to truly turn around. After analyzing the complaints received and speaking to dozens of entrepreneurs and civil servants, our team has identified these problems.

Among the most burning issues for Ukrainian businesses are problems with dilatory VAT refunds, unfounded criminal proceedings

against business, repeated failure on the part of central and local officials to enforce court rulings in favor of a business, and so on. We also received numerous complaints about export-import legislation. Export limitations and various sanctions, such as individual licensing, excessive import limitations, and temporary bans on selling imported goods were most frequently mentioned in the complaints we received in the reporting quarter. Details may vary in each case, but overall, the complaints suggest that there is a genuine need for this Council to cooperate long-term with government agencies, and we intend to do just that. We also identified the government institutions, against which the largest number of complaints were lodged and are now actively working with them to resolve the issues raised.

Recognizing the magnitude of the task set before us, the Council team takes its mission very seriously. We will continue to issue detailed recommendations to the relevant government bodies to eliminate the discrepancies and violations business brings up. We will monitor each initiative very closely to make sure the recommended action is taken within the agreed timeframe. Should the need arise, we will not hesitate to address higher authorities, such as the Ministries and the Verkhovna Rada, and will work with the media to make the issue as public as necessary.

I look forward to sharing thoughts and initiatives with you on how to make Ukraine a better place to invest and to do business in.



Sincerely,
Algirdas Šemeta
Business Ombudsman

2 Operations overview

April-June 2015

The Office

The Business Ombudsman Council

is an independent permanent advisory body under 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.

In its activity, the Council abides by

- the 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 of Ukraine.

Council operates in accordance with

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

Council is funded

through the EBRD-Ukraine Stabilisation and Sustainable Growth Multi-Donor Account

Funding is provided by 11 donor countries:

Denmark, Finland, France, Germany, Japan, the Netherlands, Poland, Sweden, Switzerland, the United Kingdom and the United States.

Budget

€1.5 million annually

The Council was founded as mutually agreed by

- the Cabinet of Ministers of Ukraine;
- the EBRD;
- the OECD;
- the European Business Association;
- the American Chamber of Commerce in Ukraine;
- the Federation of Ukrainian Employers;
- the Ukrainian Chamber of Commerce and Industry;
- the Ukrainian League of Industrialists and Entrepreneurs.

The Council reviews complaints of 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:

- to facilitate the battle against corruption and other business abuse;
- to contribute to greater investment attractiveness in Ukraine;
- to promote a public service culture of fairness, openness and accountability.

The Business Ombudsman Council is meant to be the initial point of contact for companies seeking redress against unjust treatment. It will publicize all its reports on incoming complaints from businesses and how they were handled.



In December 2014, the governing body of the Ukrainian Anticorruption Initiative unanimously nominated, and the Cabinet of Ministers approved, Algirdas Šemeta, a former European Commissioner for Taxation, Customs, Statistics, Audit and Anti-Fraud, for the position of Business Ombudsman.

The Supervisory Board, the Council's governing body, includes authorized representatives of these organizations:

government agencies: The Cabinet of Ministers of Ukraine;
international financial institutions: the EBRD, Organization for Economic Co-operation and Development (OECD);
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).

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

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 the Rules of Procedure.

At the end of the reporting period, the Council's team consisted of 14 people: distinguished experts with mostly western education and practical experience in law, strategic management, economics, auditing, and risk management.



Algirdas Šemeta Business Ombudsman

A seasoned economist and the former European Commissioner, Mr. Šemeta has extensive, in-depth practical experience in economic analysis and state governance. Over 1997-1999 and 2008-2009, he served as Minister of Finance in the Government of Lithuania. The experience he obtained while serving in that position stood Mr. Šemeta in good stead when he was nominated to become the European Commissioner for Financial Programming and Budget (2009-2010) and then for Taxation, Customs, Statistics, Audit and Anti-Fraud (2010-2014).

Mr. Šemeta graduated from the Vilnius University Department of Economic Cybernetics and Finance in 1985, with a degree in Mathematical Economics.

The Business Ombudsman's key tasks include contributing to the improvement of the country's business climate, combatting corruption, and promoting best international practice in Ukraine.

The appointment of the Business Ombudsman was approved by the Cabinet Resolution #1251-p, dated December 22, 2014.



Iaroslav Gregirchak

Deputy Business Ombudsman

An expert with 15 years of experience in commercial law, Mr. Gregirchak specializes in cross-border corporate and public finance, secured transactions and administrative law.

Over 2004-2010, Mr. Gregirchak held senior associate and management positions at several international law firms. He gained considerable in-depth experience in commercial law reform at the World Bank and USAID as an expert in secured transactions in Ukraine and Azerbaijan, as well as in public finance, with an emphasis on national borrowings and debt. Mr. Gregirchak was on the team of the World Bank Experts group that drafted the text of Ukraine's Law "On Securing Creditor's Claims and the Registration of Encumbrances."

In 1996, Mr. Gregirchak graduated from Taras Shevchenko National University in Kyiv with a degree in Law. In 2002, he obtained a LLM degree from McGill University in Montreal, Canada.



Tetyana Korotka

Deputy Business Ombudsman

With more than 17 years of experience in finance and economic development project management in the public and private sectors, Ms. Korotka served as Professional Services Director for the USAID Public-Private Partnership Development Program over 2011-2015. Over 2008-2011, Ms. Korotka held senior management positions in international financial groups. She served several terms as an expert on international projects implemented in the financial sector by the European Union, the US, Canada, Sweden, and the World Bank.

Ms. Korotka held a number of positions in the civil service as well: Chief Financial Officer at the State Nuclear Regulatory Committee of Ukraine (1999-2004) and Director of Financial Services Markets Development and European Integration at the State Commission for the Regulation of Financial Services Markets in Ukraine (2004-2008). Her responsibilities in this last position included, among others, overseeing the harmonization of Ukrainian legislation with the EU equivalents and being part of official negotiating teams between Ukraine and the WTO, the World Bank, the IMF, and the European Union.

In 1998 Ms. Korotka obtained a Masters Degree in Finance and, in 2004, a PhD in Economics from the Kyiv National Economic University. She also obtained an MBA from the Institute of International Business Relations at Steinbeis University in Germany.

Key reporting milestones:

2014

May 12

Ukrainian PM Arseniy Yatsenyuk, EBRD President Suma Chakrabarti, representatives of business, and international financial institutions signed 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

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

March 16

The Business Ombudsman Council located itself in Podil Plaza Business Centre

May 18

The Business Ombudsman Council'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 Council's operations. The results of the Council's first operational week are discussed at a media roundtable

June 11

Algirdas Šemeta pays his first working visit to Chernihiv Oblast, launching a series of working visits to Ukraine's regions

June 30

Negotiations about signing a Memorandum of Cooperation and Partnership with the State Regulatory Service of Ukraine are completed

June 30

172 complaints have been received, 5 cases have been closed

3 Complaint trends and significant cases

Number of complaints received

Clause 5.3.1 (a) of Rules of Procedure.

Since the beginning
of operations,

the Business Ombudsman's
office has received

172
complaints



67 complaints

39%

passed the preliminary
review procedure
and are currently being
considered

54 complaints

31%

were declined as not
fitting the eligibility
criteria set by the
Rules of Procedure

46 complaints

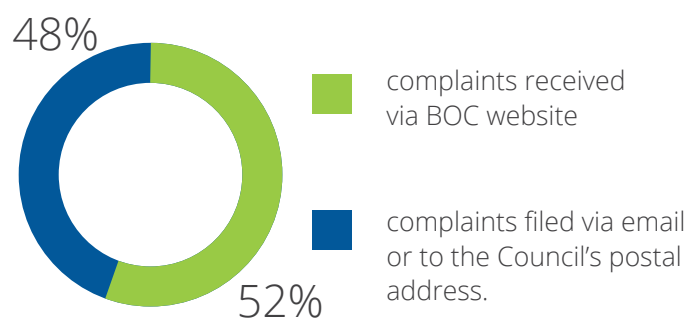
27%

are undergoing
the preliminary review
procedure

5 cases

were
closed after
completion of
investigation

Complaints were
lodged by all categories
of businesses: large
companies, small and
medium enterprises
(SMEs), and private
entrepreneurs.

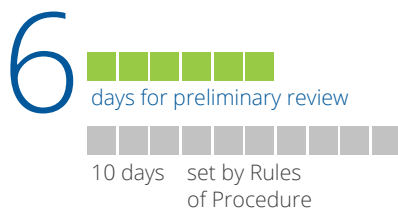


The complaints received predominantly mentioned six key issues:

- VAT refund delays, refusal of VAT taxpayer registration, abuse of power during inspections by State Fiscal Service of Ukraine and problems caused by 'status 9,' when the physical and the legal address of the company do not match;
- overdue compensation to companies whose employees have been drafted to serve in the Anti-Terrorist Operation;
- repeated failure by central government and local officials to enforce court rulings in favor of a business;
- contradictory decisions by local government agencies that affect the rights of entrepreneurs;
- government bodies and law-enforcement authorities putting pressure on businesses through baseless criminal proceedings that are not subject to court appeal;
- excessive regulation of export-import operations.

The term of the preliminary review of complaints

Clause 5.3.1 (b) of Rules of Procedure



During the reporting quarter, the Council's decisions to consider or dismiss a complaint were made, on average, in six working days, four days less than the 10-day period provided in current regulations for the preliminary assessment of complaints.

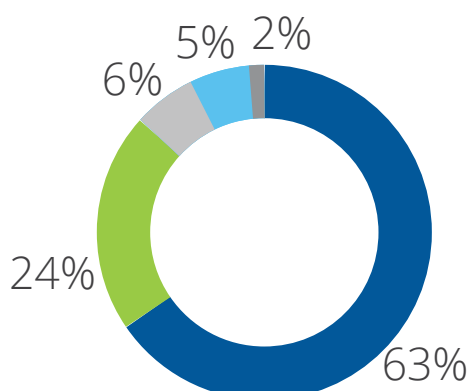
Number of complaint reviews and grounds for declining complaints

Clause 5.3.1 (c) of Rules of Procedure.

Of the 172 complaints received during the quarter, 67 were taken for consideration at the time of publication, 5 cases were closed, and 54 complaints were declined.

During the reporting period, a total of

54 complaints was dismissed for three main reasons:



- Subject matter of complaint is outside the Business Ombudsman's investigative remit
- In the opinion of the Business Ombudsman, the complaint had no substance
- A complaint was filed after the expiry of limitation period (over 1 year since the last occurrence of business malpractice)
- In the opinion of the Business Ombudsman, the complaint did not provide sufficient cooperation
- Other circumstances where the Business Ombudsman determined that the investigation of the complaint is not necessary

The term for complaint review

Clause 5.3.1 (d) of Rules of Procedure.

5
cases

■ one month for
complaint review



3 month set by
Rules of Procedure

It took, on average, four weeks to review the five cases that were closed during the reporting period, which is three times less the three-month term provided for case reviews in current regulations.

Geographical distribution of complaints received



The largest number of complaints were lodged in **Kyiv** (84) and other cities in **Kyiv Oblast** (11), reflecting the nationwide geographical structure of registered businesses, most of which are registered in the capital region.

In descending order, complaints were also received from **Dnipropetrovsk** (11) and **Kharkiv** (8) Oblasts.

The Office did not receive complaints from **Zakarpattia**, **Ivano-Frankivsk**, **Chernivtsi** and **Rivne** Oblasts.

Government agencies subject to the most complaints

More than

30%

complaints

- the State Fiscal Service of Ukraine, including the State Tax Inspection, and the Customs Service

12%

of complaints

- about the actions of the Prosecutor's Office

7%

of complaints was lodged against each of:

- the State Registration Service, the Ministry of Justice
- City Councils, central government bodies, such as the Verkhovna Rada, the Cabinet of Ministers, or the President

Significant cases and results

Clause 5.3.1 (c) of Rules of Procedure.

This section highlights key cases and trends among the complaints brought to the Business Ombudsman Council's attention during the reporting period, as well as actions taken by the Council to resolve the issues raised.

Case №1:

Government investigative agencies exceeded their authority to put pressure on business

Subject of complaint:
The Main Investigative Bureau of the Ministry of Interior of Ukraine

Complaint in brief

The officials of an international company in Ukraine complained that the company's premises had been searched, its employees summoned for interrogation, and company documents had been seized as part of the ongoing criminal investigation. According to the complainant's sources, the criminal investigation into its activities was launched for alleged VAT avoidance 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

The Business Ombudsman Council's experts analyzed the information in the complaint and reviewed related legislation (specifically, the Criminal Procedural Code), and met with the authorized representatives of the Ministry of Interior's Main Investigative Bureau and the investigator in charge of the case.

The Council's experts established that the determination that a criminal investigation was legitimate and the allegations brought forth by the Ministry of Interior's Main Investigative Bureau were its competence. Following the proper procedures, the Council concluded that the investigators' actions were 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 incidents 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.

Case №2:

Illegal actions by the
Regional State Tax
Inspection

Subject of complaint:
The Regional State Tax
Inspection

Complaint in brief

The Regional State Tax Inspection has been 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 Regional 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 Regional State Tax Inspection's illegal actions.

Action taken

The Business Ombudsman Council'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 Business Ombudsman Council in the stated matter, the complainant's issue was resolved in a two-day term. The complainant's normal business operations and ability to file tax invoices electronically were restored and the case was closed.

Case №3:

Failure by government
agency to uphold
contractual obligations
before suppliers

Subject of complaint:
The Southwestern Railway,
the Ukrainian Railways,
and the Ministry of
Infrastructure

Complaint in brief

The Southwestern Railway, which is subordinate to the UkrZaliznytsia, national railway, and the Ministry of Infrastructure, failed to compensate the complainant for equipment supplied and works completed.

Action taken

The Business Ombudsman Council held a meeting with the Deputy Director of the UkrZaliznytsia Signaling and Connection Service. In the course of the meeting, the unfulfilled financial obligations to the complainant were ascertained.

Result achieved

Afterwards, the Southwestern Railways offered the new terms for settling the dispute with the complainant, which the latter accepted and is now awaiting payment. The case was closed.

Case №4:

Facilitating an overdue /
VAT refund

Subject of complaint:
The Regional Tax
Inspection

Complaint in brief

The Business Ombudsman Council received a complaint about the Regional Tax Inspection's negligence in paying a long-overdue VAT refund to the complainant. The VAT refund amount was stated in a related statement issued by a government oversight body as the result of an off-site tax audit.

In accordance with the Tax Code of Ukraine, the Regional Tax Inspection should have filed a conclusion, stating the VAT amount to be refunded, to the State Funds Treasury Service within a five-day term following the completion of the off-site tax audit. However, the Regional Tax Inspection failed to do so and, consequently, the complainant did not receive the much-needed funds to use in daily business operations.

The complainant addressed the stated agencies with inquiries numerous times, but all its attempts proved unsuccessful.

Action taken

After accepting the complaint for processing, the Council's investigator immediately addressed the Regional Tax Inspection with an inquiry, to establish the reason for the delay in filing its conclusion confirming the amount of VAT to be refunded by the State Funds Treasury Service. The Regional Tax Inspection referred to "bureaucratic procedures" as the reason, but could not state the legal grounds for its negligence. After speaking with the Regional Tax Inspection office, the investigator sent a formal inquiry to its oversight body.

Result achieved

Two days after the investigator's actions, the complainant was paid the overdue VAT refund in full. It was the Business Ombudsman Council's intervention that facilitated the rapid resolution of the problem. The complainant was satisfied with the Council's swift response to the problems Ukrainian businesses face. The refunded VAT amount had a positive impact on the complainant's business.

Further, we describe the results of the Council's interventions that helped ease the regulatory burden on the Ukrainian businesses by simplifying previously complicated procedures.

Notably,

the Business Ombudsman Council has succeeded in simplifying the procedure for obtaining export permits

The Business Ombudsman Council facilitated the approval of changes in beer market regulations by the Verkhovna Rada.

Companies exporting scrap metal have been facing a significant obstacle to their timely fulfillment of contractual obligations. Exporters have been in trouble obtaining timely conclusions from the Ministry of Ecology and Natural Resources confirming that the scrap to be exported is on the “green scrap list.” In accordance with the Ministry’s Decree #242, dated May 30, 2013, such conclusions are supposed to be issued within 30 days, which has delayed the process of the export contract beings further registered with the Ministry of Economic Development and Trade. As a result, scrap metal exporters have faced substantial business and reputation risks and the conditions were in place for possible abuse in the process of issuing the stated conclusion.

Understanding the requirements imposed by the Ministry on exporters in order to obtain the necessary conclusions, the Council addressed the Ministry with a solicitation to review the existing term for rendering this administrative service with the aim of shortening it. As a result, the term for the Ministry of Ecology and Natural Resources to issue its conclusions was shortened from 30 to 10 days.

On July 1, 2015, changes to the Tax Code that were approved on December 28, 2014, came into force. In accordance with these changes, beer was declared an alcoholic beverage with all the relevant changes and limitations imposed on its production and distribution. As a result, the Council received a slew of complaints from big and small businesses.

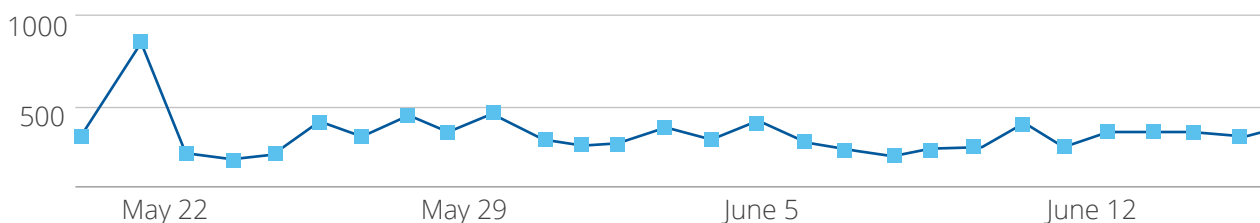
Having carefully studied the legislation proposed by the Government, and, in general, supporting it, the Council’s experts noted that it did not reflect the interests of the small and the medium players of Ukraine’s beer market. For instance, the cost of a license to sell beer wholesale, UAH 500,000, was excessively high for small and medium breweries, whose production volumes the new norm could significantly decrease, making their business economically infeasible.

The Council sent a formal solicitation to the Speaker of the Verkhovna Rada with recommendation to consider the interests of small and medium breweries while negotiating the proposed legislation. Amendments to the mentioned legislation were elaborated and submitted to the Ministry of economic development and trade for the consideration. In its turn, the Council’s representatives joined corresponding working groups of the ministry to address the proposed amendments.

4 Communications and Outreach

One of the key commitments of the Business Ombudsman Council is furthering progress towards transparency among state, regional and local authorities, and among companies owned or controlled by the state. In addition, the Council intends to facilitate ongoing, system-wide dialogue between business and government.

Website



Sessions	Users	Pageviews	Pages	Sessions	Avg. Session Duration
6 689	4 206	20 503	3.07		00:03:19

Social networks

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

Since that time,

700 users have subscribed to it

average outreach of
one post
on the timeline
is around

800
users



www.facebook.com/BusinessOmbudsmanUkraine

The media

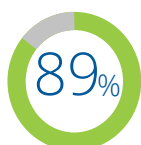
The Business Ombudsman Council communicates with the media to exchange information and does not, in any shape or form, provide financial compensation to editors or journalists for mentioning its activity or its speakers.

During the reporting period,
the Council was cited in the media

659 times



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)

The results of the Council's first week of operations were presented at a **roundtable attended** by journalists from: Kompanion, a weekly magazine; the Delo.ua portal; the Platforma portal; the LigaBusinessInform portal; the Ekonomichna Pravda portal; RBC Ukraine, a news agency; Ukrinform, a news agency; Biznes, a business weekly.

During the reporting quarter, Business Ombudsman interviews were published in:

the KyivPost, a weekly newspaper; Forbes, a monthly magazine; the Deutsche Welle portal; Novoye Vremya (New Time), a weekly magazine; the Platforma portal; the LigaBusinessInform portal; and Biznes, a business weekly.

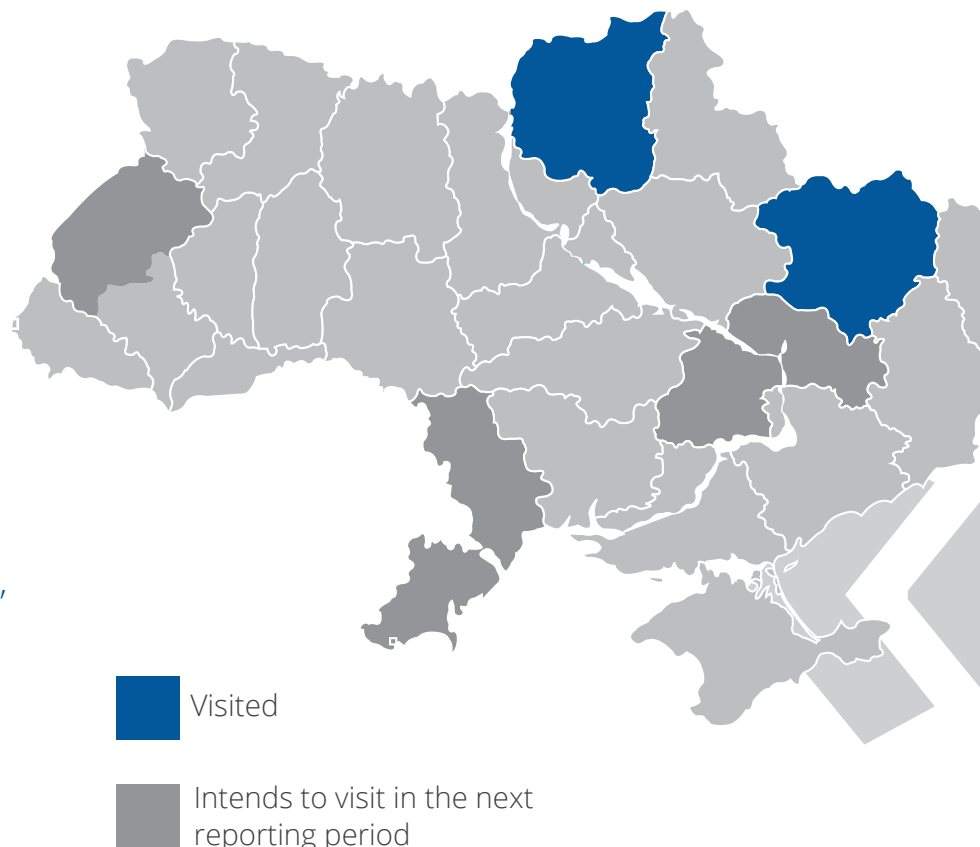
Fighting corruption is one of Kharkiv Oblast's priorities. I'm convinced that setting up the Business Ombudsman Council is a significant step in building mutual understanding that corruption must be eradicated. We will cooperate closely with the Council and are determined to help Kharkiv businesses that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

*says Kharkiv Governor
Ihor Raynin*

Working visits

In June 2015, Algirdas Šemeta made working visits to Chernihiv and Kharkiv Oblasts to establish cooperation and ongoing dialogue with local authorities and the business community, in order to support entrepreneurship and improve the investment climate in the Oblasts. He met with the leaders of the both Oblast State Administrations, as well as with regional SMEs. In the course of these meetings, the most pressing business-government cooperation issues needing Business Ombudsman Council intervention were discussed.

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. In the next reporting periods, Mr. Šemeta plans to continue the series, visiting Dnipropetrovsk, Odesa, Lviv, Mykolayiv, and Kherson Oblasts.



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 plans to sign Memoranda of Partnership and Cooperation with the government agencies that are most often involved in its investigations.

As the first step in that direction, 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 will include simplifying related legislation, improving the business climate, and preventing corruption and other violations of the lawful interests of private business.

In the next while, the Council plans to sign similar memoranda with the Prosecutor General's Office, the Ministry of Interior, the State Fiscal Service, and the Ministry of Justice.



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.*

5 Systemic problems

Analysis of the complaints received demonstrates that Ukrainian businesses most frequently come across three key systemic problems.

Clause 5.3.1 (h), (i) of Rules of Procedure.

Actions by the Fiscal Service of Ukraine:

- VAT refund delays, refusal of VAT taxpayer registration, abuse of power during inspections by State Fiscal Service of Ukraine;
- problems related to "Status 9," which is when the physical and the legal address of a company do not match.

Export and import operations:

- restricting the company's exports and applying penalties in the form of individual licensing, excessive restrictions on the import of specific products for the food processing industry, and temporary bans on the sale of imported pharmaceuticals.

Violations of the rights of business entities:

- dilatory compensation to the companies whose employees have been drafted to serve in the Anti-Terrorist Operation;
- repeated failure on the part of central and local government officials to enforce court rulings in favor of businesses;
- contradictory decisions by the local government agencies that affect the rights of entrepreneurs;
- government agencies using baseless criminal proceedings that are not subject to court appeal to put pressure on businesses.

The issues brought up in the complaints we receive reflect the full range of systemic problems faced when doing business in Ukraine. We feel the situation especially acutely, since every complaint lodged is a real problem that companies and entrepreneurs face every day. We don't prioritize complaints based on the company's jurisdiction or the size of its assets. We work on a case-by-case basis and intend to continue using our authority and our expertise to resolve conflicts and, when necessary, to demand the much-needed action from the government of Ukraine.

Systemic recommendations of Business Ombudsman Council are presented in separate documents
(Clause 5.3.1. (i) of the Rules of Procedure)

6 Reports on systemic problems

Reports of Business Ombudsman Council on problems with access to the power grid for commercial entities as well as problems for businesses as a result of the military situation in the East of Ukraine and the annexation of Crimea are presented in separate documents.

Problems with access to the power grid for commercial entities

Due to significant interest, the Council's first systemic report was devoted to the topic of connecting businesses to power networks, a problem known to be one of the main obstacles to doing business in Ukraine. The magnitude of the problem is, among others, evidenced by Ukraine's 185th place in "Getting Electricity" index in the World Bank's Doing Business 2015 report.

We started by analyzing the correlation between the number and duration of procedures used in assigning Ukraine's ranking in Doing Business 2015, and the state of Ukrainian legislation as of mid-July 2015. We thus noted that some deficiencies related to the number and duration of procedures had somewhat been mitigated. In particular, from the standpoint of methodology employed in Doing Business, the number of procedure should, in our view, be 5 rather than 10, whereas their overall duration should be in the range of 77–117 days¹, not 277 days.

We arrived to such conclusion taking into account revised approach employed in the Rules for Connecting Power Units to Electric Power Networks (approved by NCRECS Resolution #32, dated January 17, 2013), whereby the entire scope of construction and commissioning works, related to external connection of the customer's object to electrical networks (including bring it on line), shall be carried out by the power utility company (licensee) rather than the customer.

This means that the customer is relieved from the need to seek approval from the State Energy Supervision Authority (Держенергонагляд), selection committee of the State Architectural and Construction Control as well as various departments with the Kyiv City State Administration and Kyivenergo (the local power utility). Thus, we have reasonable grounds to anticipate that, as far as Ukraine's "Getting Electricity" index is concerned, Ukraine's rating in Doing Business 2016 should be markedly higher.

In the second part of the report we elaborated several recommendations that, in our view, will not only make the procedure of connecting to electricity faster and cheaper, but will also allow minimize the corruption component, which currently manifest itself at various stages of providing service to ensure a power connection. This will also help improve Ukraine's international rating.

¹ Depending on whether construction and commissioning works (including bringing an object on line) conducted by the power company is to be regarded as a separate procedure in terms of the methodology employed in Doing Business.

These recommendations include a number of steps to be implemented within the context of a comprehensive reform strategy in this field:

- To move towards fixed rates for getting hooked up to electricity, with the cost calculated based upon the quantity of power (capacity) applied for by the customer. This transfers the requirement to prepare a project design to the power company, which relieves the customer from the obligation of seeking technical conditions for obtaining a connection to electricity from the utility company;
- To simplify the process of approving project documentation by power utility company with various third parties by establishing fixed terms for securing such approvals (with the cost calculated based upon the quantity of power (capacity) applied for by the customer) and implementation of a “silent consent” mechanism, including the liability of the power utility for any failure to observe such terms, calculated as a percentage of the total cost of getting hooked up, which would be reimbursed to the customer.
- Improving current practice of receiving land plots allotment, required for power networks’ construction and bringing them on line, through wider use of a “servitude” mechanism.
- Hooking up customer’s power units to power network on the basis of the respective power supply contract (no need for the customer to file a separate application).
- Developing new and improving existing plans for the construction of territories (often non-existent in practice) to avail a certain number of land plots, located at such territories, with the external connection to electricity, to be ensured already at the stage, when customer filed an application for getting hooked up to electricity.
- Optimization of tender procedures conducted by natural monopolies through wider use of framework contracts.

In aggregated form, the cumulative effect from implementing foregoing initiatives can be summarized as follows:

As far as the number of “procedures” in the meaning of the terminology employed by Doing Business is concerned, we expect the total number of procedures to be decreased by 2 (two), namely:

- Due to transition towards fixed rates for getting hooked up to electricity, the customer will no longer be obliged to prepare and approve project documentation;
- To the extent customer’s power unit will be hooked up to the electricity network solely on the basis of the electricity supply (use) agreement, it will prevent the customer from the need to file a separate application for bring its unit on line.

We also foresee that the number of days for a customer to expect its' power unit being hooked up to electricity network will be significantly shortened. The following summarizes factor contributing to such outcome:

- An ability to file application for getting hooked up to electricity in electronic form;
- No need to wait for the issuance of a so-called "technical conditions" by the power utility;
- No need to prepare and approve technical documentation;
- Establishing fixed terms for the power utility to approve project documentation with third parties (including through "silent consent" mechanism);
- More widespread use of "servitude" mechanism, including in relations with local self-governance bodies, when signatures of respective officials will suffice for execution of a contract without the need to wait decision at the session;
- Optimization of tender procedures conducted by natural monopolies though wider use of framework contracts, to be executed to document supply of goods and/or services.

We also anticipate that if our recommendations are implemented, the factor of corruption, which is quite descriptive of the current state of affairs in the field, will be largely mitigated. This will allow to significantly decrease the actual cost of the service. Besides, it is worth noting, that transition towards fixed rate for getting hooked up, will allow the customer to know the actual cost of such service from the outset.

This report has been prepared in cooperation with the Electric Energy Retail Market Division of the National Commission Conducting State Regulation in the Spheres of Energy and Communal Services (NCRECS), PJSC «Kyivenergo», PJSC «Prykarpattiaoblenergo» as well as with the program of the United States Agency for International Development «Leadership in Economic Governance» (USAID LEG).

Problems for businesses as a result of the military situation in the East of Ukraine and the annexation of Crimea

This report is dedicated to the most pressing issues mentioned by complainants in the reporting quarter. Given the need to balance the interests of citizens and the state, the Business Ombudsman Council decided to handle these issues separately, to study the situation in-depth, and to prepare practical recommendations for the Government of Ukraine on how to improve the situation.

On reimbursing companies for salaries paid to employees who were mobilized for a specified term

In accordance with legislation recently passed by the Verkhovna Rada, a formal procedure was established in March 2014 to reimburse companies for the salaries they paid employees who were mobilized, from the State Budget. Though this law was passed, many complaints were received from businesses that the state had failed to fulfill this obligation.

A deeper analysis of the current reimbursement procedure, including how state compensation was calculated, accounted for and paid, and whether the necessary funding was in place, allowed the Council to offer three recommendations to the Government:

- to fulfill all current commitments to such companies, starting on June 8, 2014, when the Decree #1169-VII came into force;
- to amend the Law of Ukraine “On the 2015 State Budget,” in order to provide the necessary funding to reimburse companies for payroll costs incurred in 2014 (UAH 1.6bn), to secure funding for similar upcoming reimbursements in 2015 (UAH 955m), and to include these expenses under the appropriate State Budget items in future periods;
- to ensure the targeted nature of reimbursements by establishing a unified register of State Budget reimbursements for mobilized employees; to set up an electronic information exchange mechanism between the State Fiscal Service, the Pension Fund, the Ministry of Social Policy, and the Ministry of Defense; and to provide the necessary accounting and banking infrastructure for such payments.

On transporting goods (cargo) to and from the territory of the Anti-Terrorist Operation

Despite the ongoing negative impact of the military situation in the East of Ukraine, some flow of goods (cargo) across the nominal border with the occupied territory has had to continue. The procedure for crossing this border needs to include clear, transparent rules, to minimize the risks of abuse on the part of the government agencies involved, and to facilitate better security control. To this end, the Council suggested three steps:

- to establish clear quantitative criteria for assessing which companies are allowed to move across this nominal border;
- to have the Security Bureau of Ukraine (SBU), Ministry of Interior, and State Fiscal Service establish the terms and the procedures for the relevant Ministries to issue the necessary border-crossing permits and to clearly define the list of Ministries authorized to issue such permits;
- to improve the current system of issuing border-crossing permits and transporting goods (cargo), following the “one-stop shop” principle, where authorized government employees verify the required data using the electronic consolidated registers of various government agencies, saving time and minimizing risks of abuse.

On returning train cars belonging to Ukrainian owners from annexed Crimea to mainland Ukraine

Since the Law “On establishing the Crimea Free Economic Zone and on the specifics of engaging in commercial activity on the temporarily occupied territory of Ukraine” was passed in September 2014, business activity between Ukraine and the Crimea free economic zone, including customs clearance of cargo, has been settled. In December 2014, when UkrZaliznytsia, the national railway operator, limited the movement of trains to and from occupied Crimean territory for security reasons, some 1,000 rail cars owned by Ukrainian companies, some empty and some loaded, were left on the other side of the temporary “border.”

Although the Council fully understands the political and security context in which UkrZaliznytsia made its decision to suspend train links between Crimea and mainland Ukraine, we believe the rolling stock of Ukrainian companies and the cargo they contained before the moratorium came into force, should be returned to mainland Ukraine and put to work to benefit the country's economy.

The Council recommends that UkrZaliznytsia:

- review its decision and lift the moratorium on the movement of any Ukrainian-owned boxcars—many of which were loaded when the ban came into force—for which the owners have confirmation documents;
- establish a joint Commission with the Ministry of Infrastructure, the SBU, the Customs Service, in order to resolve the issue of ensuring the security of cargo crossing the nominal border with occupied Crimea, and to set up procedures for verifying the content of loaded boxcars pending crossing the border with mainland Ukraine.



7 Plans for the next quarter

Analyzing numerous complaints from Ukrainian businesses and working on possible solutions has given the Council an opportunity to see, in practice, the causes of the current position of Ukraine in Doing Business and Transparency International rankings. The information and data we accumulated will be used as a foundation for system-wide recommendations to the Government of Ukraine in subsequent periods. Specifically, the Council's experts plan to draft detailed recommendations for improving tax administration.

The Council's experts will continue preparing recommendations on how to ease export-import operations. Systemic problems with export-import legislation were among the most burning issues for Ukrainian businesses during the reporting period. The essence of the

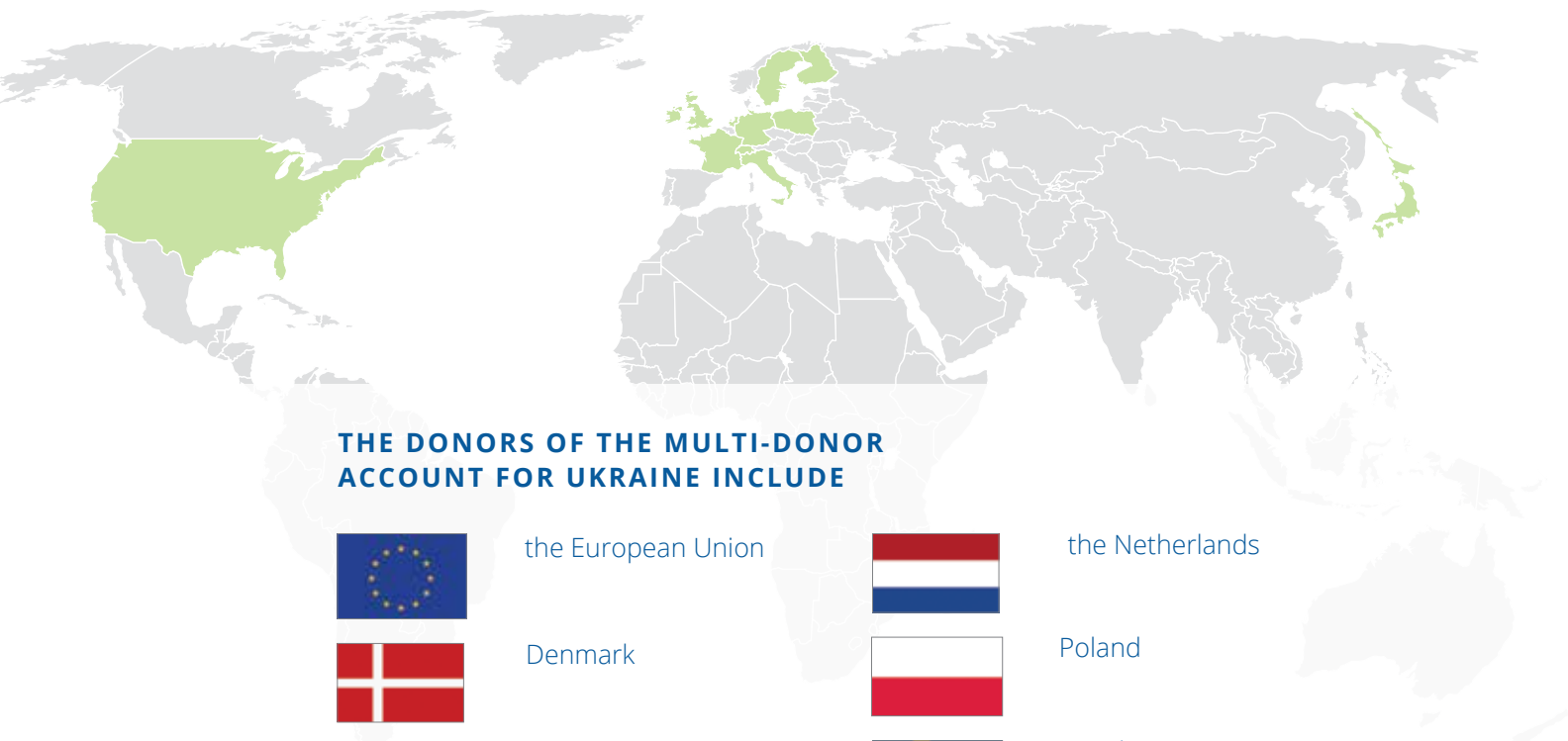
complaints was predominantly about export limitations and sanctions, such as individual licensing; excessive import caps on specific food products; and a temporary ban on importing foreign pharmaceuticals. Though the details varied in every case, the volume and the nature of the complaints suggest a need for long-term cooperation between the Council and government agencies in order to eliminate discrepancies in the law and to improve export-import regulation.

In the next quarter, the Council plans to continue to make the results of its activity public and inform both the business community and civil servants about its activities, through Memoranda of Cooperation with government agencies, regional events, expert meetings, and the press.

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