

01 April – 30 June

Quarter II 2017



REPORT



ADVOCATING
FOR BUSINESS
WITH THE
GOVERNMENT

www.boi.org.ua

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

FOREWORD OF THE BUSINESS OMBUDSMAN



Dear Friends, Colleagues, and Partners,

It is my pleasure to present the Business Ombudsman Council's report for Quarter II 2017.

In the reporting quarter, we successfully continued to serve the interests of Ukrainian businesses.

The Council received 237 complaints, a 12% growth in comparison to similar period of 2016. We undertook the second largest number of investigations in the Council's history – 160 – and managed to improve timeliness of conducting investigations. The direct financial impact of our operations was UAH 495 million, and the overall effect since launch of operations has reached over UAH 10.2 billion.

In the reporting quarter, the Council prepared systemic report analyzing problem of raider attacks that negatively affect Ukraine's business environment. The report contains a list of recommendations aimed at improving the

efficiency of fighting raiders and implanting business integrity into business core.

In May 2017, we presented the Ukrainian Network of Integrity and Compliance (UNIC), a new initiative for businesses that want to work transparently. The purpose of this network is to promote the idea of doing business ethically and responsibly. The network should help bring together leaders in the business community who understand how important transparency is in doing business and who are prepared to offer a role model to other companies. We are supporting the network actively.

The Business Ombudsman Council has become the voice of entrepreneurs making significant impact on further growth and development of Ukraine's economy. We will continue to best serve the interests of business and advance the legitimate rights of Ukrainian entrepreneurs.

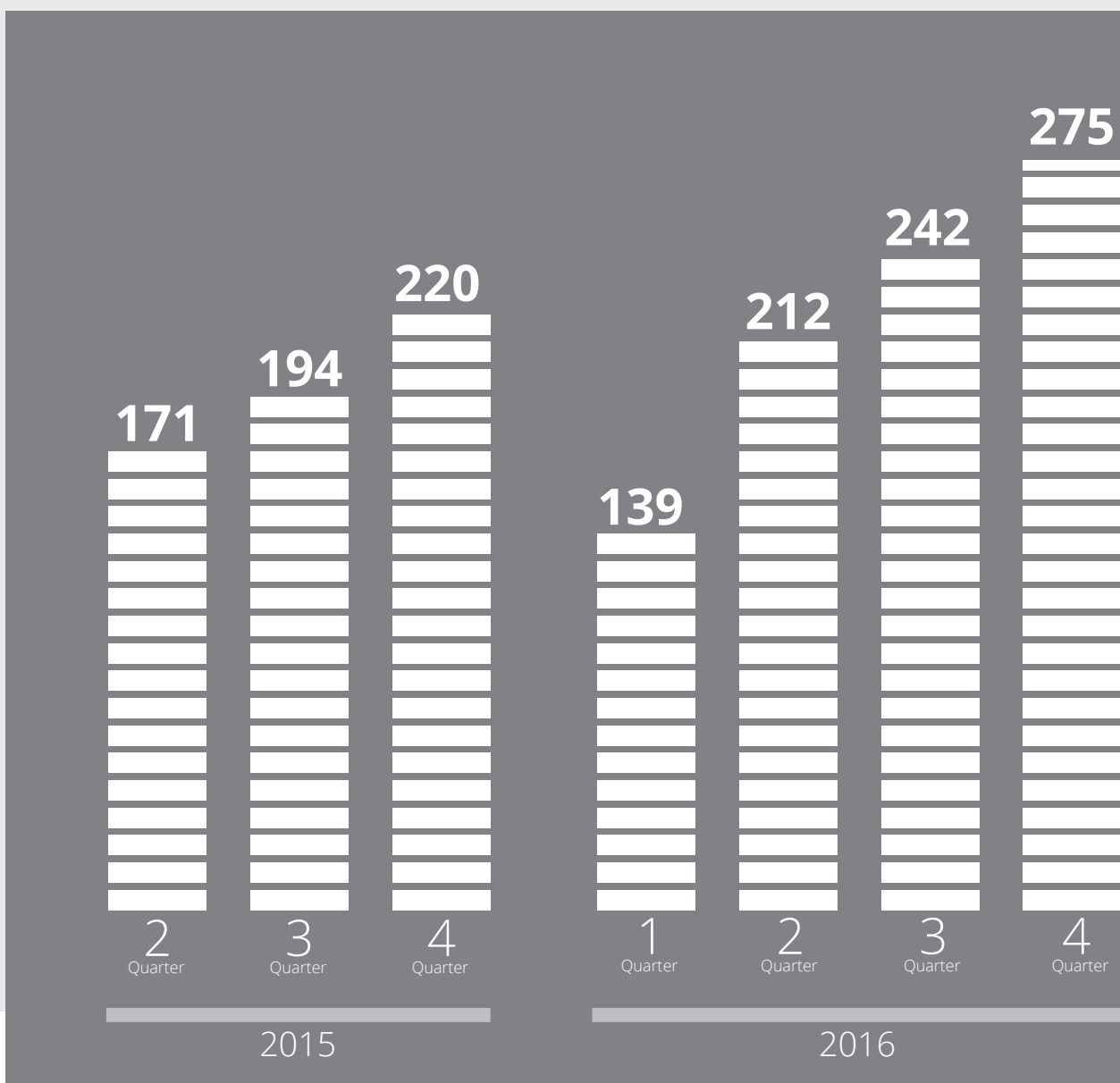


Algirdas Šemeta
Business Ombudsman

COMPLAINT TRENDS

1.1. Volume and nature of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)



Compared to similar reporting periods in 2016 and 2015 the Quarter II figures grew by 12% and 39% respectively. In comparison to Quarter I 2017, the number of incoming complaints has slightly decreased.



TOP-10

SUBJECTS OF COMPLAINTS RECEIVED
IN QUARTER II 2017

TAX ISSUES



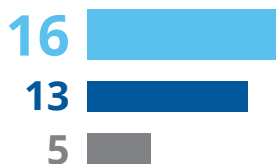
ACTIONS OF STATE REGULATORS



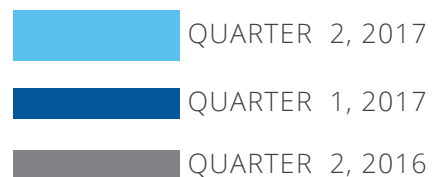
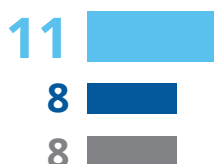
PROSECUTOR'S OFFICE ACTIONS

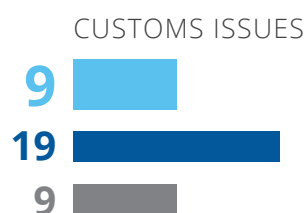
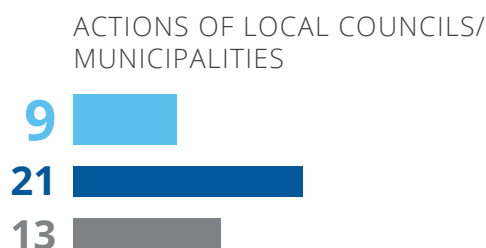
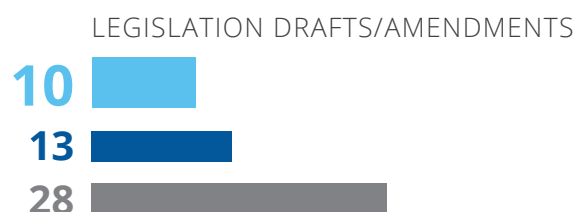


NATIONAL POLICE ACTIONS



MINISTRY OF JUSTICE ACTIONS





There was an increase in the number of complaints regarding:

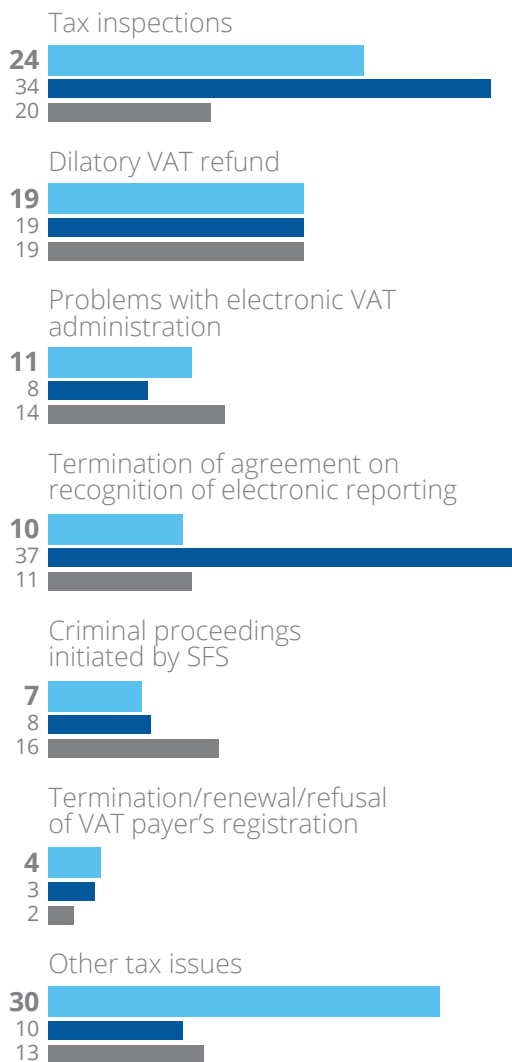
By 60%	State Security Service actions
By 38%	Ministry of Justice actions
By 25%	State regulators' actions
By 23%	National Police actions

There was a drop in the number of complaints regarding:

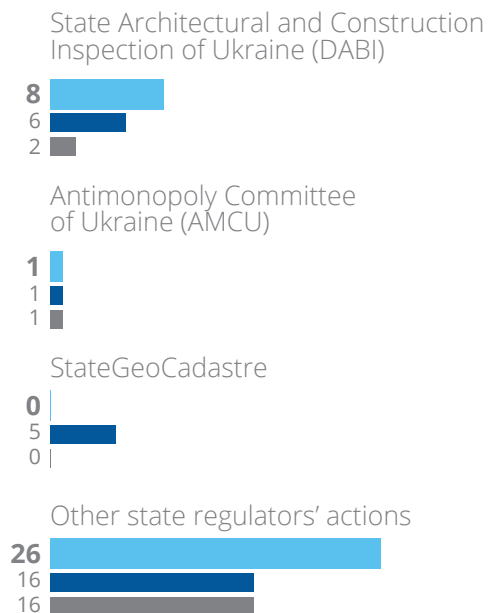
By 57%	local councils and municipalities actions
By 53%	customs issues
By 23%	legislation drafts/amendments
By 12%	tax related issues

* In comparison to previous reporting quarter

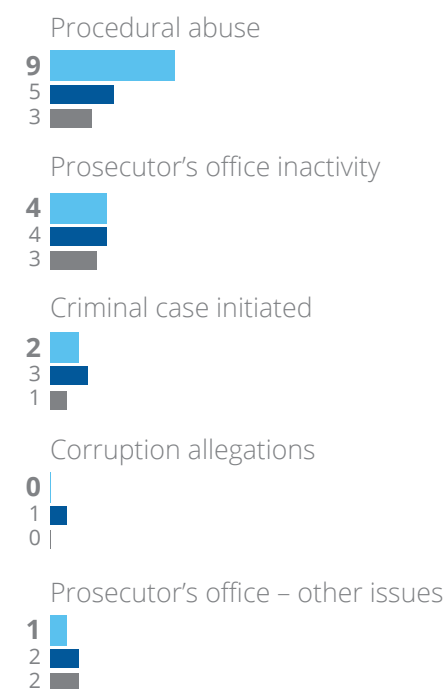
105 119 95 TAX ISSUES



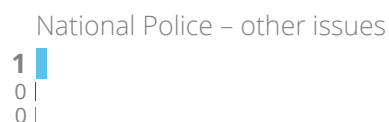
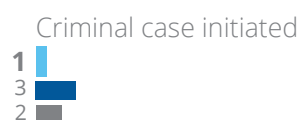
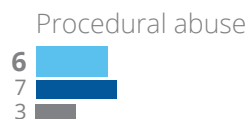
35 28 19 ACTIONS OF STATE REGULATORS



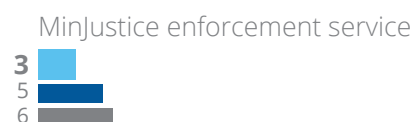
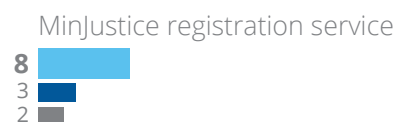
16 15 9 PROSECUTOR'S OFFICE ACTIONS



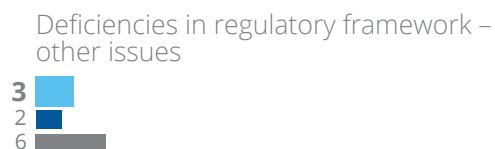
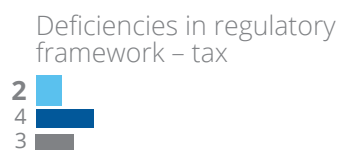
16 13 5 NATIONAL POLICE ACTIONS



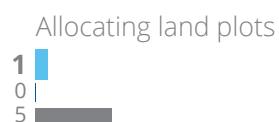
11 8 8 MINISTRY OF JUSTICE ACTIONS



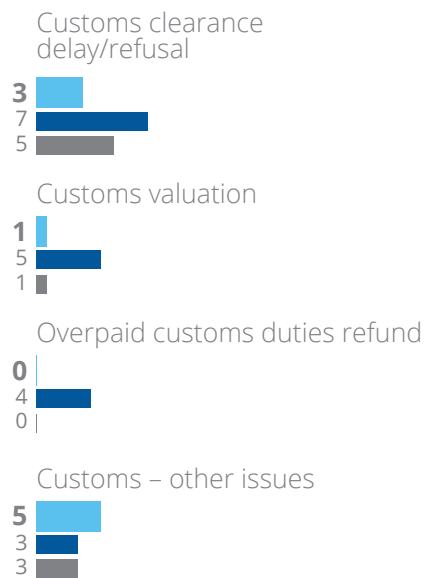
10 13 28 LEGISLATION DRAFTS/ AMENDMENTS



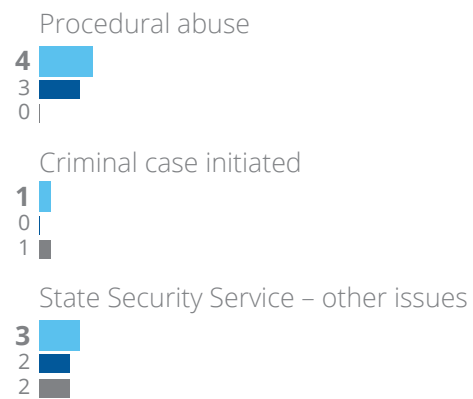
9 21 13 ACTIONS OF LOCAL COUNCILS/MUNICIPALITIES



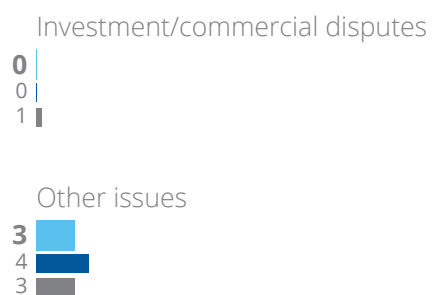
9 19 9 CUSTOMS ISSUES



8 5 3 STATE SECURITY SERVICE ACTIONS



3 4 4 ACTIONS OF STATE COMPANIES



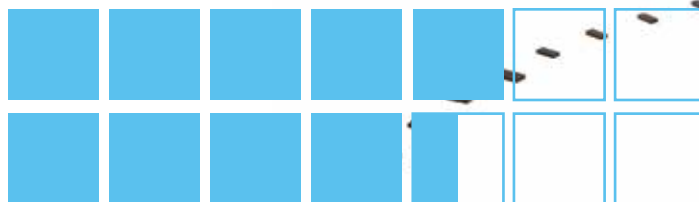
1.2. Timeliness of the preliminary review of complaints

(Clause 5.3.1 (b) of Rules of Procedure)

The average time
for preliminary review
of complaint:

9,5

working days



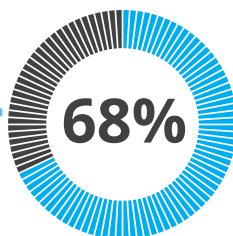
In this quarter, we reduced
the average time for preliminary
review of complaint by
half a day.

1.3. Number of investigations conducted and grounds for declining complaints

(Clause 5.3.1 (c) of Rules of Procedure)

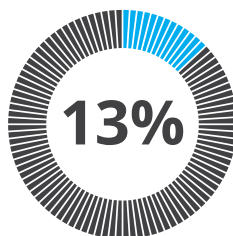
237

complaints



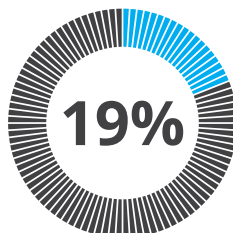
160

Investigations



33

Complaints
in preliminary
assessment



44

Dismissed complaints

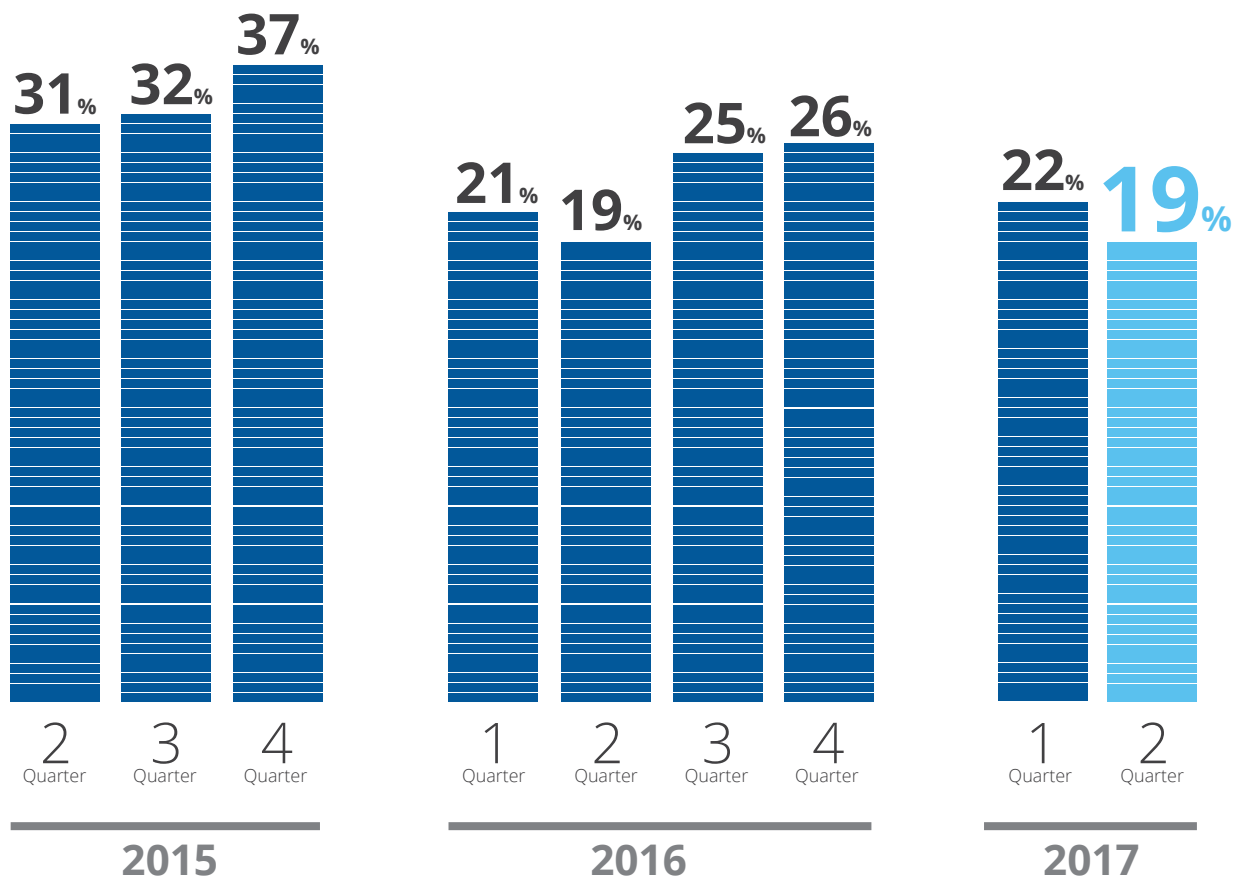
* as of the end of Quarter II 2017

NUMBER OF INITIATED INVESTIGATIONS:



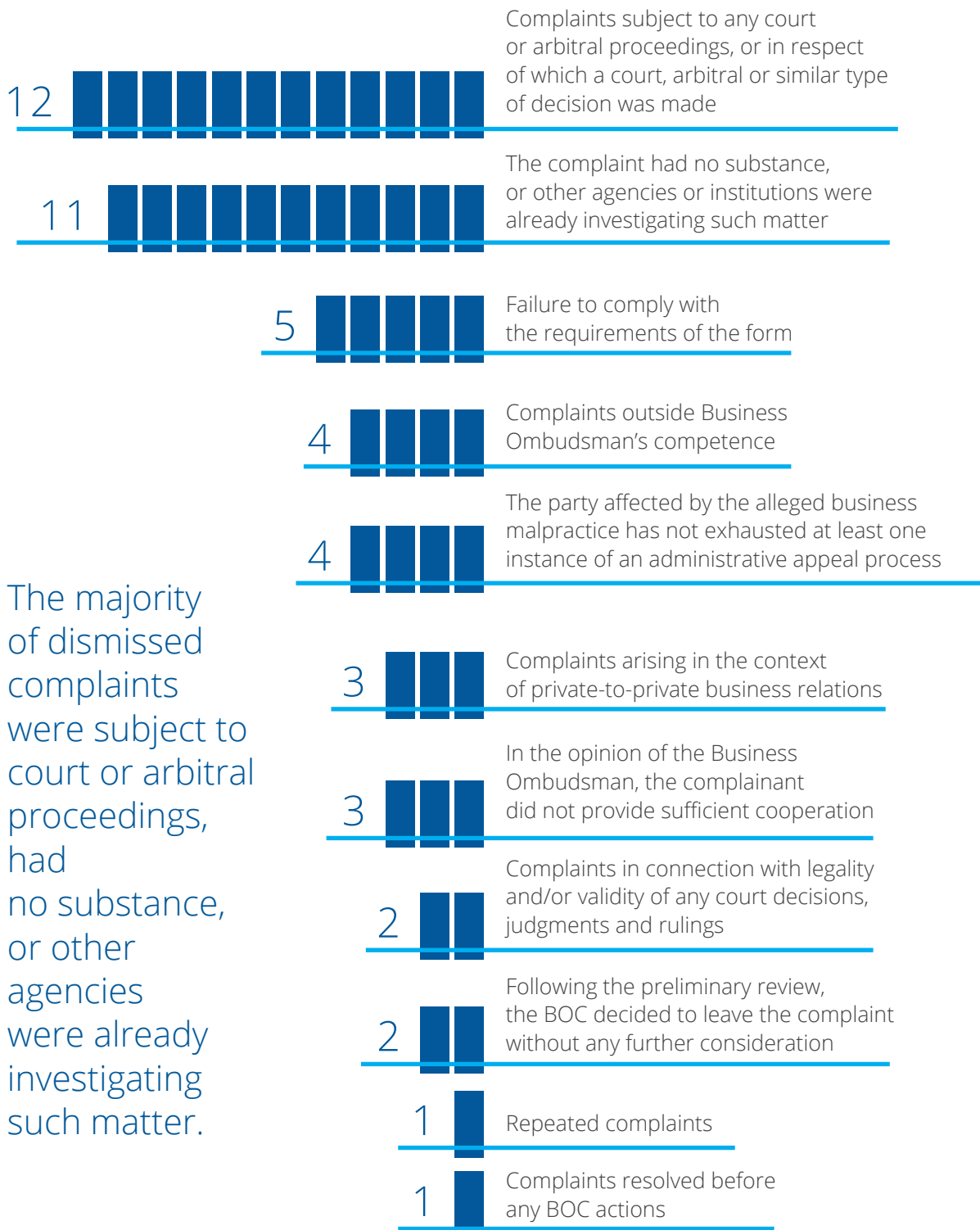
In this reporting quarter, the BOC initiated the second largest number of investigations since launch of operations.

RATIO OF DISMISSED COMPLAINTS:



In the reporting period, the BOC dismissed by 3 percentage points fewer complaints than in the previous quarter. We reduced the rate of rejections by 12 percentage points compared to the similar period of 2015. This testifies that awareness about our mandate is growing.

MAIN REASONS FOR COMPLAINTS' DISMISSAL IN QUARTER II 2017



1.4. Timeliness of conducting investigations

(Clause 5.3.1 (d) of Rules of Procedure)

In the reporting quarter,
the BOC closed

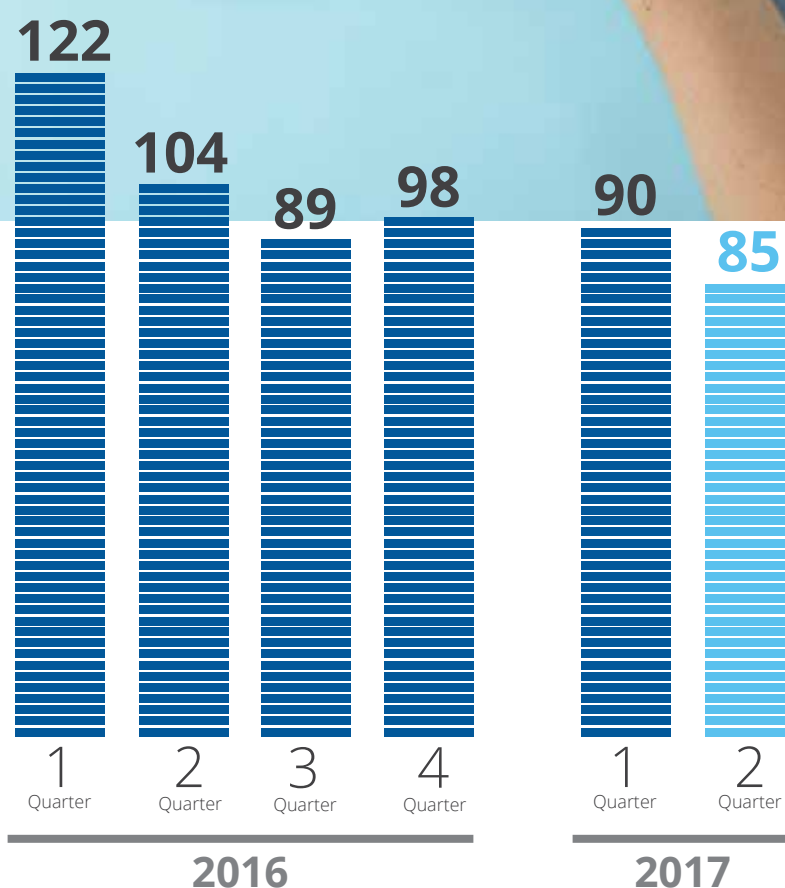
192
cases

Average time
for conducting these
192 investigations:

85 days



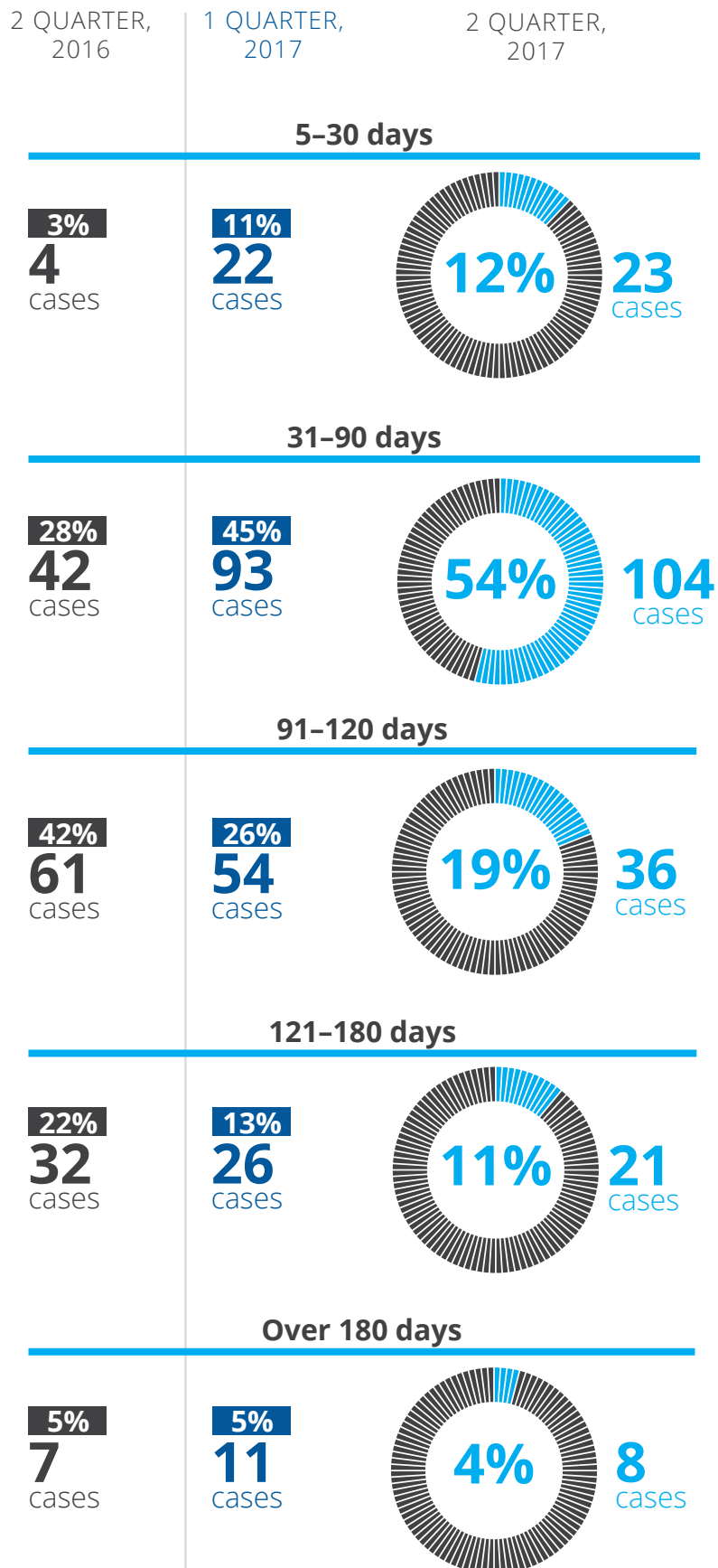
AVERAGE
TIME FOR
CONDUCTING
INVESTIGATIONS
SINCE 2016
(DAYS):



RATIO OF CLOSED CASES BY DAYS:

In this reporting period, the BOC's team showed the best timeliness of conducting investigations since launch of operations.

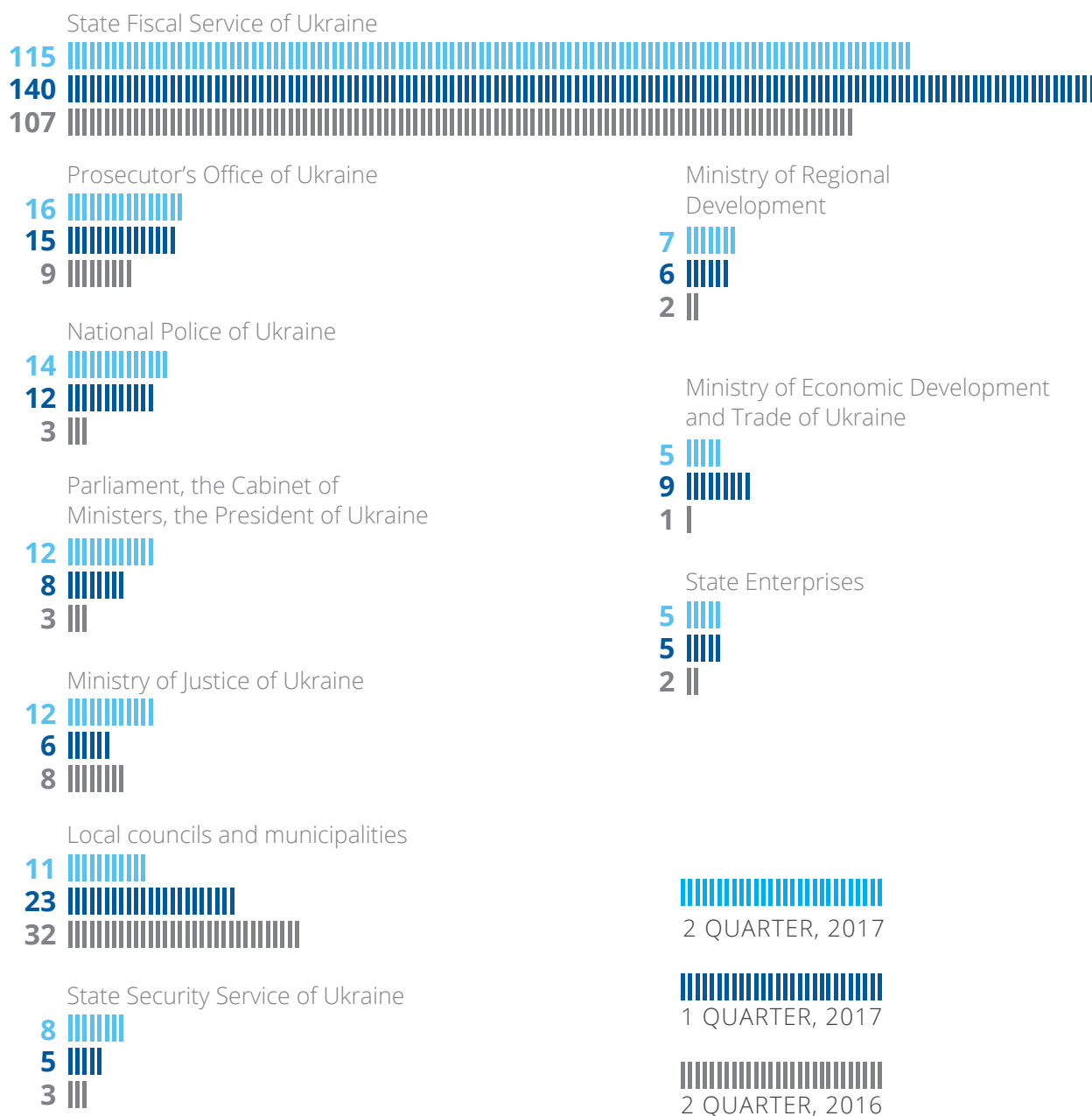
The biggest part of cases – 127, which is 66% of all closed investigations in Quarter II – was conducted within 90 days. Although the cases lodged to the BOC became more complex, only 4% took over 180 days to investigate while 12% were closed in 5-30 days.



1.5. Government agencies subject to the most complaints

TOP-10

GOVERNMENT AGENCIES SUBJECT TO COMPLAINTS



OTHER COMPLAINNEES INCLUDE:

Ministry of Finance of Ukraine	4
Antimonopoly Committee of Ukraine	3
Ministry of Social Policy and Labour of Ukraine	3
Ministry of Internal Affairs	2
Ministry of Agrarian Policy and Food of Ukraine	2
Ministry of Ecology and Natural Resources of Ukraine	2
Commercial and other courts	2
Ministry of Infrastructure of Ukraine	1
Ministry of Health of Ukraine	1
National Bank of Ukraine	1
State Service of Ukraine on Food Safety and Consumer Protection	1



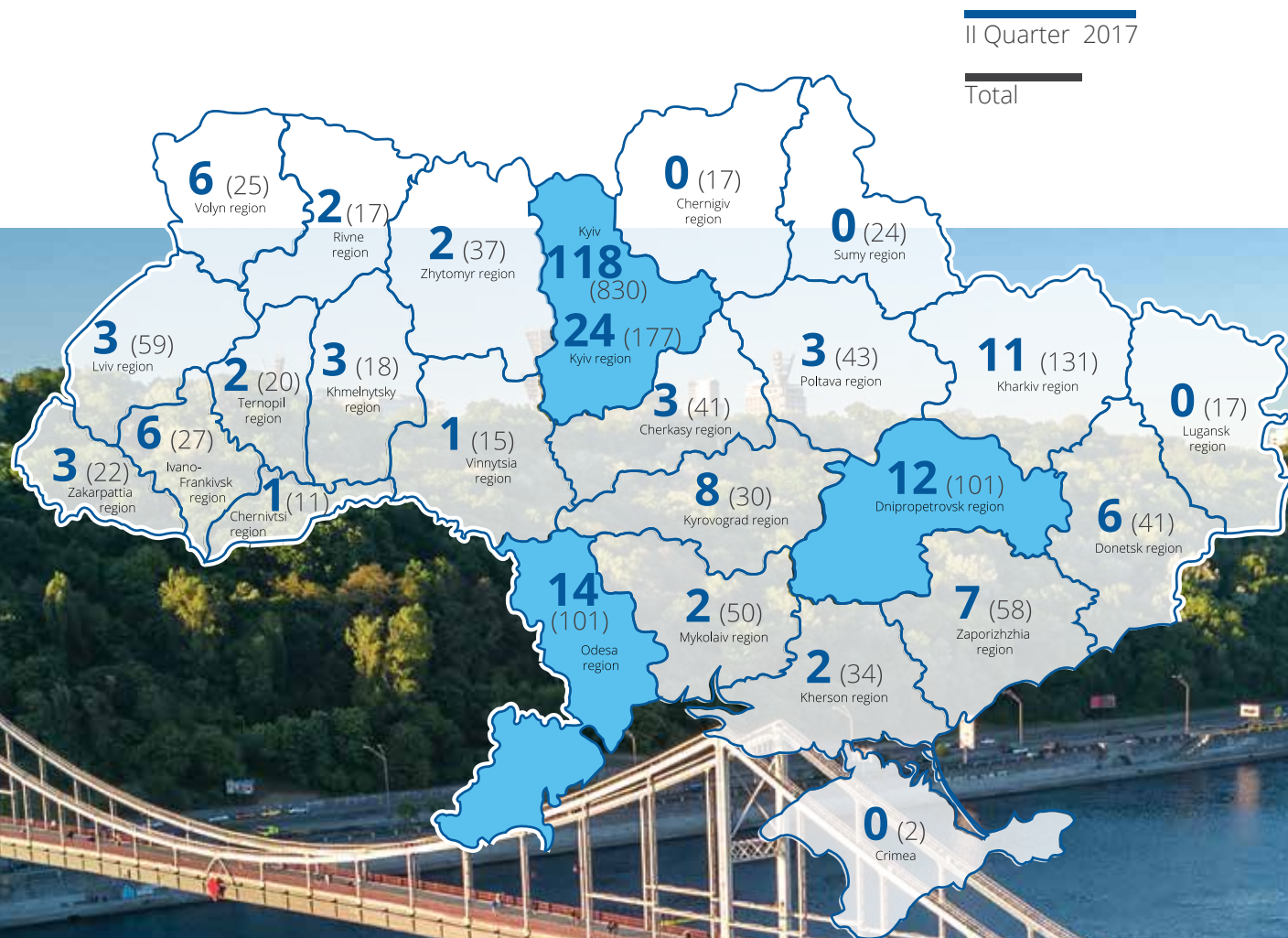
The State Fiscal Service (including the State Tax Inspection, and Customs Service) and enforcement agencies (including Prosecutor's Office, National Police, State Security Service of Ukraine) top the chart – 49% and 16% respectively out of all complaints received.

Inquiries regarding the State Fiscal Service as well as the local councils and municipalities dropped by 18% and 52% respectively in this reporting quarter. There was a twofold drop in complaints regarding the Ministry of Economic Development and Trade.

On the other hand, there was a significant growth of inquiries regarding the actions of top government bodies (the President, the Parliament and the Cabinet of Ministers of Ukraine), Ministry of Justice as well as State Security Service of Ukraine.



1.6. Geographical distribution of complaints received



THE DYNAMICS OF COMPLAINTS

remained similar to the previous reporting period: the majority of complaints came from Kyiv city (118), the Kyiv (24), Odesa (14) and Dnipropetrovsk (12) regions.

THE FEWEST COMPLAINTS

came from Chernivtsi and Vinnitsia regions (1 complaint each). We have received no complaints from Sumy, Chernigiv, Lugansk regions and the Crimea.

1.7. Complainants' Portrait

TOP-6

COMPLAINANTS' INDUSTRIES

QUARTER 2,
2016QUARTER 1,
2017QUARTER 2,
2017

43

79



47

Wholesale and
Distribution

43

28



40

Manufacturing

8

25



26

Real Estate
and Construction

5

17



22

Retail

31

15



19

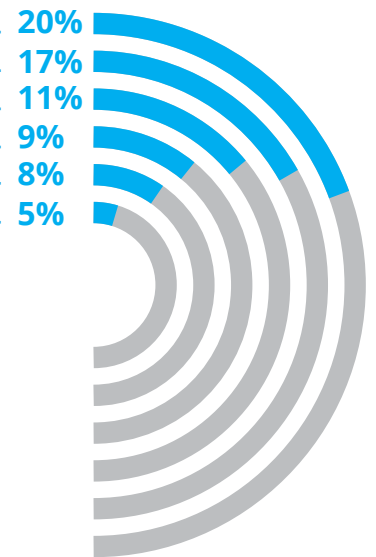
Individual
Entrepreneur

16

21



11

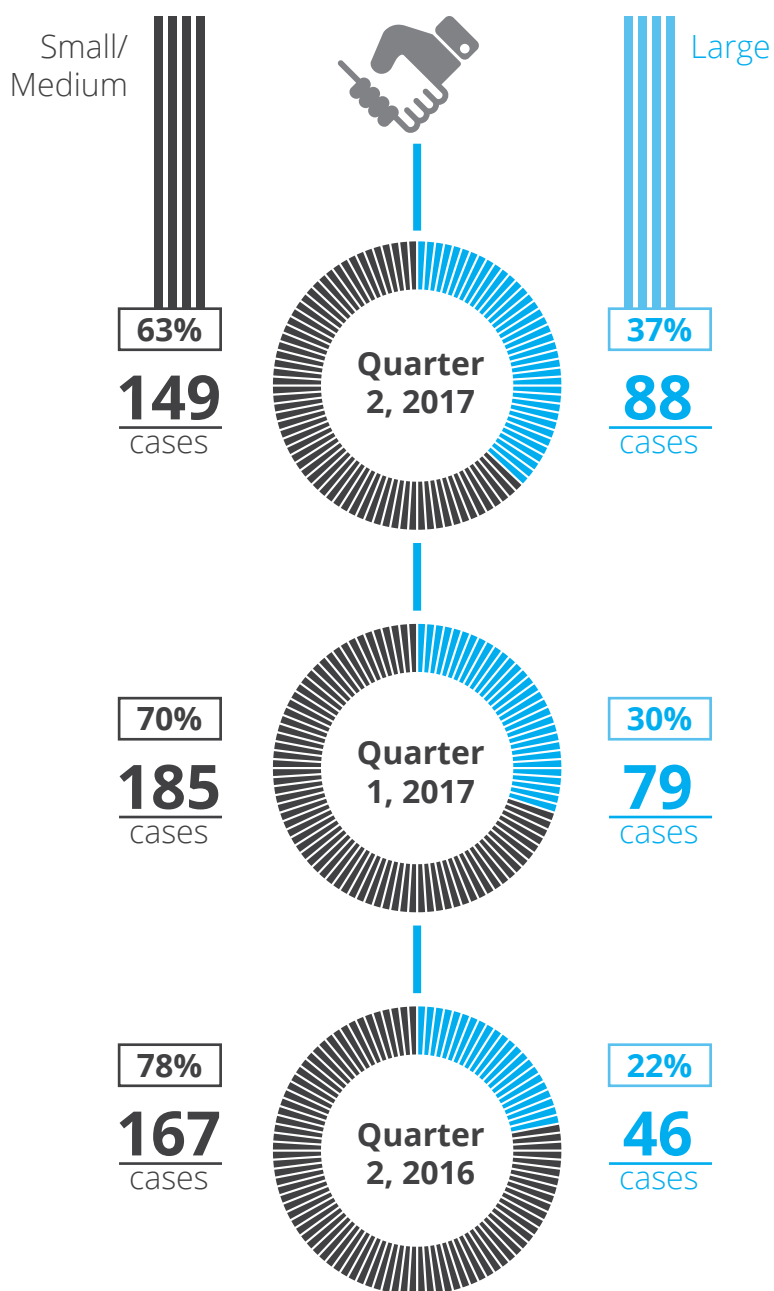
Agriculture
and Mining

OTHER INDUSTRIES INCLUDE:

Financial Services	8
Public Organizations	5
Warehousing	5
Transportation and Storage	4
Processing Industry	4
IT companies	4
Software and Internet	3
Wastes collection and disposal	3
Telecommunications	3
Activity in the field of law	3
Consulting	3
Air Transport	3
Engineering, geology and geodesy areas activity	2
Delivery services	2
Activities in the field of sport	2
Metallurgical production	2
Energy and Utilities	2
Physical Person	2
Restaurant business	1
Building of ships and floating structures	1
Media and Entertainment	1
Hire, rental and leasing	1
Health, Pharmaceuticals, and Biotech	1
Activities in the field of employment	1
Technical testing and research	1
Advertising	1
Maintenance of buildings and territories	1

Complaints were coming predominantly from wholesalers, distributors, retailers, manufacturers, real estate, agribusiness as well as individual entrepreneurs. In this reporting quarter, there was a 43% rise of complaints from manufacturers while the number of complaints from distributors dropped by 40%.

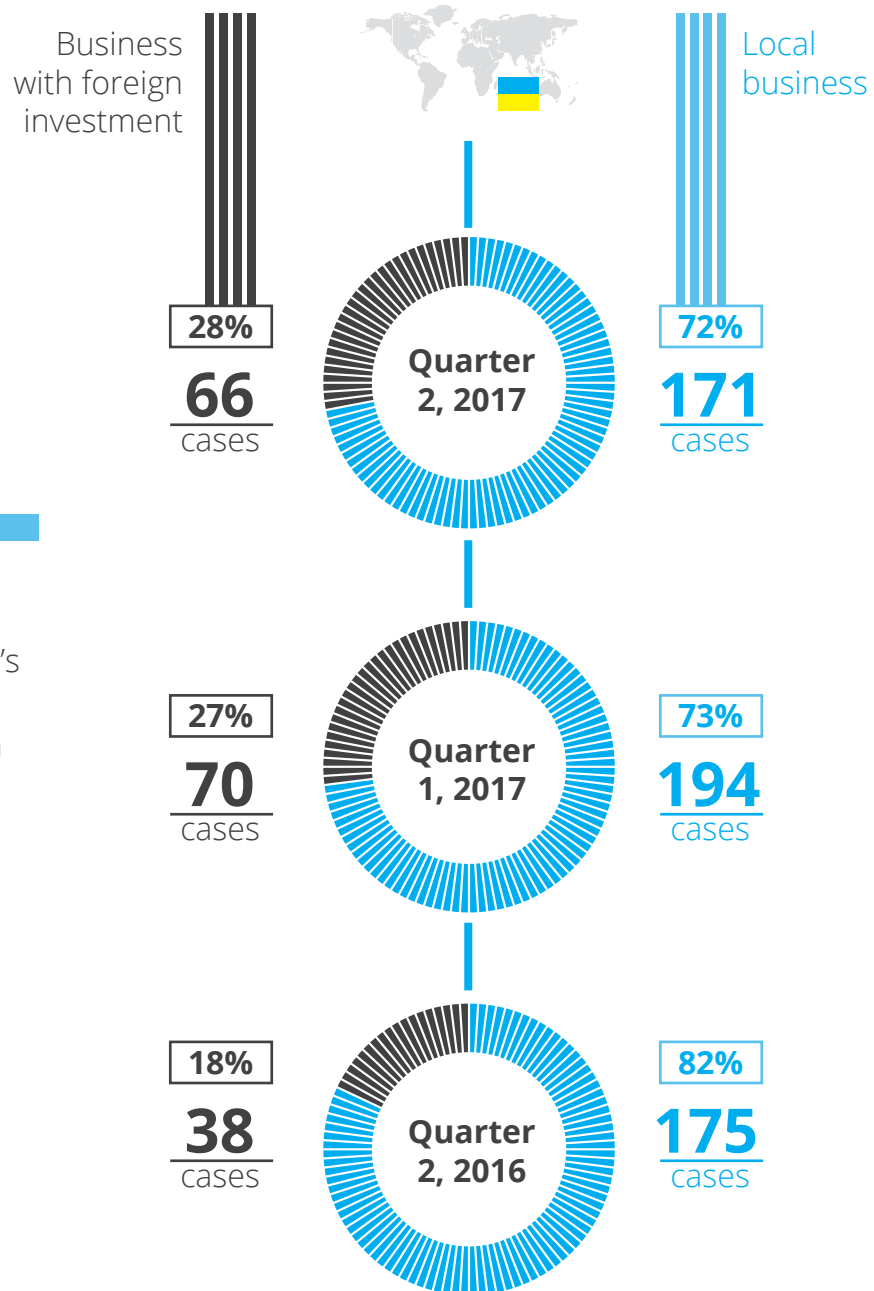
SIZE OF BUSINESSES



On average 4 in 10 complaints came from large businesses, which is a slight growth since previous reporting quarter. The number of inquiries from large enterprises is continuously growing. Although we do not make any preferences based on the size or nature of business, small and medium business, which has fewer leverages of protecting their lawful interests, still remains our main source of queries.

LOCAL / FOREIGN BUSINESS

Local business is most active in seeking the Business Ombudsman's support, although the share of inquiries from foreign companies is gradually increasing.



1.8. Feedback



In the reporting quarter, we received

95 feedback forms

from our complainants.

Complainants assess our work based on several criteria:

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

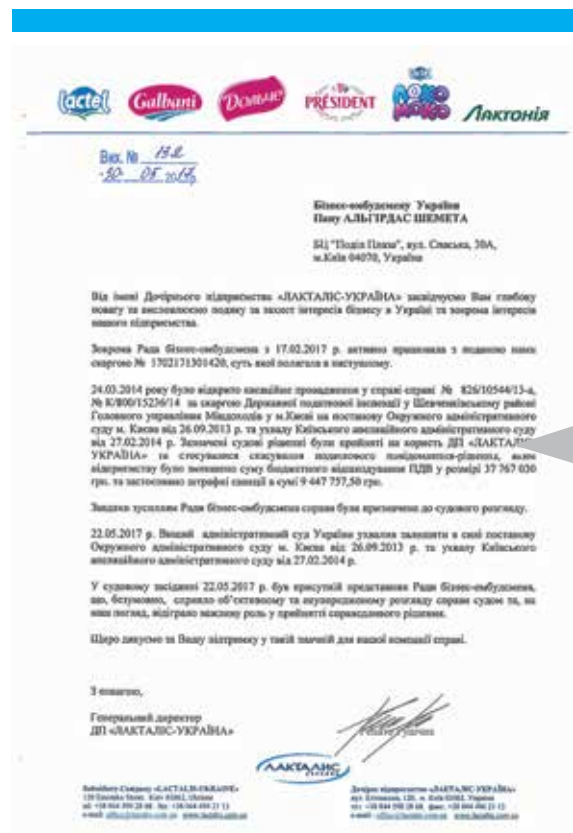
They also indicate what they are satisfied with most in dealing with us and what areas need improvement.



As a result,
an absolute majority –

97%

of complainants – said they
felt good about working
with us.



Thank you for valuable support in such an important case for our company

We are grateful for your help and hope for further support

Товариство з обмеженою відповідальністю «ПРОПАН ТРЕЙД»

Користувачі адреси: пров. Таврійський, 4 м. Харків, 61087
к/р 26001500078313 в ПАТ «ОРЕД АГРЕГОГА БАНКО м. Харків МФО 300614
ЄДРПОУ 34887114, ІПН 34887120314, СІ-НО ПЛАНШЕВІ 7328 100071638

Вих. №173
від 11 травня 2017 р.

Бізнес-омбудсмену Альїтрасу Шеметі
Ради бізнес-омбудсмена
вулиця Спаська, будинок 30А, Київ, 04070

Шановний Альїтрасе Шеметі!

ТОВАРИСТВО З ОБМЕЖЕНОЮ ВІДПОВІДАЛЬНІСТЮ «ПРОПАН ТРЕЙД» виключно зацікавлено в тому, щоб Рада бізнес-омбудсмена задовольнила та розглянула скаргу Товариства, що стосувалася застосування Міністерством економічного розвитку і торгівлі України санкцій у вигляді заборони здійснення комерційно-економічної діяльності.

Завдяки оперативному зверненню Ради бізнес-омбудсмена до представництва Служби безпеки України, а також звернення Міністерства економічного розвитку, вдалося доскоти скасування дії певної санкції. Так, 10 березня 2017 року Міністерством економічного розвитку і торгівлі України було прийнято Наказ № 347 «Про скасування спеціальної санкції, що застосована до суб'єкта комерційно-економічної діяльності України, який є суб'єктом спеціальної санкції, що застосована до суб'єкта комерційно-економічної діяльності України (зокрема і щодо ТОВ «Пропан Трейд»), а також визначено, що втрачає чинність, наказ Міністерства економічного розвитку України від 06.02.2017 року № 154 у частині застосування спеціальної санкції до зазначеного у додатку до цього листа суб'єкта комерційно-економічної діяльності України.

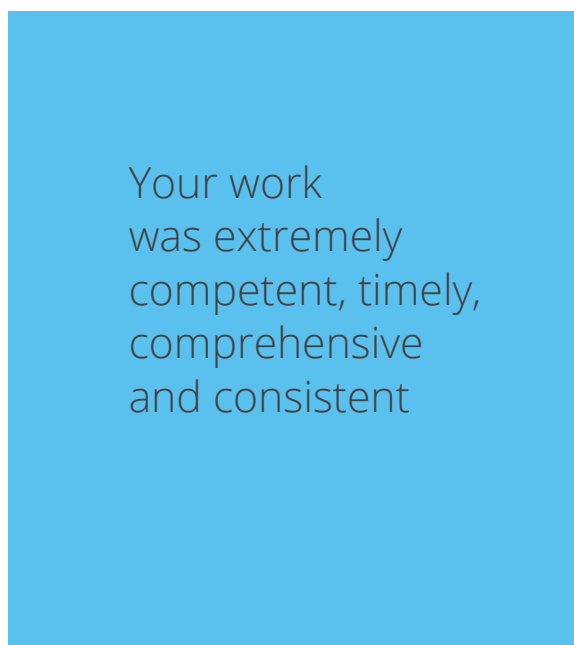
ТОВ «ПРОПАН ТРЕЙД» щиро вдячне Вашій команді за визначення справи і сподівається на подальшу вітрянку в сфері забезпечення корупційним діям з боку державних органів та відомим порушенням прав інтересів суб'єкта підприємництва.

З повагою,
Директор

О.В. Богаченко



Your high professionalism and faith in justice supported and inspired us



SUMMARY

OF KEY MATTERS AND FOLLOW-UP OF RECOMMENDATIONS

2.1. Systemic issues identified

Much of the Business Ombudsman's work is still generated by complaints concerning the State Fiscal Service. The figures in the reporting quarter say that 44% of complaints received were tax related. On the other hand, number of received tax-related queries decreased by 12% since previous quarter.

We observe a significant decrease of complaints regarding actions of local councils/ municipalities and customs issues – by 57% and 53% respectively. Inquiries regarding legislation drafts and amendments also dropped by 23% since previous quarter.

In the reporting quarter, the Council decided to look into the issue of raidership and prepared systemic report analyzing problem of raider attacks that negatively affect Ukraine's business environment. The report contains a list of recommendations aimed at improving the efficiency of fighting raiders and implanting business integrity into business core.

2.2. New systemic report “Combating raidership: current state and recommendations”

In the reporting quarter, the Council prepared systemic report analyzing problem of raidership, being one of the factors that negatively affects quality of business environment in Ukraine (the “Report”).

This problem is evidenced, inter alia, by the statistics of complaints received by the Council. In particular, from May 2015 until May 2017 the Council received 15 complaints related to raider attacks on business, where 6 has been received after Anti-Raidership Law entered into force.

The businesses, which sought the Council’s assistance, primarily challenged the actions of the state registrars (including notaries); 3 complaints were related to allegedly inadequate consideration of complaints by the Commission on consideration of complaints in the sphere of state

registrations; 3 complaints were lodged to challenge inactivity of pre-trial investigation authorities due to inadequate investigation of crimes related to raidership.

The **Report commences with the analysis of the term “raidership”**, lacking legislative definition, thus triggering its ambiguous interpretation. Hence, for the purposes of the Report, the “raidership” is understood as seizure or repossession of assets and/or corporate rights by employing illicit methods or tools.

The **Report is continued with the chapter containing comprehensive analysis of the current state of law and practice in the field of combatting raidership.**

In particular, we critically analyze the scope and practical impact of the key provisions of the recent Anti-

Raidership Law when it comes to eradication of the most known raidership schemes.

We continue by analyzing authority and activity of the permanent commissions tasked to consider complaints in the sphere of state registrations, set up under the auspices of the Ministry of Justice of Ukraine and its territorial divisions, that were launched as a mechanism of pre-trial administrative appeal of violations in the sphere of state registrations.

We then describe new mechanism of control over activities of the state registrars, comprising monitoring and off-sight documentary audit.

The chapter completes with the critical analysis of the current state of legal framework governing investigation of “raidership” crimes. Besides, we attend to problems hampering law

enforcer's ability to operate efficiently, which is required to ensure that organizers and accomplices in the raidership schemes are actually held liable.

The Report completes with the chapter comprising **aggregated list of systemic recommendations aimed at improving efficiency of combatting raidership in Ukraine.**

In particular, we propose improving selected legislative provisions governing (i) carrying out registration actions with both corporate rights and immovable property; (ii) authority of the commissions tasked to review complaints in the sphere of state registration;

(iii) mechanism of control over activities of the state registrars; as well as (iv) collection and conservation of evidence by victims.

As far as improving efficiency in the work of law enforcement agencies is concerned, the General Prosecutor of Ukraine and the Main Investigatory Department of the National Police of Ukraine are suggested to develop methodological recommendations for prosecutors and investigators focused on investigation of the most common instances of raidership. In the Council's view, such recommendations shall be aimed at developing common approaches to investigation of "raidership"

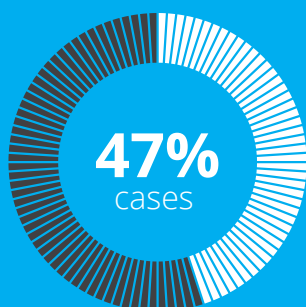
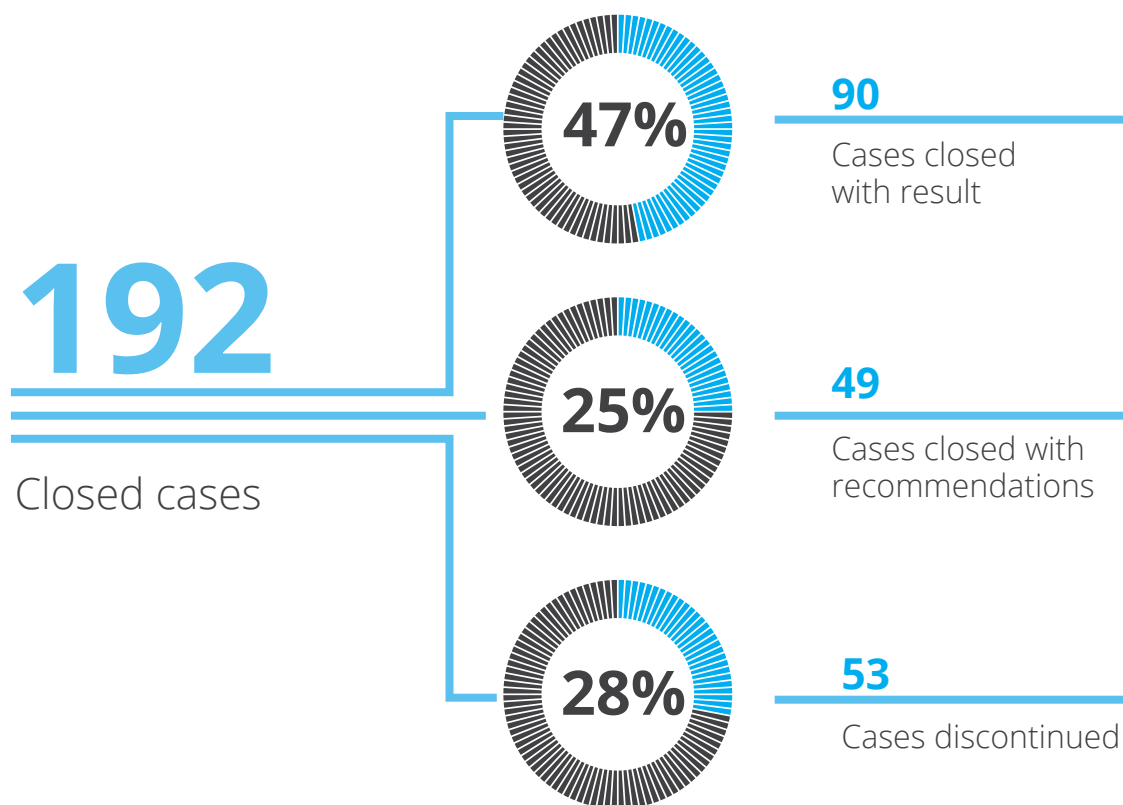
crimes and establishing effective cooperation between prosecution authorities and pre-trial investigation authorities.

As far as victim's right to due judicial protection is concerned, the Report concentrates on the need to remove the existing consideration of interrelated homogeneous claims pursuant to the rules governing different types of legal proceedings.

Finally, as the Council's recommendation for business, the Report discusses implementation of business integrity standards as a precondition for decreasing susceptibility to raidership attacks.



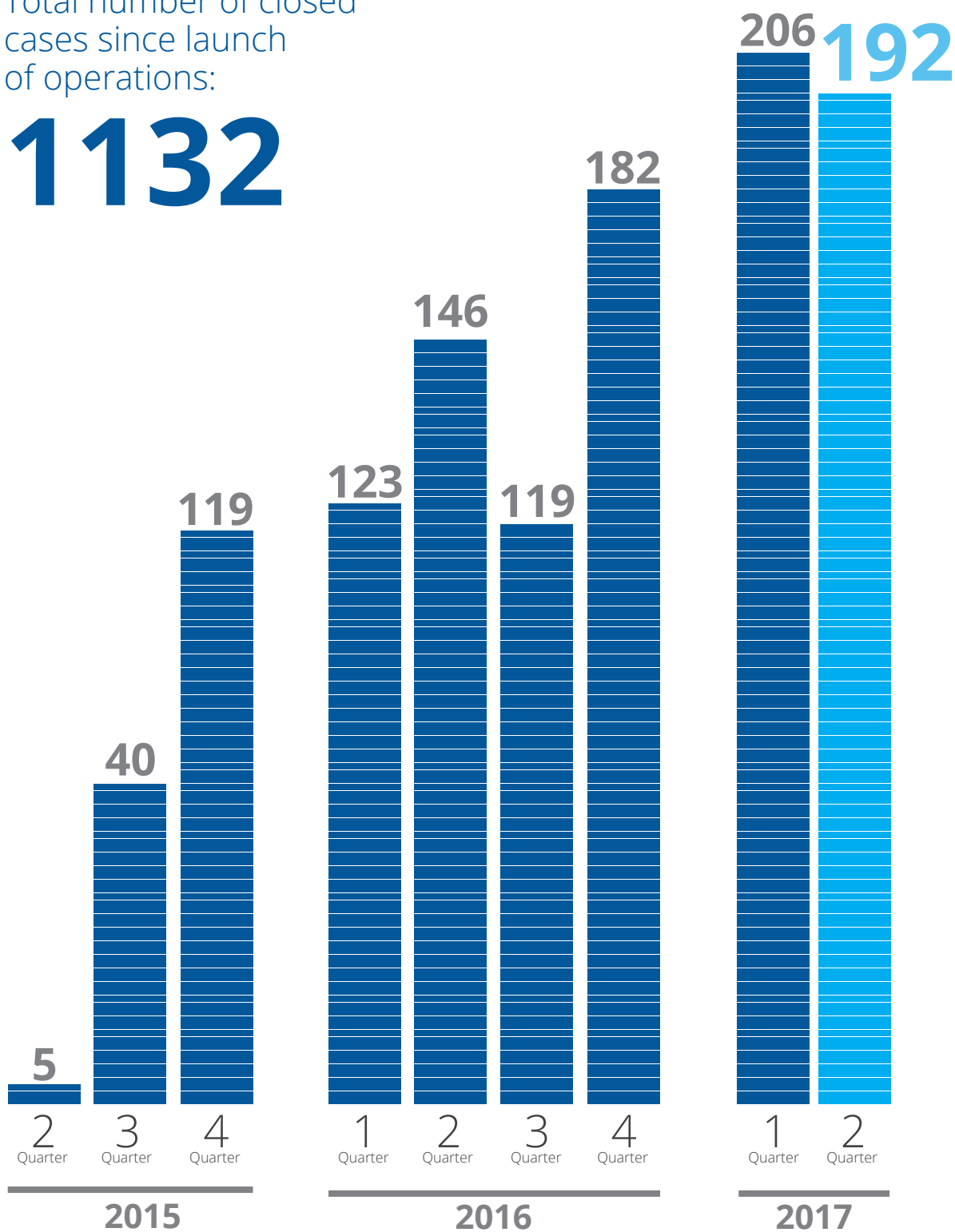
2.3. Information on closed cases and recommendations provided



were closed with desirable (either financial or non-financial) outcome for complainants.

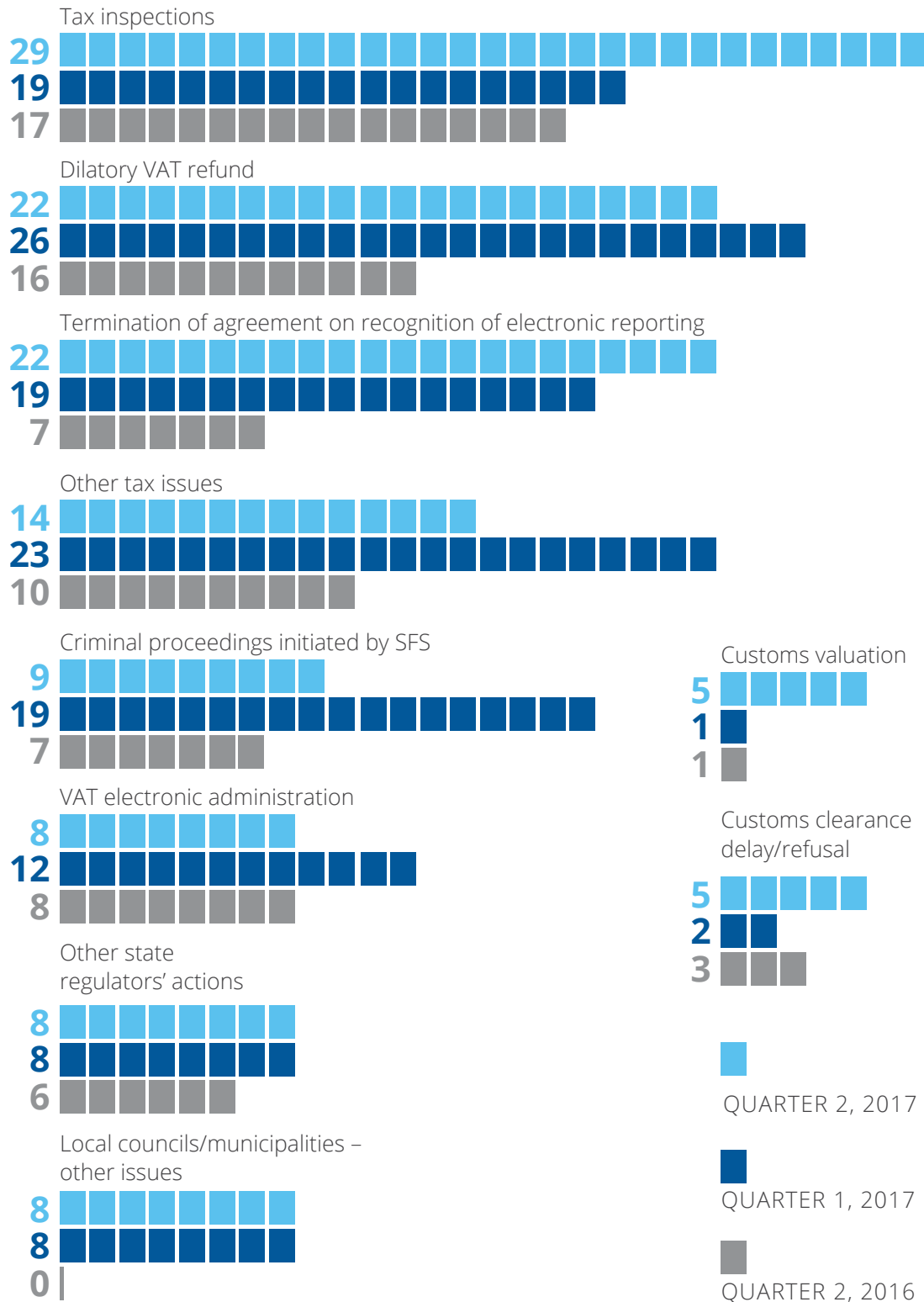
Total number of closed cases since launch of operations:

1132



TOP-10

SUBJECT OF CLOSED CASES IN QUARTER II 2017:



FINANCIAL IMPACT IN QUARTER II 2017:

495 151 370

UAH

Dilatory VAT refund	345,493,451
Tax inspections	79,167,125
Other tax issues	51,619,923
Fines cancelled by the court	16,771,374
Overpaid customs duties refund	947,563
Customs clearance delay/refusal	571,000
Customs valuation	440,123
Compensation by local councils/ municipalities	101,639
Settlement of debt by Ministry of Internal Affairs	39,171

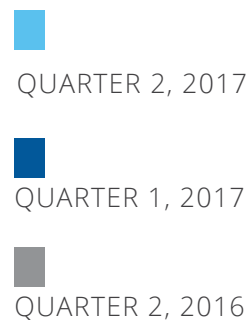
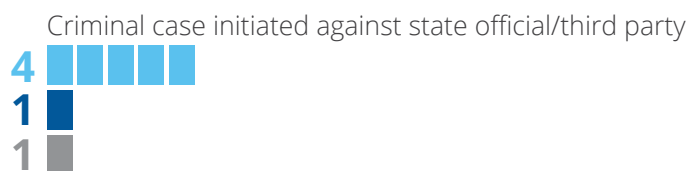
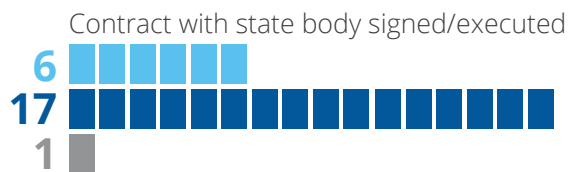
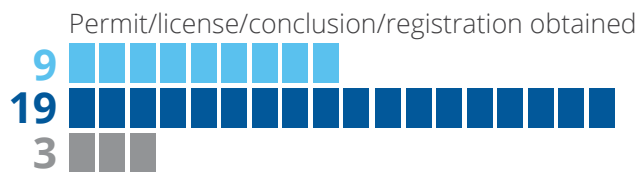
DIRECT FINANCIAL IMPACT
OF BOC'S OPERATIONS
20 MAY 2015 – 30 JUNE 2017:

10 253 451 128

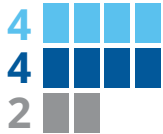
UAH



NON-FINANCIAL IMPACT OF BOC'S OPERATIONS IN QUARTER II 2017:



Legislation amended/enacted; procedure improved



Tax records reconciled, tax reporting accepted



Claims and penalties against the Complainant revoked/ Sanction lifted

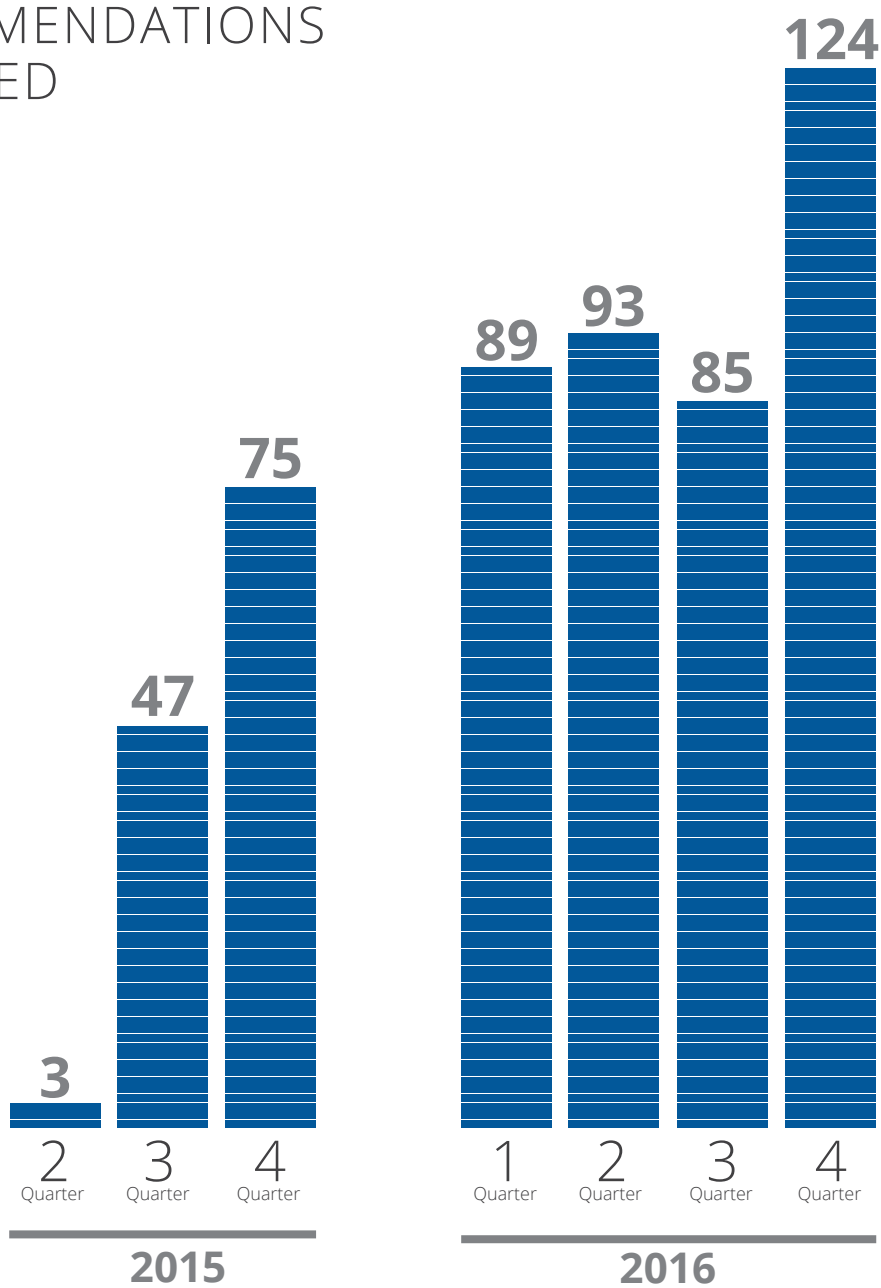


State official fired/penalized

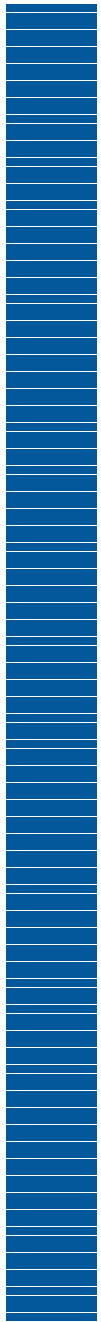


In this reporting quarter, we helped entrepreneurs to cease more instances of malpractice by officials. Our non-material help also included obtaining licenses, permits and registration, closing criminal cases against our complainants, signing contracts with state bodies, releasing property from under arrest, etc.

RECOMMENDATIONS PROVIDED



152

1 Quarter
2 Quarter

2017

Recommendations
issued in Quarter II,
2017:

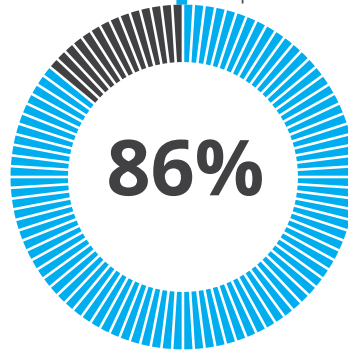
135

Total number
of recommendations
issued since launch
of operations:

803

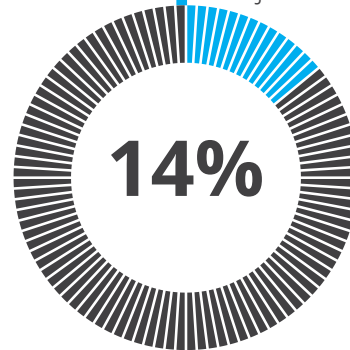
691

Number of
recommendations
implemented



112

Number
of recommendations
subject to monitoring



GOVERNMENT AGENCIES WHOM THE BOC ISSUED RECOMMENDATIONS IN 2015-2017 (CASE-BY-CASE BASIS) AND RATIO OF IMPLEMENTATION

Ratio
of issued/
implemented

State Fiscal Service

89%

Ministry of Justice

93%

37 40

Prosecutor's Office of Ukraine

76%

29 38

Local councils and municipalities

75%

27 36

Ministry of Economic Development and Trade of Ukraine

83%

20 24

National Police of Ukraine

82%

18 22

State Security Service

95%

21 22

Parliament, the Cabinet of Ministers, the President of Ukraine

45%

9 20

Ministry of Internal Affairs

95%

18 19

Ministry of Agrarian Policy and Food of Ukraine

83%

15 18

State Enterprises

77%

10 13

Ministry of Regional Development

100%

11 11

Ministry of Ecology and Natural Resources of Ukraine

100%

8 8

Ministry of Health of Ukraine

86%

6 7

Commercial and other courts

83%

5 6

National Commission for State Regulation of Energy and Public Utilities

67%

4 6

Ministry of Finance of Ukraine

100%

6 6

Antimonopoly Committee of Ukraine

50%

3 6

Ministry of Social Policy and Labour of Ukraine

83%

5 6

Recommendations
implemented

Recommendations
issued

417

471



By the end of reporting quarter, government agencies implemented 86% of all recommendations issued by the BOC since launch of operations. Although the majority of issues the BOC receives are now successfully resolved on a case-by-case basis, we wish that government agencies put more emphasis on the implementation of systemic recommendations in the reports we publicized.

SYSTEMIC RECOMMENDATIONS IMPLEMENTED

ISSUE

Implementation of territorial power organization and local self-governance reform on the grounds of decentralization

BOC'S RECOMMENDATION

To adopt draft laws that would fill legal gaps and encourage the territorial communities to voluntary associations (No. 4772 dated 3/06/2016; No. 5520 dated 09/12/2016)

ACTIONS TAKEN BY GOVERNMENT AGENCIES

No. 4772 dated 3/06/2016: Draft law on amendments to certain legislative acts of Ukraine (regarding voluntary association of territorial communities)

9/02/2017: The law was adopted by the VRU

17/03/2017: The law was signed by the President of Ukraine No. 5520 dated 09/12/2016: Draft law on amendments to certain

legislative acts of Ukraine (regarding voluntary association of territorial communities located in the territories of adjacent districts)

14/03/2017: The law was adopted by the VRU

13/04/2017: The law was signed by the President of Ukraine



ISSUE

Lack of/outdated urban planning documentation

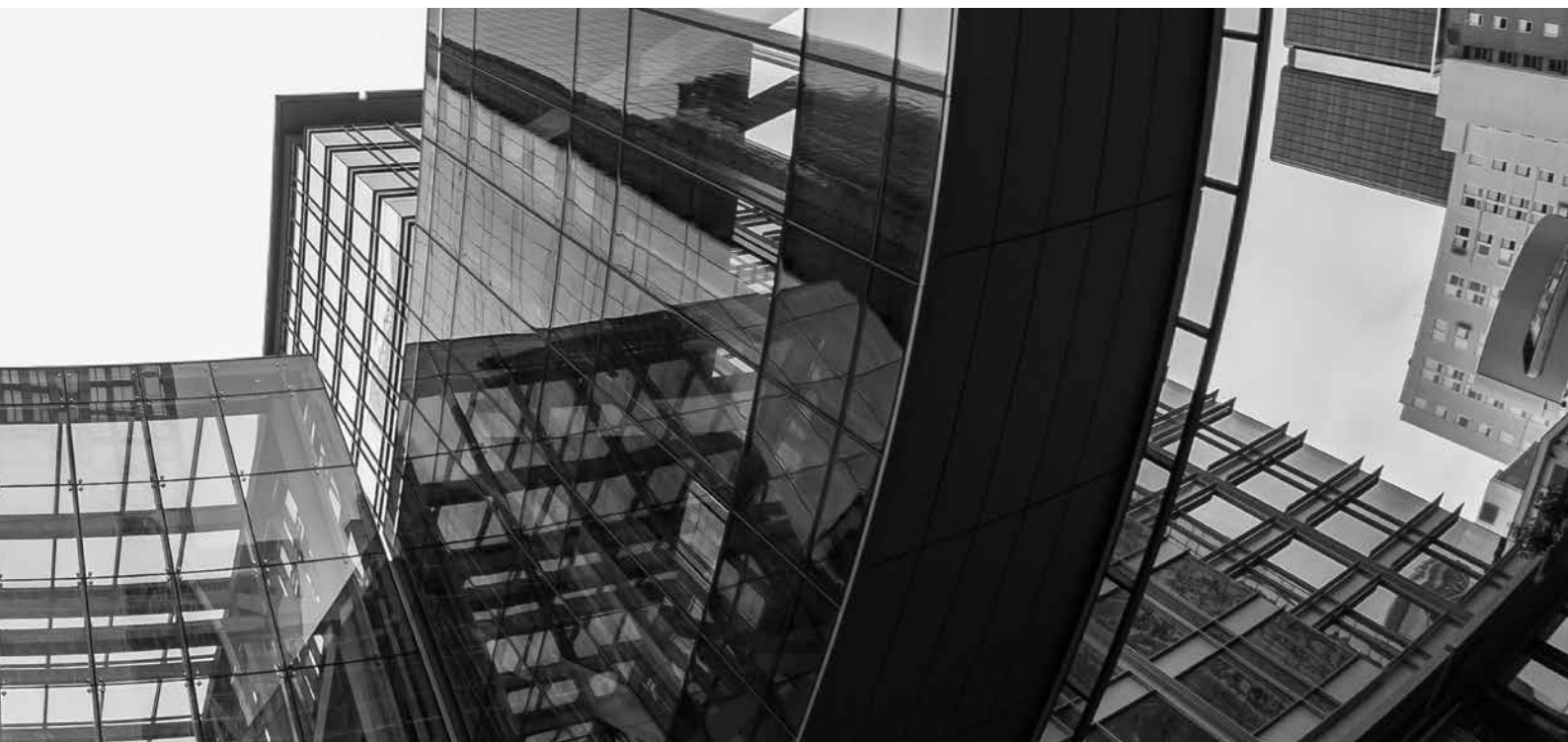
BOC'S RECOMMENDATION

To disclose information on urban planning documentation by adoption of appropriate changes to the legislation

ACTIONS TAKEN BY GOVERNMENT AGENCIES

25/05/2017: The CMU has adopted decree No. 354 "On Amendments to the Decrees of the Cabinet of Ministers of Ukraine of May 25, 2011 No. 559 and of October 21, 2015 No.835" whereby the procedure of information disclosure on urban planning documentation was improved for the free access of individuals and legal entities.

Amendments to a number of decrees of the Cabinet of Ministers of Ukraine stipulate that such disclosure of the information would take place by means of web service creation for the collection and publication of general urban planning documentation.



2.3. Summary of important investigations

In this chapter, you may read the illustrations of recommendations the BOC issued to various government agencies and the results of their implementation.

TAX ISSUES

SUBJECT: TAX INSPECTIONS

#1

BOC helps one of the world's biggest clothing retailers avoid huge tax penalties

Subject of complaint:

The Pechersk District State Tax Inspection (Pechersk STI), under the Main Department of State Fiscal Service in Kyiv

*Complainant has kindly agreed to disclose his name for communication purposes

Complaint in brief:

On March 9, 2017, TOV GAP Ukraine*, a subsidiary of one of the world's biggest clothing retailers, addressed the BOC to help challenge a baseless tax notification issued by the Pechersk STI over a supposedly late submission of the company's 2015 corporate profit tax declaration.

The penalty for late submissions is only UAH 170, but by rejecting the Complainant's tax report, the Pechersk STI was challenging the accuracy of GAP Ukraine's calculations and payment of corporate profit tax for the entire accounting period, which threatened the Complainant with considerable additional penalties.

Action taken:

During his investigation of the complaint, the BOC investigator found that the SFS agency had no basis for rejecting the Complainant's 2015 tax declaration.

The BOC investigator then requested that the SFS ensure an unbiased administrative hearing of the complaint. Next, the investigator took part in the administrative hearing at the SFS of Ukraine. He also asked the MD SFS in Kyiv to verify whether the Pechersk STI had informed Complainant in writing about any issues with the tax declaration, in accordance with Tax Code procedures for corresponding with taxpayers.

In its reply to the BOC's request, the MD SFS informed the Council that the Pechersk STI had not notified the Complainant about issues with GAP Ukraine's tax declaration and had thus violated the procedure.

The BOC investigator passed this information along to the SFS to include it in making a decision in the Complainant's case.

Result achieved:

On April 14, the SFS informed the Council that the Complainant's claim had been satisfied and the penalty dropped. This helped the Complainant to avoid possible serious fines related to the rejection of its 2015 corporate profit tax declaration. The BOC closed the case less than in a month.

SUBJECT: TAX INSPECTIONS

#2

Eskada-M* gets tax charge worth over UAH 9mn dropped

Subject of complaint:

Main Department of State Fiscal Service (MD SFS) in Rivne Oblast

Complaint in brief:

In February 2017, a wood-processing company called TOV Eskada-M located in Rivne Oblast requested that the BOC help challenge the results of a scheduled tax audit by the Rivne Oblast SFS office. Based on the conclusions of the audit, the Complainant was expected to pay additional tax invoices and penalties worth over UAH 9mn.

Action taken:

Having examined the substance of the complaint, the BOC investigator discovered that, when drawing up the formal conclusions of the tax audit, SFS official without justification refused to recognize the Complainant's production costs, which dramatically increased the company's tax liabilities and led to penalties. On February 13, the BOC investigator wrote to the SFS head office, pointing to the unjustified nature of most of the penalties imposed on the Complainant by the Rivne Oblast SFS office.

On February 27, the BOC investigator arranged a meeting between Rivne Oblast SFS officials and the Complainant, where he once more presented the BOC's position, as he had set out in writing.

On March 3, following the Council's suggestions, the Complainant wrote to the main office of the SFS with a request to arrange a new audit of primary accounting documents to prove the actual expenses per unit. From March 20 to April 6, the Rivne Oblast SFS

*Complainant has kindly agreed to disclose his name for communication purposes

office carried out a repeat tax audit at the Complainant's premises, as a result of which it reduced the penalty amount by UAH 2mn. However, the Complainant and the Council found this result equally unsatisfactory, since the Rivne Oblast SFS still failed to take into account all of the company's production costs during the second audit.

On April 7, the Deputy Business Ombudsman and the investigator attended an administrative hearing of the Complainant's case at the SFS's main office.

Result achieved:

On April 18, the Complainant informed the Council about the positive outcome of the hearing and about the dropping of the tax penalties practically in full. In its turn, Rivne Oblast SFS office sent a letter to the BOC with assurances that the persons guilty of violating the Complainant's rights would be penalized. The case was successfully resolved.

SUBJECT: OTHER TAX ISSUES

#3

The Council gains fulfilment of the court ruling regarding chemicals manufacturer

Subject of complaint:

Investigations Department of Financial Investigations of Main Department of State Fiscal Service (MD SFS) in Kharkiv Oblast

Complaint in brief:

On November 18, 2016, the Complainant, a manufacturer of chemicals, addressed the BOC to help challenge actions of state officials of MD SFS Investigations Department of Financial Investigations in Kharkiv Oblast. The Complainant informed the BOC that investigation officers had seized all necessary for Complainant's normal operation capital assets during the searches carried out within the course of groundless in Complainant's opinion criminal proceeding.

The Complainant turned to the Kyiv District Court of Kharkiv and attained revocation of arrest over the property with the Court Ruling dated February 01, 2017. Nevertheless, the Investigations Department delayed performing the Court Ruling and didn't return the seized property to Complainant.

Action taken:

Having examined the issue of Complainant, on February 22, the BOC investigator recommended the Investigations Department of Financial Investigations to enforce the Court Ruling and to stop violating the Complainant's rights. The BOC investigator also discussed Complainant's issue at the meeting of joint working group of the BOC and the SFS of Ukraine.

Result achieved:

On March 03, the Complainant informed that officials of Investigations Department successfully fulfilled the court ruling. The Complainant got an opportunity to regain the seized property. The case was closed successfully.

NATURAL MONOPOLIES ISSUES

SUBJECT: INACTIVITY / DELAYS

#4

The Council helps to stop abuse on the part of the state enterprise

Subject of complaint:
Artemsil State Enterprise
(Artemsil SE)

*Complainant has kindly agreed to disclose his name for communication purposes

Complaint in brief:

Complainant, wholesale company TOV Ukrainian National Product*, registered in Dnipro Oblast, lodged a complaint with the BOC regarding abuse by Artemsil SE, a state monopoly that controls more than 90% of the salt extraction and supply market in Ukraine. The latter refused to sign direct salt supply contract with the Complainant for 2017. Instead, Artemsil SE suggested that the Complainant sign a supply contract with a distributor, that is, an intermediary.

State company actually carried out the offense, as it is obliged to sign direct contracts for the supply of salt.

The Complainant had already applied to the BOC over similar matter in early 2016, when Artemsil refused to sign a direct supply contract for last year.

Action taken:

The BOC investigator determined that Artemsil's refusal to sign the salt supply contract might fall within the meaning of monopoly abuse under Art. 13 of the Law "On the protection of economic competition."

The BOC investigator sent a request to Artemsil SE to promptly take all the necessary steps to sign a salt supply contract with the Complainant for 2017.

Result achieved:

Following the Council's involvement, Artemsil SE signed a new salt supply contract with Complainant on January 16, 2017. The case was successfully closed.

NATIONAL POLICE ISSUES

SUBJECT: NATIONAL POLICE – PROCEDURAL ABUSE

#5

BOC helps agro firm get a criminal investigation on track

Subject of complaint:

County Police Department of Main Department of National Police in Ternopil Oblast (CPD)

Complaint in brief:

On February 8, 2017, the Complainant, an agricultural firm registered in Ternopil Oblast, requested that the BOC help challenge the inaction of inspectors at a CPD in Ternopil Oblast. The company had filed a criminal case with the courts because company employees had been beaten, yet police inspectors were not taking any steps to investigate.

Action taken:

On the day the complaint was received, the BOC investigator arranged a phone conversation, and on February 21 requested in the written form that the Main Department of National Police in Ternopil Oblast look into the circumstances of complaint. In its reply to the BOC, the National Police confirmed that the company's suit was justified. The Police ordered the CPD investigators to get serious about investigating the criminal case. Meanwhile, the National Police also launched an internal investigation regarding the failure to act.

The BOC investigator also discussed the complaint with the official at the Ternopil Oblast State Administration. This led to two meetings between the Management of the Ternopil Administration and oblast law enforcement authorities in February.

Result achieved:

As result of the BOC intervention, the criminal investigation was activated and the police inspectors guilty of inaction received a reprimand and a reminder about the need for proper discipline. The BOC closed the case within a month since receiving the initial complaint. The Complainant thanked the Council for successful resolving the company's issue.

PROSECUTOR'S OFFICE ISSUES

SUBJECT: PO – OTHER ISSUES

#6

Prosecutor General's Office returned the documents of the cement plant

Subject of complaint:
Prosecutor General's Office (PGO)

Complaint in brief:

On April 6, 2017, the Complainant, a cement plant, addressed the BOC to help challenge the PGO's removal of the company's application to renew a special permit for subsoil use on the previous month. The application was seized during a search of the office of Derzhgeonadra, the State Geology and Mineral Resources Service. This threatened Complainant's operations as he could not timely renew the permit for extraction of limestone used in cement manufacturing.

Action taken:

The day after receiving the complaint, the BOC investigator found out in a phone conversation with a highly placed official at the Geological Service that the seizure of the Complainant's documents from the Service was allowed by a March 13 search warrant issued by an investigative judge at the Pechersk District Court of Kyiv. The warrant was related to a criminal case that does not involve the Complainant.

On April 11, the Deputy Business Ombudsman appealed to the PGO to return seized documents belonging to the Complainant, referring to the fact that in case of delayed renewal of special permit, the enterprise would have to stop its operations.

Result achieved:

Following the Council's intervention, the PGO returned the Complainant's papers to the Geological Service on April 12. On April 13, a week after the complaint had been lodged with the Council, the Complainant notified the BOC that the situation had been resolved successfully. The case was soon closed.

ACTIONS OF STATE REGULATORS

SUBJECT: STATE ARCHITECTURAL AND CONSTRUCTION INSPECTION (DABI)

#7

DABI grants building permit to TOV Morgan Furniture*

Subject of complaint:
State Architectural and
Construction Inspection
(DABI)

*Complainant has kindly agreed to disclose his name for communication purposes

Complaint in brief:

On April 21, 2017, a furniture manufacturer TOV Morgan Furniture, located in Rivne Oblast, addressed the BOC about DABI's refusal to grant a building permit to the Complainant to begin construction on the company's facilities. The DABI office claimed that the Complainant had submitted an incomplete package of documents, yet it did not specify which documents were missing.

Action taken:

After thorough investigation of the case, the Deputy Business Ombudsman and BOC investigator contacted DABI officials daily over April 24-26 about the matter of the complaint.

Result achieved:

DABI finally told the Complainant which documents were missing, after which the company submitted its documents again. On April 28, the Complainant informed the BOC that DABI had satisfied the firm and issued the necessary building permit. The case was resolved.

CUSTOMS ISSUES

SUBJECT: CUSTOMS CLEARANCE DELAY/REFUSAL

#8

BOC resolves customs clearance delay within a day

Subject of complaint:

Ivano-Frankivsk Customs, Main Department, Ivano-Frankivsk Oblast State Fiscal Service (Ivano-Frankivsk Customs)

Complaint in brief:

At the end of May 2017, an importer of chemicals based in Ivano-Frankivsk requested that the BOC help challenge a delay in the clearance of industrial chemicals by Ivano-Frankivsk Customs.

Action taken:

On the day the complaint came in, the BOC investigator organized a conference call between the Complainant and Ivano-Frankivsk Customs officials to clarify the circumstances of the hold-up.

It turned out that Customs and the Complainant had conflicting opinions over procedure of an expert review of the samples of the imported goods. The Customs official asked the Complainant to come to the checkpoint to check the goods in his presence to assign a customs classification. The Complainant instead proposed that Customs take the necessary samples, and to provide him decision of the Head of the Customs to extend the duration of the customs clearance which usually should last not more than 4 hours.

Result achieved:

Through the mediation of the BOC, the Complainant agreed to go to the Customs point the following day and provide the goods for expert review. With the assistance of the Council's experts, the issue was resolved in less than a day.

MINISTRY OF JUSTICE ACTIONS

SUBJECT: MINJUSTICE REGISTRATION SERVICE

#9

**Illegal changes to
statutory documents
of financial / IT services
provider dropped**

Subject of complaint:

Pechersk District State
Administration in Kyiv
(Pechersk DSA)

Complaint in brief:

On May 25, 2017, a financial/IT services provider registered in Kyiv turned to the BOC to help challenge illegal actions by the Pechersk DSA State Registrar, which had changed the company's shareholder structure and management based on tampered documents. The Complainant also turned to the Commission for Registration Complaints under the Ministry of Justice with a request to organize a hearing on this case.

Action taken:

On May 30, the BOC investigator participated in the Commission session where he supported the position of the Complainant and stressed the need for an impartial review of the case.

Result achieved:

On June 13, the Complainant informed the Council that the Commission had cancelled the registration entries, and the company returned to normal operations. The case was closed less than in a month and the Pechersk DSA State Registrar had access to the state register suspended for 90 days.

ACTIONS OF LOCAL COUNCILS/ MUNICIPALITIES

SUBJECT: RULES AND PERMITS

#10

**TOV “EuroCape Ukraine I”
gets permit for land
development documentation**

Subject of complaint:
Zaporizhzhia Oblast State
Administration (ZOSA)

*Complainant has kindly agreed to
disclose his name for communication
purposes

Complaint in brief:

At the end of March 2017, a company TOV “EuroCape Ukraine I” specialized in developing and building wind farms, addressed the BOC to help challenge the Resolution of Zaporizhzhia OSA, which partly met current legislation. Complainant wanted to build objects of wind farm on land parcels, lent to him into lease by the State, which required permit from ZOSA to draw up the working land management plan on recultivation of land, the soil cover of which will be damaged during construction. In its reply to Complainant's request, ZOSA approved the permission to draw up the plan, yet it obliged Complainant to provide the working plan for state ecological expertize in accordance with the Article 14 of the Law of Ukraine “On ecological expertize”. Complainant didn't find any legal requirements for mandatory ecological expertize and turned to the BOC.

Action taken:

Having examined materials of the case, the BOC investigator addressed Zaporizhzhia OSA with request to revise the issued to Complainant Resolution for compliance with legislation, and to make necessary amendments.

Result achieved:

On May 5, the Complainant informed the Council that the Resolution was amended and he was granted permit to draw up the working land management plan. The case was closed.

COOPERATION WITH STAKEHOLDERS

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

3.1. Working visits

In the reporting period, Business Ombudsman made working visits to Kyiv and Ivano-Frankivsk Regional State Administrations, where he met with the leaders of the State Administrations and the representatives of public and business community.

Visits to the regions is 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 previous reporting period Mr. Šemeta visited

Cherkasy,
Vinnytsia,
Poltava,
Chernigiv,
Kharkiv,
Lviv,
Lugansk,

Dnipropetrovsk,
Donetsk,
Odesa,
Rivne,
Volyn,
Zhytomyr,
Sumy,

Ternopil,
Zakarpattia,
Chernivtsi,
Khmelnysky,
Kherson and
Zaporizhzhia Oblasts.

3.2. Cooperation with government agencies

The BOC continues to work tightly within the expert groups established within Memoranda signed with key government agencies.

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

Expert group meetings
held in Quarter II, 2017:

18

Expert groups are a platform to review particular complaints openly and transparently as well as to improve legislation governing business activities and remove barriers that inhibit doing business in Ukraine.

3.3. 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.

Outreach

Our experts spoke at a range of important events, namely:



05-04

II Forum on protection of business, organized by "Yuridicheskaya Praktika" Publishing House



20-04

Conference "Investor - State Dispute: Towards Greater Dialog", organized by American Chamber of Commerce

20-04

Forum "Ukraine and Lithuania: Investment and Business Opportunities", organized by UCCI

27-04

Presentation of the BOC's activities for Organization for Democracy and Economic Development GUAM

12-04

IV International Tax Forum, organized by "Yuridicheskaya Praktika" Publishing House



20-04

"Straight Talk" discussion dedicated to core challenges that businesses in Ukraine are facing today, initiated by Kyiv Post



04-05

Presentation of the BOC's activity for Norwegian investors in Oslo, Norway (at invitation of Norwegian-Ukrainian Chamber of Commerce (NUCC) and Confederation of Norwegian Enterprise)



18-04

Meeting with the students of Kyiv-Mohyla Academy

12-05

Lecture for Rule of Law Centre of the Ukrainian Catholic University

**12-05**

Forum "Corporate Social Responsibility for investors: going beyond compliance", organized by the CSR Centre

**25-05**

III International Forum "Transfer Pricing 2017"

**25-05**

International investment forum "Ternopilshchyna Invest-2017"

25-05

13th Procurement, Integrity, Management and Openness (PRIMO) Forum

**31-05**

III Antitrust Forum, organized by "Yuridicheskaya Praktika" Publishing House

31-05

Public Discussion on Export Barriers, within USAID Program "Leadership in economic governance" (LEV)

12-06

European Neighbourhood workshop in Copenhagen, Denmark, organized by Ministry of Foreign Affairs of Denmark

**14-06**

Public discussion "Export without barriers: why business needs exchange controls?", within USAID Program "Leadership in economic governance" (LEV)

14-06

Conference on corporate governance "Leading from the Board", organized by Ukrainian Corporate Governance Academy (UACG)

**21-06**

USUBC General Meeting "White Paper on Legal & Governance Reform"

29-06

Meeting of interagency group on concessional legislation

15-06

Round Table "Protection of land rights and establishing the functions of the Land Ombudsman", organized by the World Bank

16-06

VI All-Ukrainian Forum on public law, organized by Ukrainian Advocates' Association (UAA)

On April 5,

the Business Ombudsman Council hosted a delegation of Swedish International Development Cooperation Agency (Sida), which included members of governmental structures from different European countries. Business Ombudsman Algirdas Šemeta told guests about the key aspects of the BOC's operations in Ukraine.



On April 24-27,

the Business Ombudsman Council hosted a delegation from Kyrgyzstan that came to learn from our experience to create a similar institution in their homeland. The delegation included representatives of the Ministry of Economy, the government bodies, prosecutor's office and leading business associations of the country.



On April 24-28,

BOC's investigator Yuliana Revyuk visited Brussels, where she participated in the European Union Visitors Programme.

On 30 June,

BOC's investigator Tetiana Kheruvimova visited Regensburg (Germany), where she spoke at the Fifth IOS Annual Conference "Corruption in Eastern and South-eastern Europe and Latin America: Comparative Perspectives".

The media



Our interviews were published in the leading Ukrainian media:

Ukrainian News (Ukrajinski Novyny) news portal; legal newspaper "Yuridicheskaya Praktika"; Hubs.ua; Delo.UA; Finance.ua; "Novoye Vremya Biznes"; Business.ua; KyivPost, and Business Ukraine editions.



We also made a number of TV (Hromadske TV, Persha Shpalta, TRC Ukraina) and radio appearances.

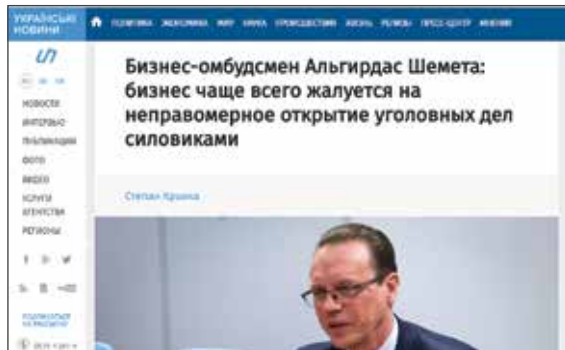
We organize roundtables on a quarterly basis and invite journalists to see and feel how the Business Ombudsman works.



2900
followers

The Business Ombudsman Council's Facebook account (**@BusinessOmbudsmanUkraine**), launched in June 2015

The BOC does not resort to any advertising campaigns and focuses on qualitative content in social media. We use Facebook to share information about our Office, our work, and news of interest in the oversight field.



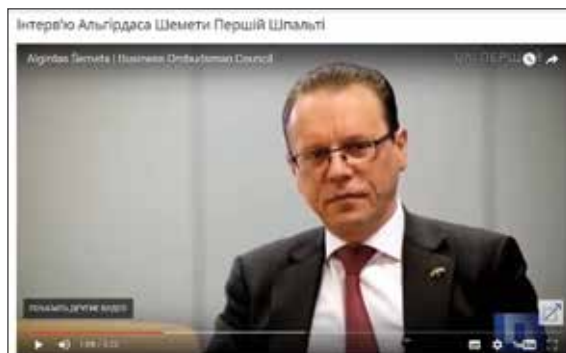
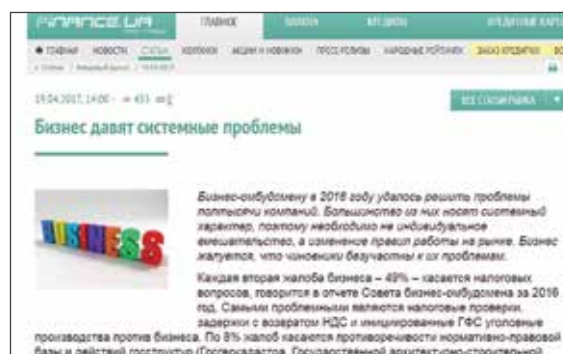
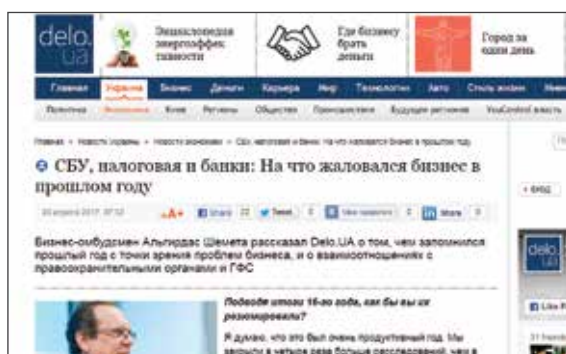
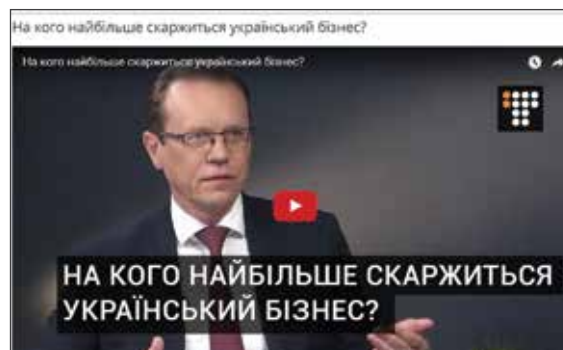
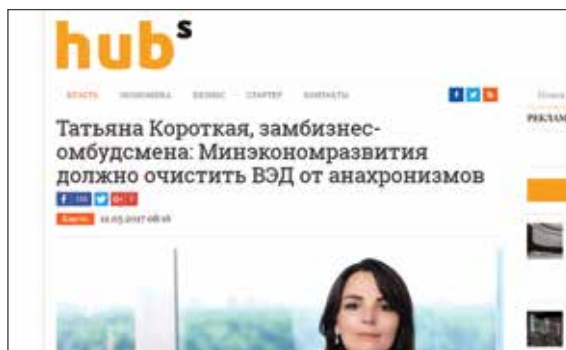
Since launch of operations
in May 2015, the Business
Ombudsman and his Office
were cited in the media

13 000+
times

99%
mentions
being positive and
constructive.



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.



Ukrainian Network of Integrity and Compliance

On May 19, 2017, the Business Ombudsman Council, with the support of the European Bank for Reconstruction and Development (EBRD) and the Organization for Economic Cooperation and Development (OECD) presented the Ukrainian Network of Integrity and Compliance (UNIC), a new initiative for businesses that want to work transparently.



The purpose of this network is to promote the idea of doing business ethically and responsibly. Companies who join the network commit themselves to support a good business reputation and improve the standards of integrity. By instituting responsibility in the foundations of a company's operations, businesses will be able to counter corruption, lighten regulatory pressures, ease access to credits, and foster their entry onto international markets.

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**Ukrainian
and international
companies**

have signed the pledge of integrity. These companies will jointly determine the basis and rules for the network's activities.

Network members will work together to assess corruption risks as part of instituting compliance programs in their companies, to draw the business community into discussions of the principles of integrity, and to raise interest in doing business transparently among market players. Members will also audit their own levels of compliance on a regular basis.



Applications to join the network are now being accepted. Any company, regardless of its size or sphere of activities may join. The key to becoming a member is to favor a high standard of integrity and compliance in doing business.



"Corruption remains a serious obstacle to economic growth in Ukraine. Transparency International ranks Ukraine 131st out of 176 in the Corruption Perception Index. This network should help bring together leaders in the business community who understand how important transparency is in doing business and who are prepared to offer a role model to other companies. We plan to support the network actively," **says Algirdas Semeta**, Business Ombudsman of Ukraine and the initiator of the network concept.

THE BOC IS FUNDED



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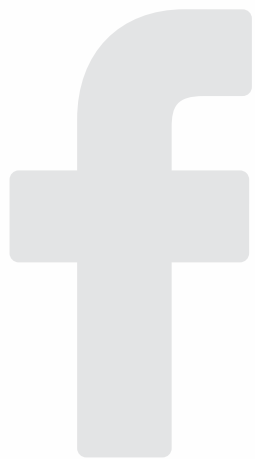
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