



Business  
**OMBUDSMAN**  
Council

Analysis of  
complaints  
on local  
government  
authorities

QUARTER II 2019

**REPORT**

01 April – 30 June



# The BOC is funded

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

## Dear Friends, Colleagues, and Partners,

I am pleased to introduce you the Business Ombudsman Council's report with our work results in Q2 2019.

Over the past three months we have received 398 complaints from businesses (-2% as compared to Q1 2019) and closed 286 cases (+3% as compared to Q1 2019). We helped companies to save over UAH 3.5 billion by ceasing malpractice of state bodies. We set a new record – state authorities implemented 90% of our case-by-case recommendations. Meanwhile, 97% of applicants remained satisfied with our professional facilitation in considering their cases.

The key observation concerning the trend of received complaints: while the most widespread subjects of appeals went up, the rest in of the TOP-10 list decreased, which eventually caused a 2% reduction in the total quarterly number of complaints.

Tax issues (60%). The number of tax-related appeals went up by 6% as compared to Q1 2019. This was mainly due to the increase in the number of complaints regarding suspension of VAT invoices, electronic administration of VAT and other tax issues. We noticed that the nature of appeals regarding non-registration of VAT invoices has changed: since Q1 2019, companies have been complaining a lot about tax authorities not complying with the Court's decision to register VAT invoices. We received less appeals on tax inspections, tax criminal cases, VAT refunds, as well as termination of agreements on electronic reporting and registration of VAT payers.

Actions of law enforcement bodies (13%).

On a positive note – the number of complaints against law enforcers either went down or remained stable as compared to Q1 2019. In particular, companies appealed fewer cases of procedural abuse by law enforcement bodies. Businesses lodged fewer complaints concerning the National Police, inter alia, regarding initiated criminal cases and other episodes of misconduct. We received fewer complaints concerning actions of the State Security Service. As for the Prosecutor's Office – the number of complaints remained stable from the previous quarter.



Actions of state regulators (9%). We received 13% more appeals concerning actions of state regulators. Companies complained more about the State Architectural and Construction Inspection and the StateGeoCadastre. At the same time, companies filed fewer appeals against the Antimonopoly Committee and other state regulators.

Local government authorities (5%). We received more complaints from businesses (+24%) regarding actions of local government authorities (LGAs). That is why we decided to devote a separate section of the report to the analysis of appeals on this issue.

Since May 2015, companies have addressed the Council 273 complaints regarding malpractice of local government authorities, which is 5% of total appeals. A quarter of these complaints related to allocation of land plots; 20% – to resistance of LGAs to issue rules and permits to enterprises; a significant share of 15% concerned a delay in issuing permits. Companies also complained about investment disputes with LGAs, dismantled temporary constructions and non-compliance with financial obligations – each of these categories amounts to a share of 5%. The refusal to follow a court decision (4%) and violation of the procurement procedure (3%) were also among common issues faced by entrepreneurs in dealing with local authorities.

With respect to the success rate of LGAs related cases – it is much lower than on average: 50% vs 67%. As for the implementation of the BOC's individual recommendations LGAs similarly, yet unfortunately, performed below the average: 71% vs 90%.

It is a common knowledge that public authorities in Ukraine might exercise their powers in a rather

questionable manner. That's why the opportunity to enforce the mechanism of internal appeal to challenge decisions, actions or omission of public authorities in the pre-trial investigation is vitally important for businesses. Having taken poll of more than three hundred businesses we ascertained that almost three quarters of them confirmed the importance of this tool.

Hence, in the new systemic report we analysed key issues faced by businesses to identify what and how has to be changed so that the administrative appeal mechanism may work effectively, transparently, impartially, conveniently, timely and consistently. To ensure practical implementation of each of the foregoing principles, the Council has developed a comprehensive set of recommendations to the Government.

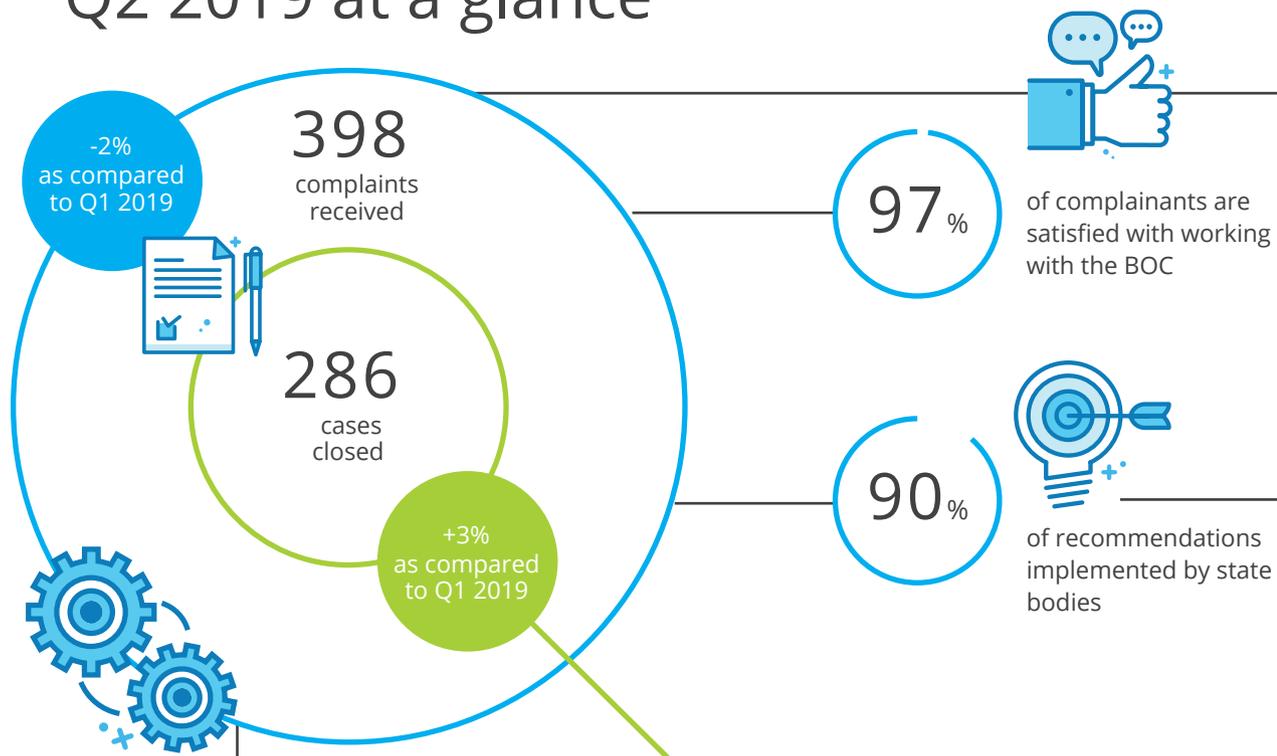
To get the Ukrainian business acquainted with tools available for protection of their lawful rights, we launched a new awareness campaign called "ZmiNEW". This project implies cooperation with media, business associations, business schools and universities, as well as government agencies, in order to create a platform for pursuing open, fair and responsible public services.

In Q2 2019 we continued promoting benefits of doing business honestly and transparently jointly with our partners from the UNIC and major international organizations. The Annual General Meeting of UNIC Members was followed by a number of events on compliance within the framework of the Business Integrity Week, which eventually gave momentum to a series of regional seminars, with the first one held in Poltava Oblast. All these activities prove that our country has a growing interest in business integrity and motivates us to facilitate changes in the way business is conducted in Ukraine.



**Algirdas Šemeta**  
Business Ombudsman  
of Ukraine

# Q2 2019 at a glance

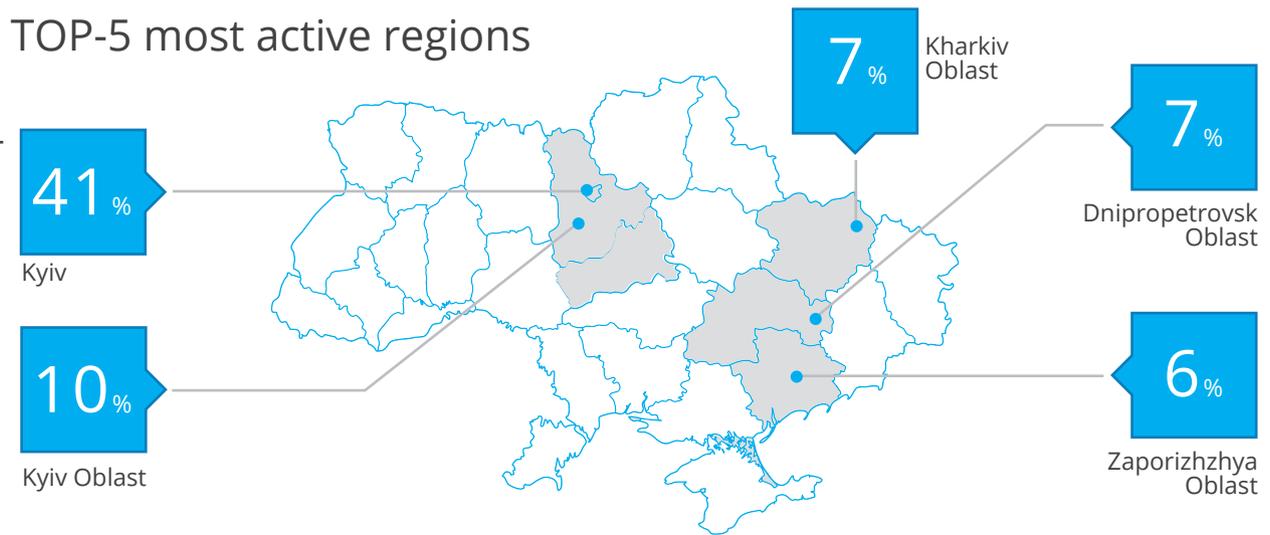


Direct financial impact:  
**UAH 3.5 bn**

TOP-5 blocks of complaints



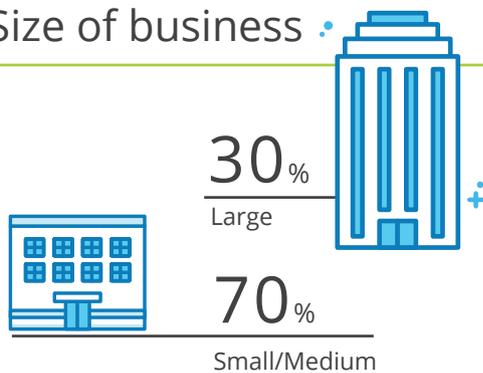
### TOP-5 most active regions



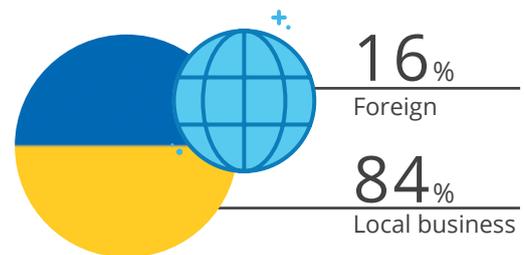
### TOP-5 industries



### Size of business



### Origin of investment





# 1 Complaints trends

# 1.1. Volume and nature of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

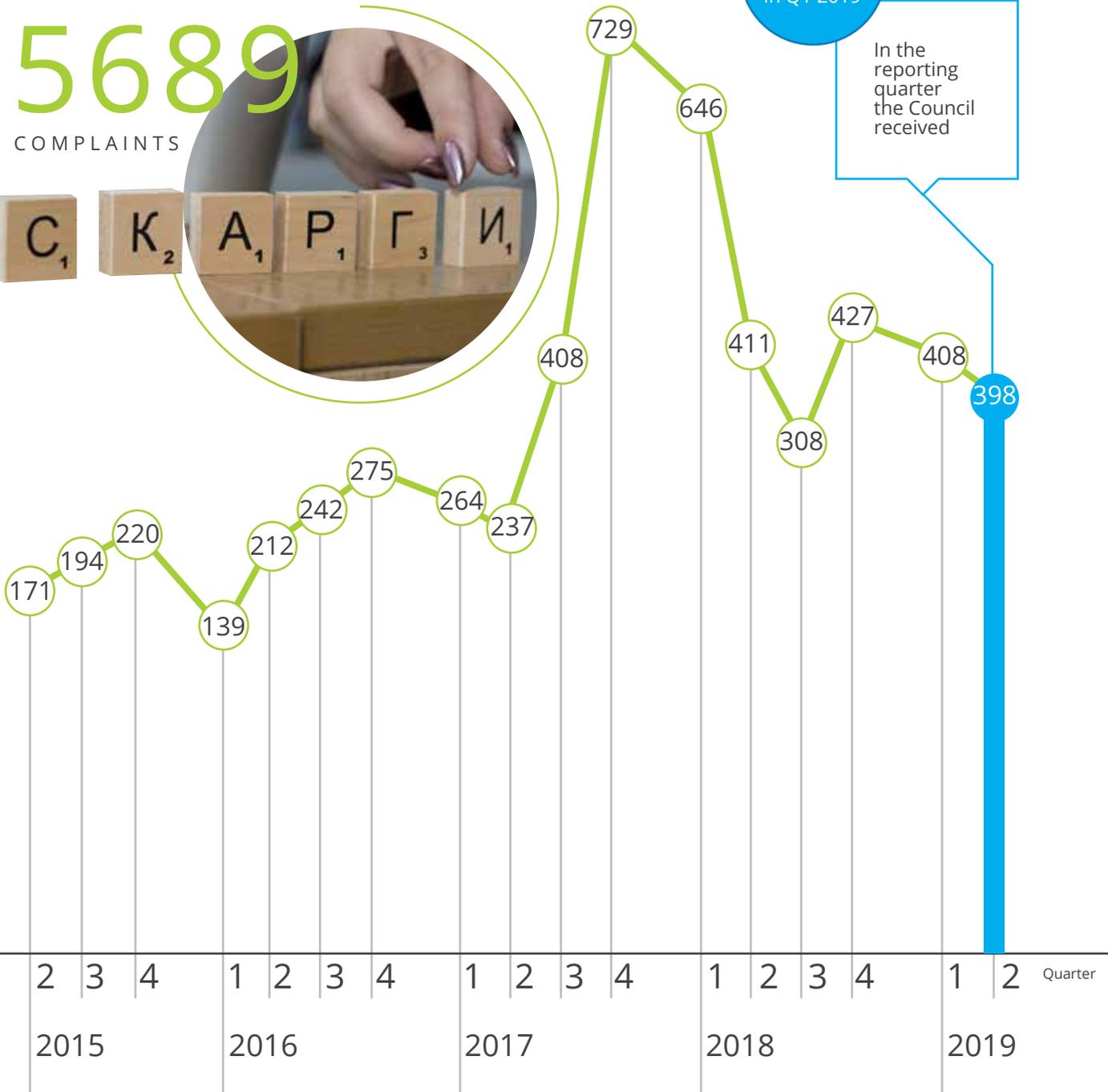
Total number of complainants received since May 2015:

**5689**  
COMPLAINTS



2% less than in Q1 2019

In the reporting quarter the Council received



## TOP-10 Subjects of complaints in Q2 2019

	Complaints received in Q2 2019	Change as compared Q1 2019	Change as compared Q2 2018
<b>Tax issues</b>	<b>238</b>	<b>6%</b>	<b>-6%</b>
Tax inspections	90	-4%	48%
VAT invoice suspension	67	5%	-42%
VAT electronic administration	15	400%	0%
Tax criminal cases	12	-40%	0%
VAT refund	2	-75%	-60%
Tax termination of agreement on recognition of electronic reporting	2	-60%	-67%
Tax termination/renewal/refusal of VAT payers registration	1	-50%	0%
Tax other	49	75%	29%
<b>Actions of State Regulators</b>	<b>35</b>	<b>13%</b>	<b>9%</b>
State Architectural and Construction Inspection (DABI)	5	400%	150%
StateGeoCadastre	4	33%	300%
Antimonopoly Committee of Ukraine (AMCU)	2	-33%	-
National Energy and Utilities Regulatory Commission (NKREKP)	1	-	-50%
Other state regulators	23	-4%	-15%
<b>National Police Actions</b>	<b>27</b>	<b>-16%</b>	<b>-16%</b>
National Police procedural abuse	12	-29%	33%
National Police inactivity	11	83%	-31%
National Police criminal case initiated	1	-75%	-50%
National Police other	3	-40%	-40%
<b>Prosecutor's Office Actions</b>	<b>22</b>	<b>0%</b>	<b>-12%</b>
Prosecutor's Office procedural abuse	11	-8%	-21%
Prosecutor's Office criminal case initiated	6	50%	20%
Prosecutor's Office inactivity	5	-	67%
Prosecutor's Office corruption allegations	0	-100%	-100%
Prosecutor's Office other	0	-100%	-100%

	Complaints received in Q2 2019	Change as compared Q1 2019	Change as compared Q2 2018
<b>Actions of Local government authorities*</b>	21	24%	50%
LGAs land plots	5	0%	25%
LGAs rules and permits	4	0%	0%
LGAs investment disputes	0	-100%	-100%
LGAs other	12	71%	140%
<b>Customs issues</b>	19	-34%	138%
Customs valuation	9	-18%	350%
Customs clearance delay/refusal	5	-67%	150%
Overpaid customs duties refund	3	-	200%
Customs other	2	-33%	-33%
<b>Ministry of Justice actions</b>	13	-24%	63%
MinJustice Enforcement Service	7	-13%	75%
MinJustice Registration Service	6	-33%	50%
<b>Actions of state companies</b>	5	-38%	25%
State companies abuse of authority	2	0%	-
State companies other	3	-50%	-25%
<b>State Security Service Actions</b>	3	-50%	-67%
State Security Service procedural abuse	2	-60%	-60%
State Security Service criminal case initiated	1	-	-75%
State Security Service other	0	-100%	-
<b>Legislation drafts/amendments</b>	2	-50%	-78%
Deficiencies in regulatory framework tax	1	-	-75%
Deficiencies in regulatory framework customs	0	-100%	-
Deficiencies in regulatory framework state regulators	0	-100%	-100%
Deficiencies in regulatory framework other	1	0%	0%

\* Featured in previous reports as "local councils and municipalities"

## Tax issues

Although the total number of appeals received by the BOC went down by 2% in Q2 2019, the major group of appeals – tax issues – performed a 6% growth. This was mainly driven by an increase of complaints concerning tax invoice suspension (+5%), VAT electronic administration (+400%) and other tax issues (+75%).

With respect to tax invoice suspension, we notice a change in the matter of appeals – since the first quarter of 2019 we have been receiving complaints regarding the SFS failure to comply with court decisions on registering specific tax invoices. We have already received 56 appeals regarding similar situations faced by businesses, 79% of them in Q1 and Q2 2019.

The number of complaints on tax inspections slightly went down as compared to Q1 2019 (-4%). However, the figure is still restless – 90 appeals in Q2 2019, which is still 48% higher than in Q2 2018.

Companies lodged less appeals concerning tax criminal cases and VAT refund, as well as termination of agreements on electronic reporting and termination of VAT payers' registration.

## Actions of law enforcement bodies

On a positive note – the number of complaints against all law enforcers either decreased or remained stable in comparison with the previous period. In particular, companies reported fewer episodes of procedural abuse performed by law enforcement bodies.

Businesses lodged less appeals with respect to the National Police (-16% as compared to both Q1 2019 and Q2 2018). Notably, the number of complaints concerning open criminal cases against businesses and other malpractice of the National Police went down.

We only received three complaints regarding actions of the State Security Service, which is half less as compared to Q1 2019 and two thirds less as compared to Q2 2018.

As for the Prosecutor's Office – the number of complaints remained stable from the previous quarter, but went down as compared to Q2 2018. Companies did not report on corruption episodes of the Prosecutor's Office, but addressed us more (+50%) new criminal cases initiated against businesses.

## State regulators

The number of complaints concerning actions of state regulators went up as compared to both Q1 2019 and Q2 2018. This was mainly driven by an increase in appeals related to the DABI (+400%) and the StateGeoCadastre (+33%). At the same time companies lodged less appeals regarding the AMCU and other state regulators.



## Local government authorities

We received more complains from businesses on this subject as compared to both Q1 2019 (+24%) and Q2 2018 (+50%). That is why we decided to devote a separate section of the report to a deeper analysis of appeals concerning local councils and regional state administrations.

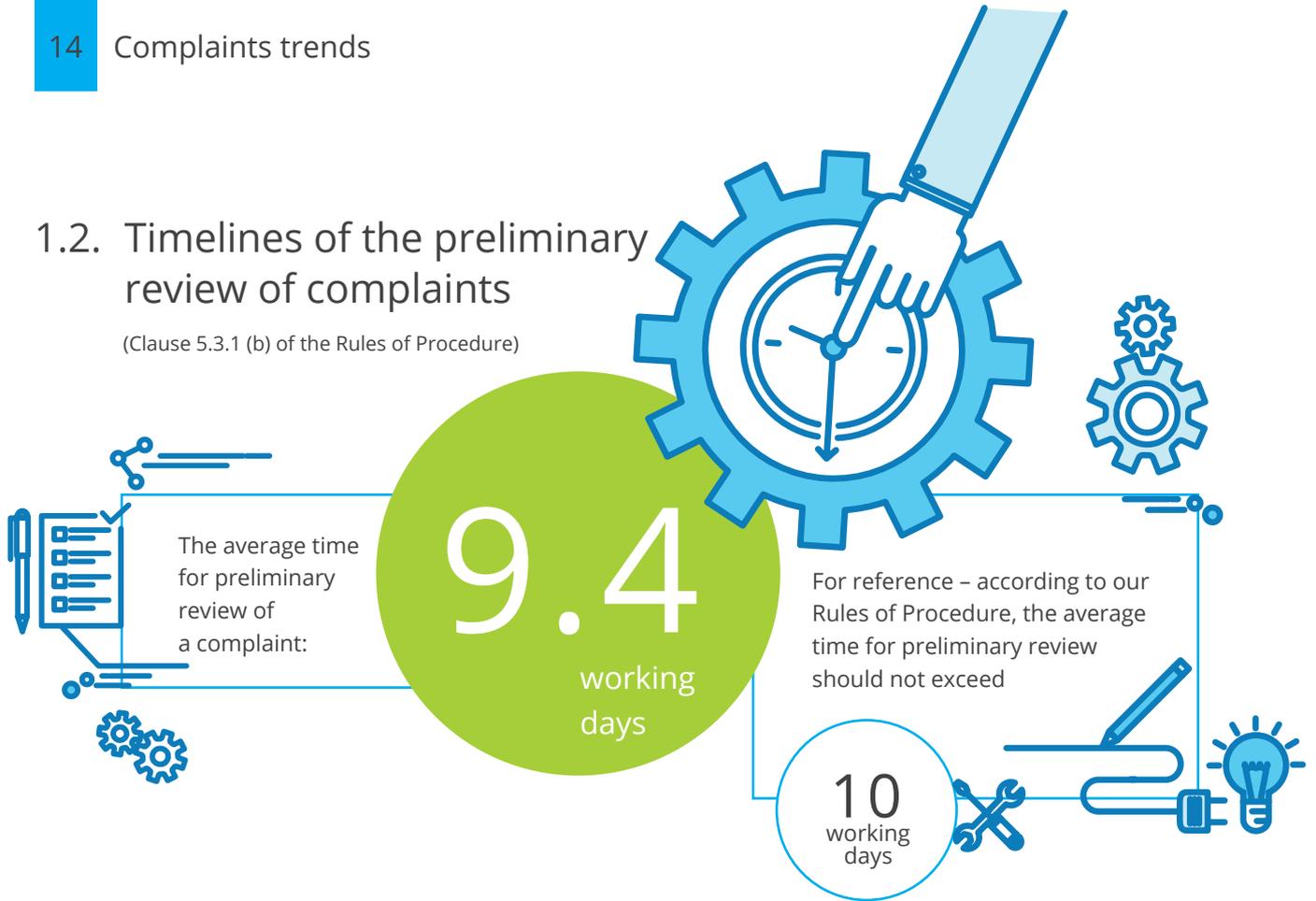
## Other subjects

With regard to all other subjects from the TOP-10, companies lodged less appeals in comparison with Q1 2019: customs issues (-34%), the Ministry of Justice (-24%), state-owned companies (-38%) and drafting legislation (-50%).



## 1.2. Timelines of the preliminary review of complaints

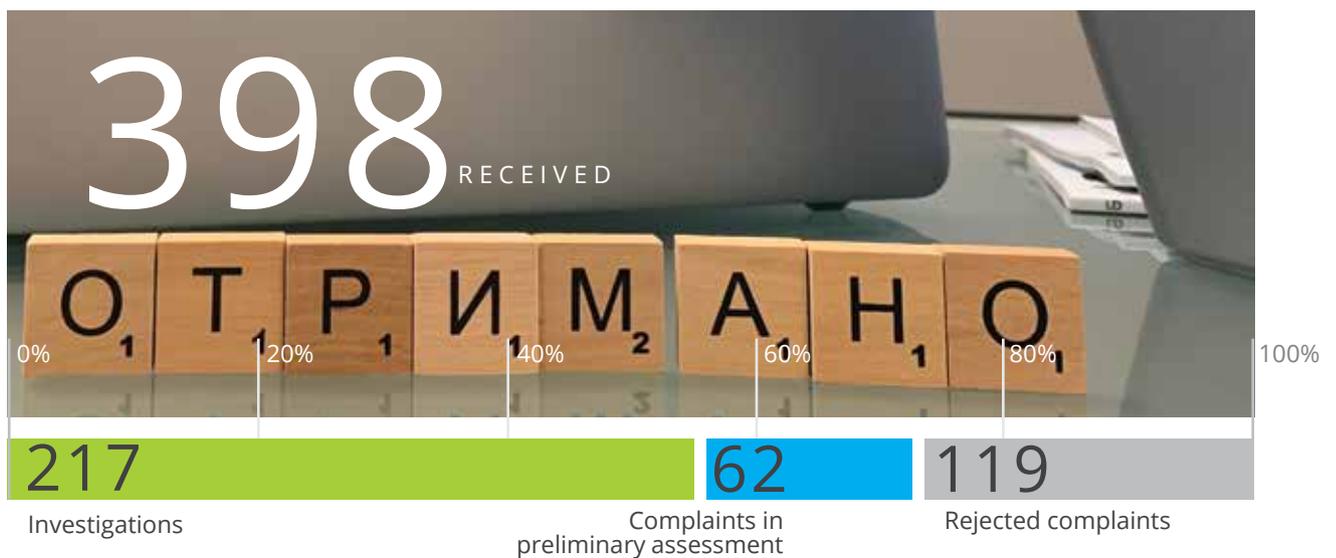
(Clause 5.3.1 (b) of the Rules of Procedure)



## 1.3. Number of investigations conducted and grounds for declining complaints

(Clause 5.3.1 (c) of the Rules of Procedure)

In the first quarter of 2019, the BOC undertook 217 investigations out of 398 complaints received (55%). The rest remained at the stage of preliminary assessment (16%) or was dismissed as not fitting the Council’s eligibility criteria (30%) as of June 30, 2019.



Number of initiated investigations:



Ratio of dismissed complaints:



## Main reasons for complaints' dismissal in Quarter II 2019

	Q2 2019	Change as compared to Q1 2019	Change as compared to Q2 2018
Complaints outside Business Ombudsman's competence	51	38%	34%
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	22	22%	29%
The complaint had no substance, or other agencies or institutions were already investigating such matter	13	-13%	-46%
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	8	14%	-11%
A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration	7	150%	67%
Complaints arising in the context of private-to-private business relations	4	33%	100%
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	3	-67%	-40%
A complaint relates to an issue that has already been addressed by the Business Ombudsman in his previous decisions	3	0%	200%
All other	10	0%	-38%

The predominant reason (43%) for complaints dismissal – they were outside the Business Ombudsman's competence. Despite the Council being active in explaining its institutional capacity to potential applicants, this ground of dismissal has been increasing alongside with the growth of the number of complaints received.

Active court proceedings (18%) and absence of substance in appeals (11%) were also common in Q2 2019. In the reporting period the Council received 2,5 times more repeated complaints, but less appeals in which companies questioned the validity of a court decision.

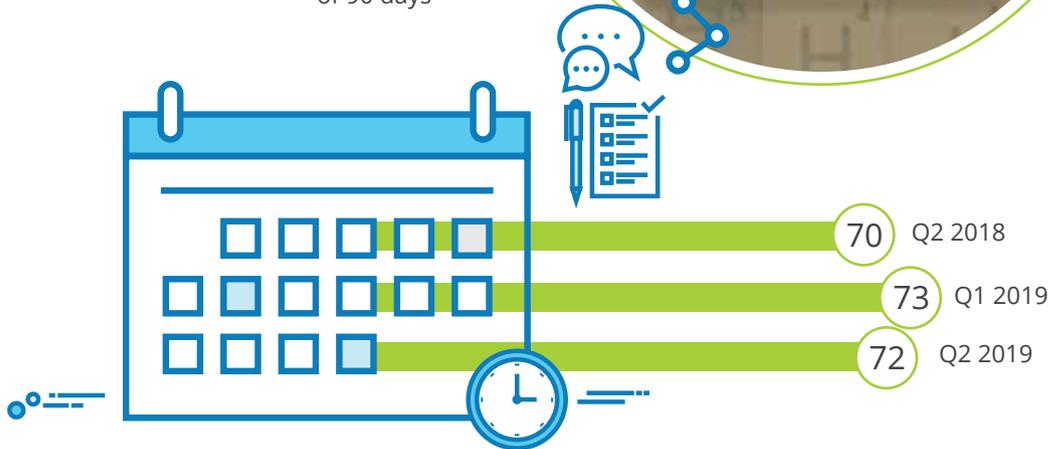
## 1.4. Timelines of conducting investigations

(Clause 5.3.1 (d) of the Rules of Procedure)

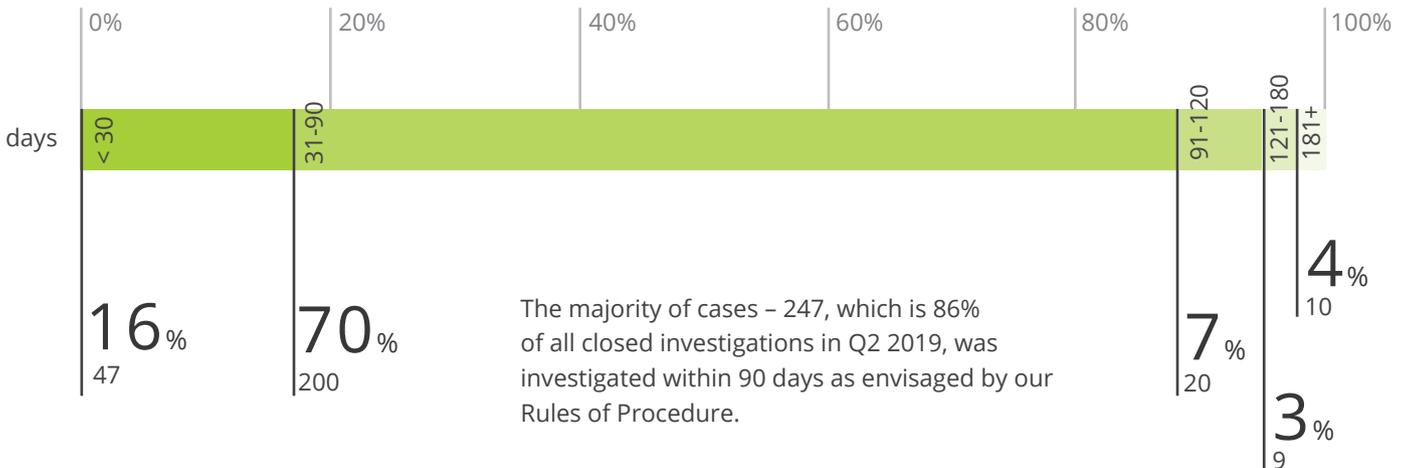
In the reporting quarter, the BOC closed 286 cases, which is 3% more than in the previous one.



which is one day less than in the previous quarter and means that we perfectly fit our Rules of Procedure's average investigation duration of 90 days



### Ratio of closed cases by days:



## 1.5. Government agencies subject to the most complaints

### TOP-10 Complainees

	Complaints received in Q2 2019	Change as compared to Q1 2019	Change as compared to Q2 2018
State Fiscal Service	259	1%	-3%
National Police of Ukraine	27	-13%	-18%
Local government authorities	23	35%	64%
Prosecutor's Office of Ukraine	22	0%	-8%
Ministry of Justice	15	-12%	50%
Ministry of Regional Development	7	75%	133%
Ministry of Social Policy and Labour of Ukraine	7	-13%	17%
Ministry of Agrarian Policy and Food of Ukraine	4	100%	33%
Ministry of Ecology and Natural Resources of Ukraine	4	33%	-33%
Ministry of Finance of Ukraine	4	0%	100%

The share of appeals concerning actions of the State Fiscal Service, which embraced both tax and customs issues, amounted to 65% in Q2 2019, which is +2pp as compared to the previous period.

Companies reported fewer episodes of malpractice by the National Police as compared to both Q1 2019 and Q2 2018. The number of appeals concerning the Prosecutor's Office didn't go up as well. Another law enforcement body – the State Security Service – didn't hit the list of TOP-10 complainees at all.

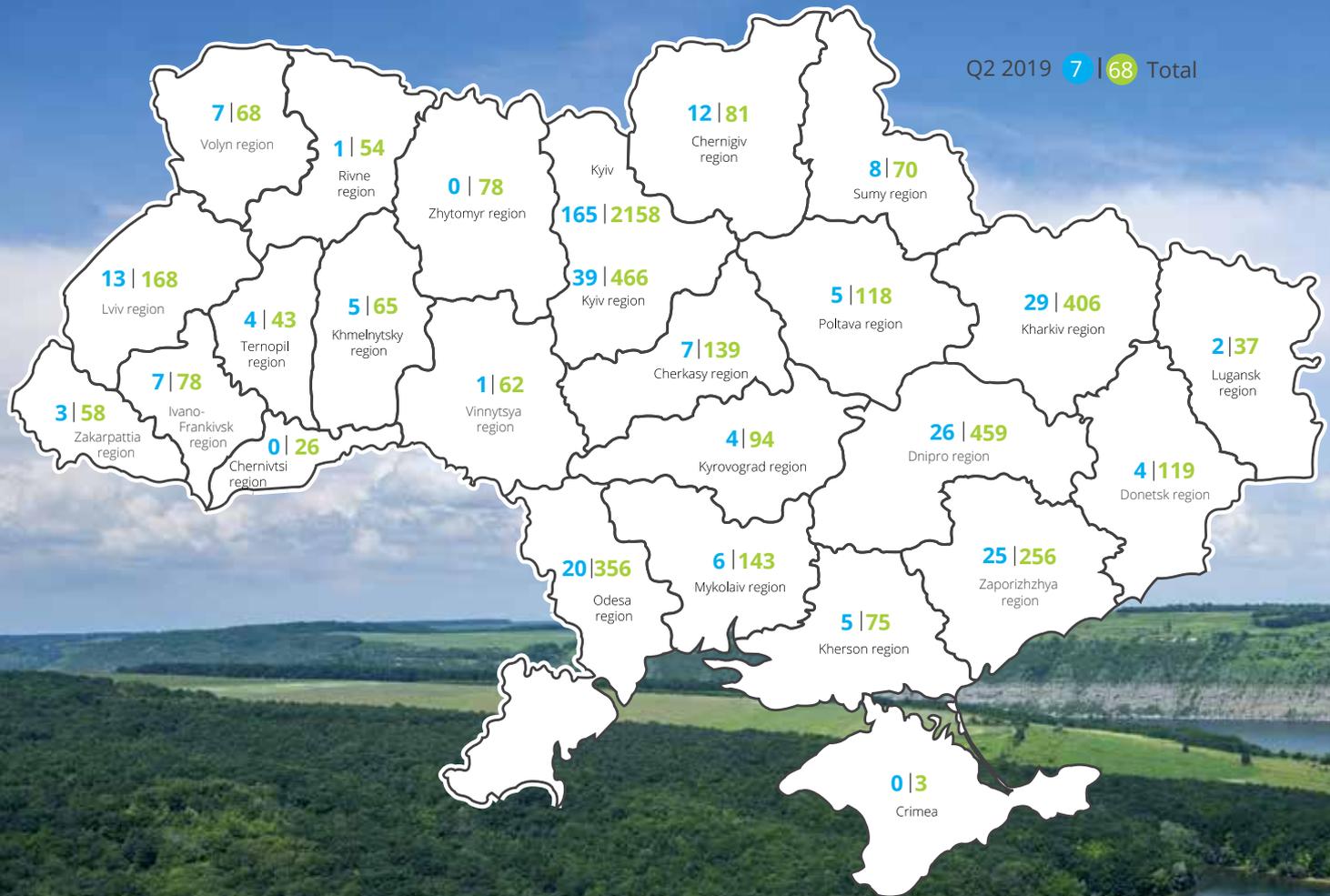
In comparison with the previous quarter, companies submitted one third more appeals concerning local government authorities as compared to Q1 2019 and two thirds more as compared to Q2 2018. We also received more complaints concerning the Ministry of Regional Development (+75%), the Ministry of Agrarian Policy and Food (+100%) and the Ministry of Ecology and Natural Resources (+33%).

On the contrary, the Council received less complaints related to actions of the Ministry of Justice (-12%) and the Ministry of Social Policy and Labour of Ukraine (-13%).

## Other complainees include:

	Complaints received in Q2 2019	Change as compared to Q1 2019	Change as compared to Q2 2018
State Security Service	3	-40%	-67%
Antimonopoly Committee of Ukraine	2	-33%	-
Commercial and other courts	2	100%	-33%
Ministry of Economic Development and Trade of Ukraine	2	-50%	-33%
Ministry of Health of Ukraine	2	-	100%
Ministry of Infrastructure of Ukraine	2	-60%	-33%
Ministry of Internal Affairs	1	-67%	0%
Parliament, the Cabinet of Ministers, the President of Ukraine	2	-33%	-33%
Ministry of Energy and Coal Industry of Ukraine	1	0%	-50%
National Anti-Corruption Bureau of Ukraine	1	-67%	0%
National Bureau of Investigation of Ukraine	1	-	-
National Commission for State Regulation of Energy and Public Utilities	1	-	-50%
State Enterprises	1	-75%	-50%
State Forest Resources Agency of Ukraine	1	-	-
Other	4	-43%	-56%

## 1.6. Geographical distribution of complaints received



	Complaints received in Q2 2019	Change as compared Q1 2019	Change as compared Q2 2018
Kyiv	165	13%	10%
Kyiv Oblast	39	-15%	50%
Kharkiv Oblast	29	26%	81%
Dnipro Oblast	26	-10%	-45%
Zaporizhzhya Oblast	25	32%	67%

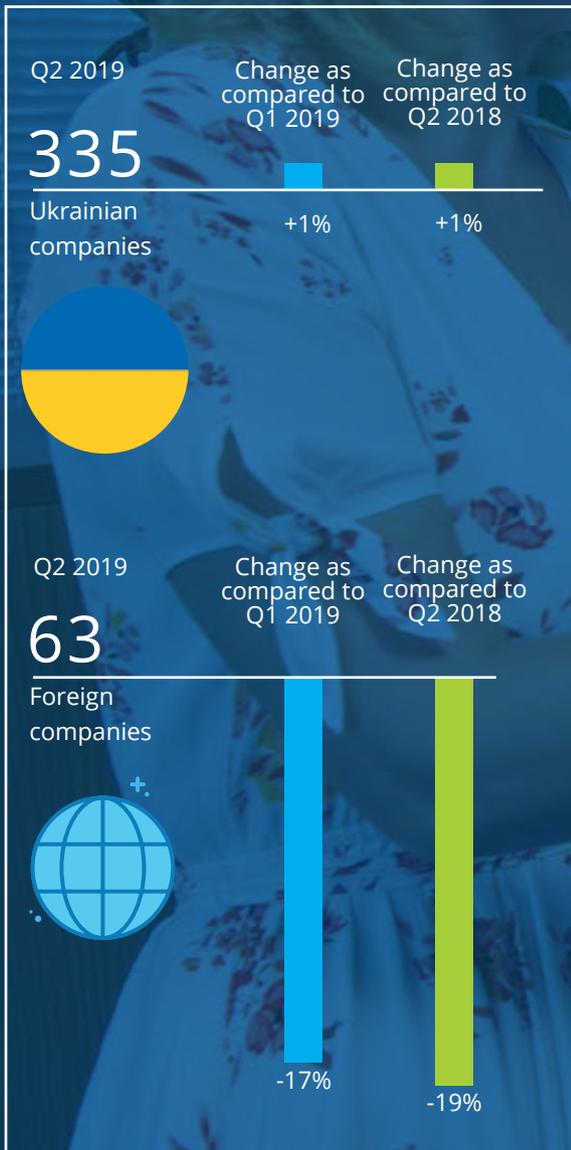
As compared to Q1 2019, the share of complaints from Kyiv increased by 4 pp to 41% of total appeals.

The highest increase in the number of appeals received and respectively the share growth is recorded for **Zaporizhzhya region**. That was how this region hit the fifth position in TOP-5 of the reporting quarter, moving Odessa Oblast out from the list.

## 1.7. Complainants' portrait

### Local vs Foreign Complainants

Number of complaints

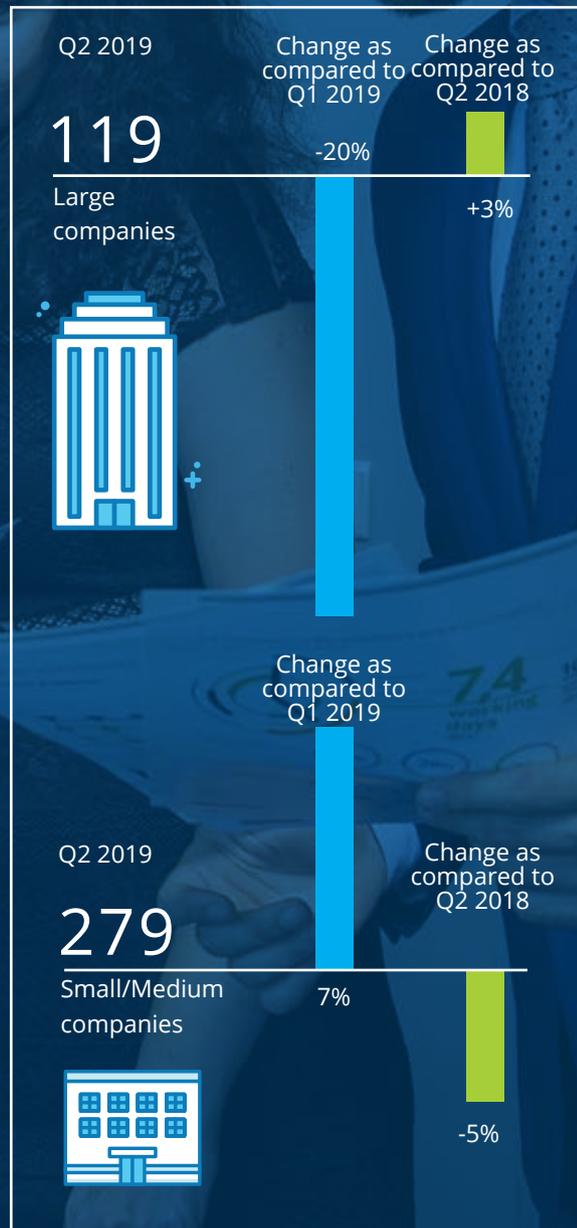


Structure

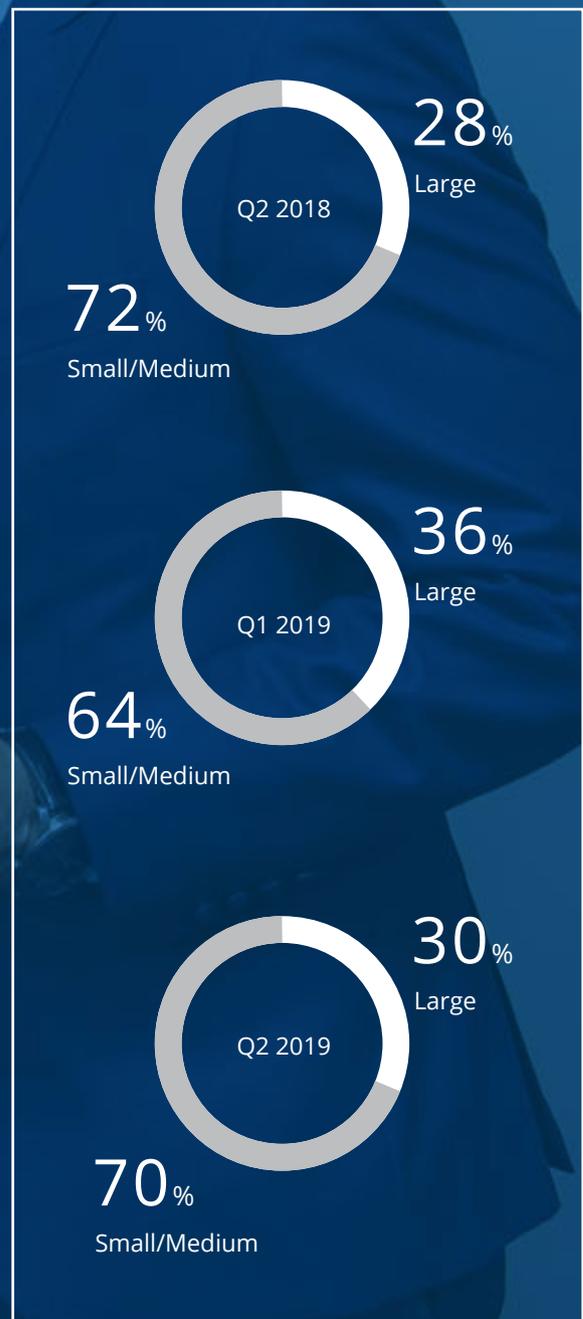


# Size of Business

## Number of complaints



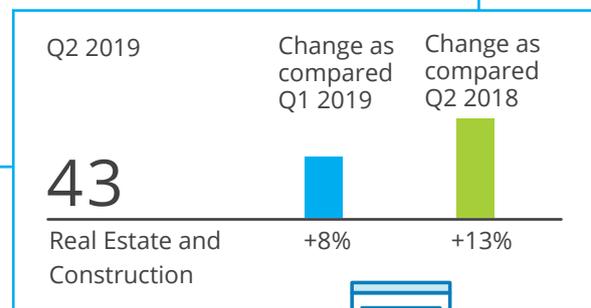
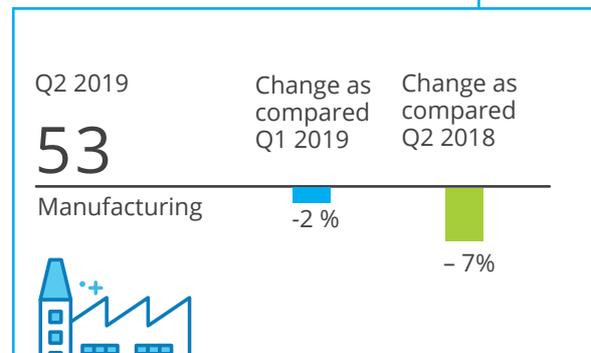
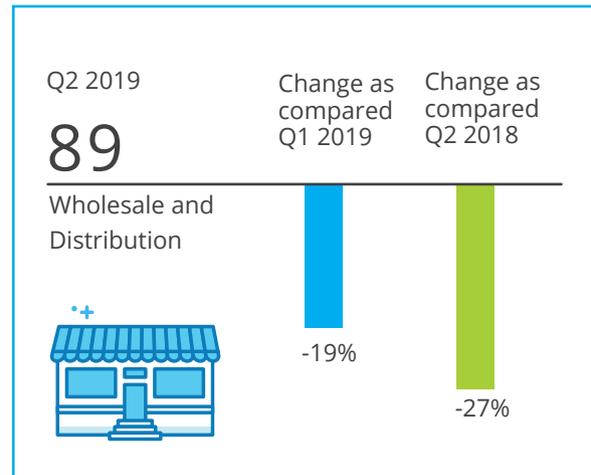
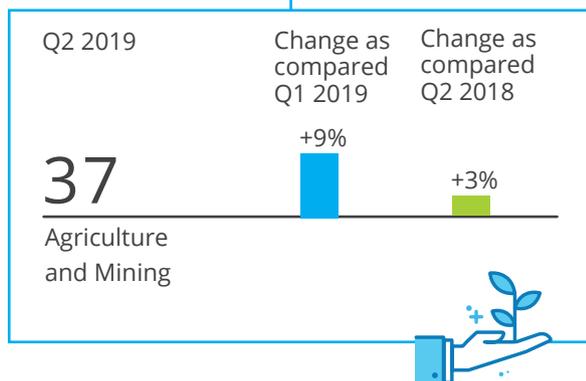
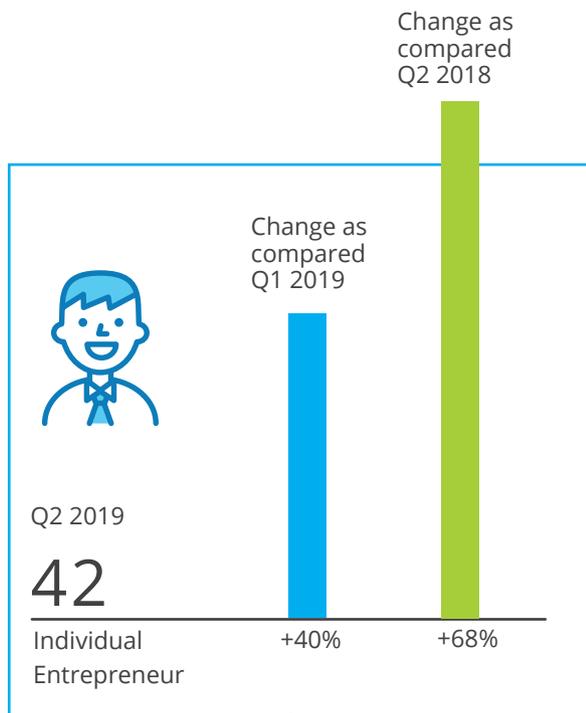
## Structure



## TOP-5 Complainants' Industries

The majority of appeals was submitted by wholesalers (22%), manufacturers (13%), developers (11%), agribusiness (9%) and individual entrepreneurs (11%).

As compared to Q1 2019, the share of complaints submitted by wholesalers, decreased by 5 pp, while the one of private entrepreneurs, on the contrary, went up by 4pp.



## Other industries include:

Retail	31	Advertising	2
Auto transport	10	Banks	2
Physical person	8	Electric installation works	2
Engineering, geology and geodesy areas activity	6	Health, Pharmaceuticals, and Biotech	2
Financial services	6	Restaurant business	2
Consulting	5	Scientific research and development	2
Hire, rental and leasing	5	Software and Internet	2
Education	4	Warehousing	2
Energy and Utilities	4	Activity in the field of architecture	1
Ground and pipeline transport	4	Business services	1
Repair and maintenance services	4	Delivery services	1
Supply of electricity, gas, hot water, steam and air conditioning	4	Farming	1
Computer and electronics	3	Information and telecommunications	1
Forestry and logging	3	Investment companies	1
Private security firms activity	3	Maintenance of buildings and territories	1
Public organizations	3	Processing industry	1
Tourism and travel-related services	3	Transportation and storage	1
Waste collection and disposal	3		

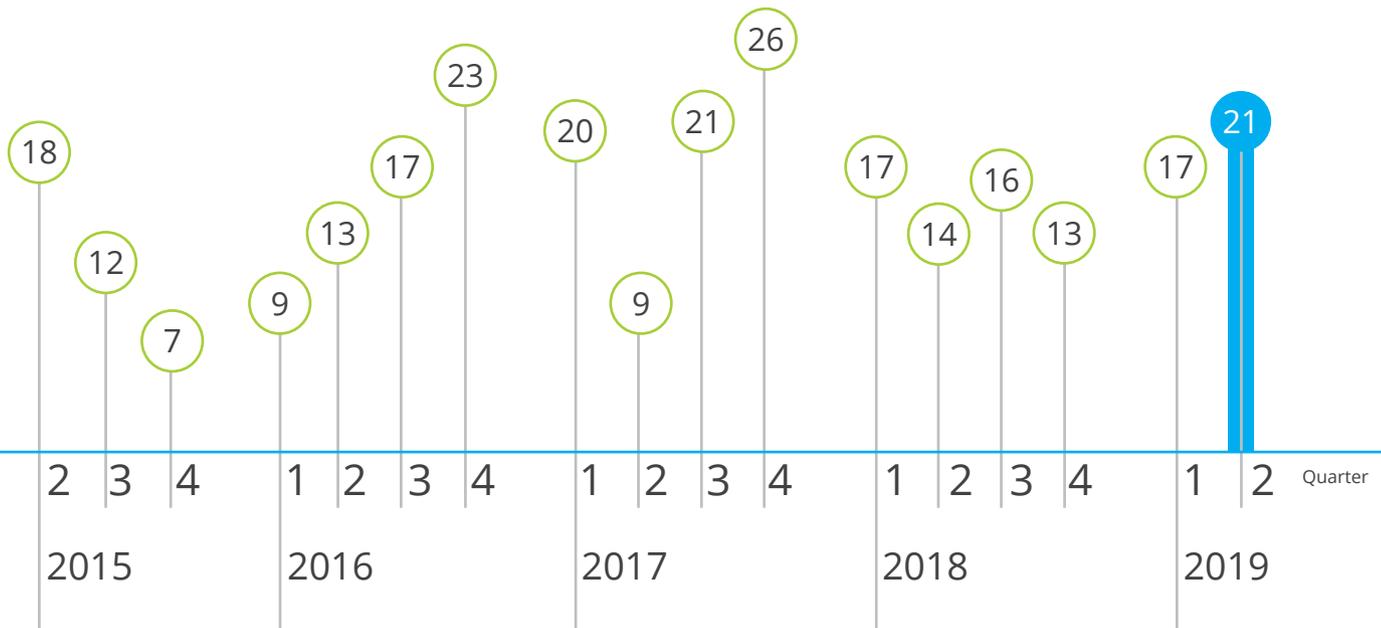
## 1.8. Report focus: analysis of complaints on local government authorities\*

\* local councils and regional state administrations

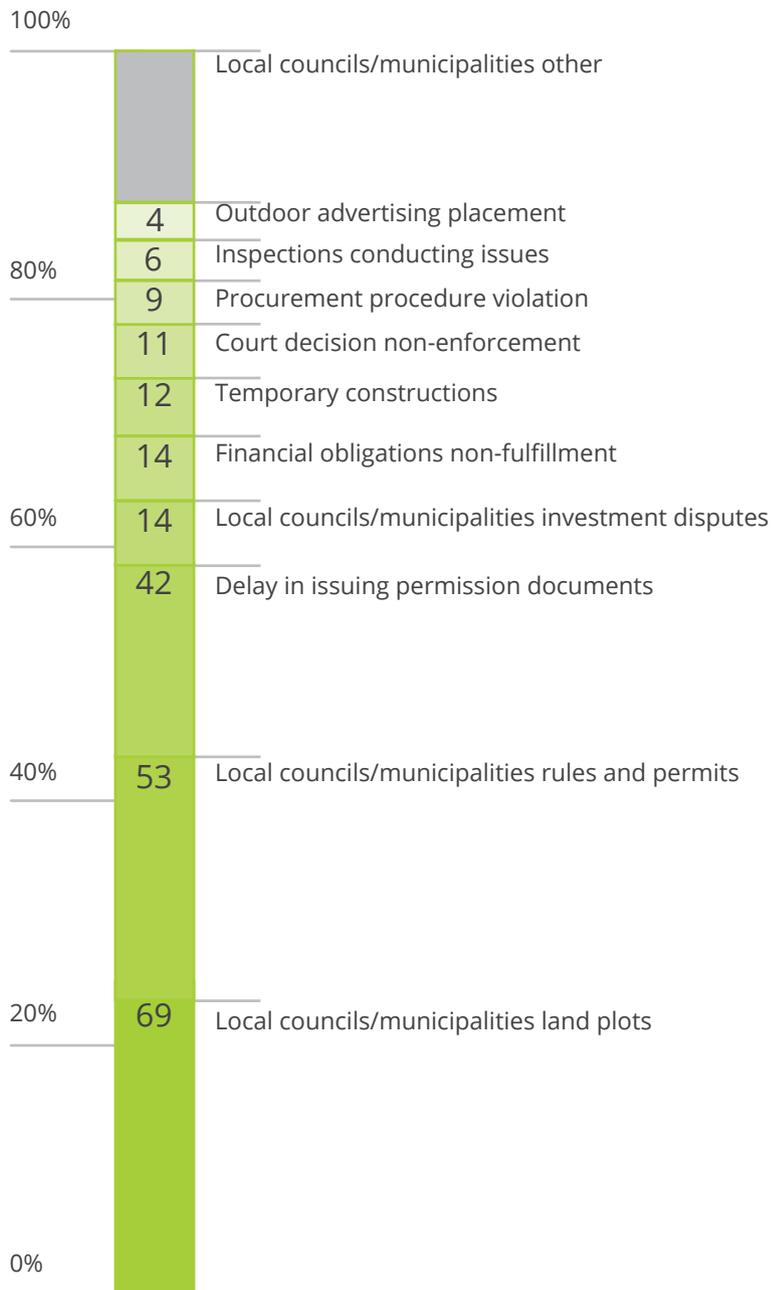
Since May 2015 we have received 273 appeals concerning actions of local government authorities (LGAs), which amounts to 5% of total complaints.

The highest number of received appeals on this subject was recorded in Q4 2017, while the lowest – in Q4 2015. During recent quarters companies have been lodging more complaints regarding actions of local government authorities, reaching 21 appeals in Q2 2019.

### Local government authorities: total number of complaints received



## Local government authorities: subjects of complaints received



The quarter of appeals regarding LGAs related to allocating land plots. One fifth of them was about the LGAs resistance to setting rules and issuing permits required by the business. A significant share of 15% regarded LGAs delays in issuing permissions.

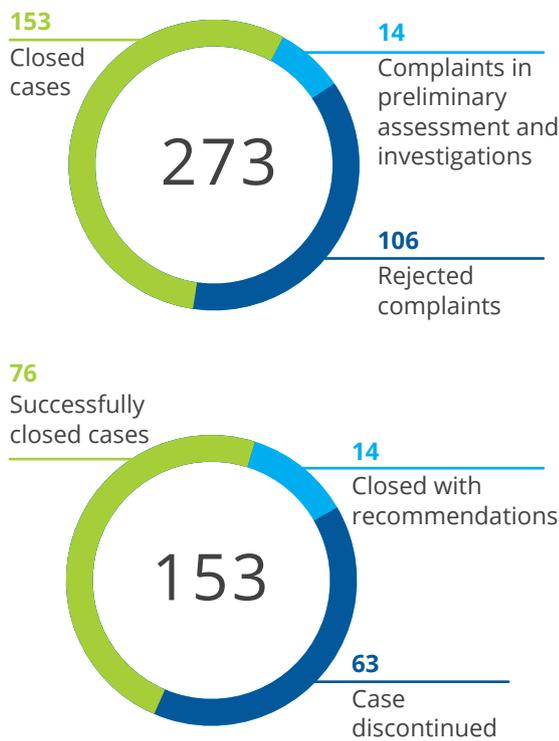
Companies also complained about investment disputes with LGAs, temporary constructions, dismantled upon the LGAs order, failure to fulfill financial obligations by LGAs – all categories constitute shares of 5%.

Refusal to follow the court decision (4%) and breaking the procurement procedure (3%) were also among the common issues, faced by entrepreneurs when dealing with LGAs.



### Local government authorities: closed cases

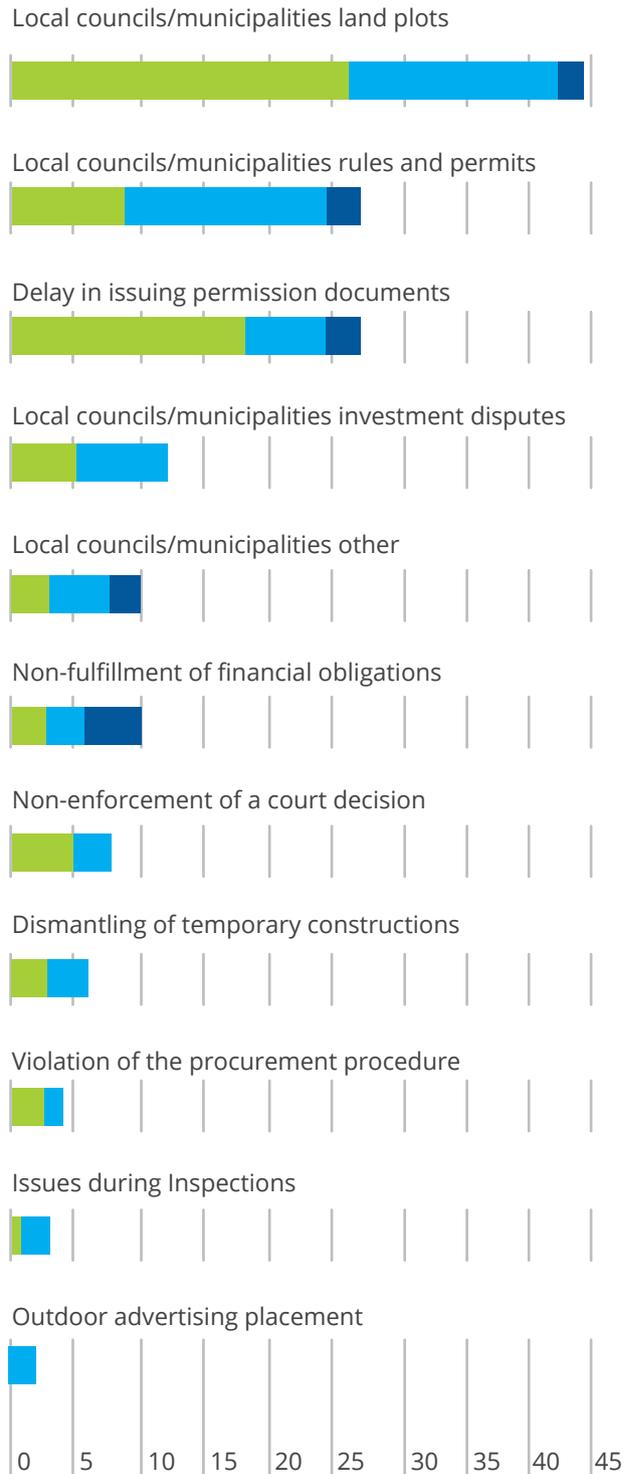
Out of 273 complaints on LGAs received we undertook 167 investigations were undertaken and 92% of them closed. Half of cases was closed with immediate desirable result for the complainant, which is 17 pp lower, than on average among all subjects of complaints.



- Successfully closed cases
- Case discontinued
- Closed with recommendations

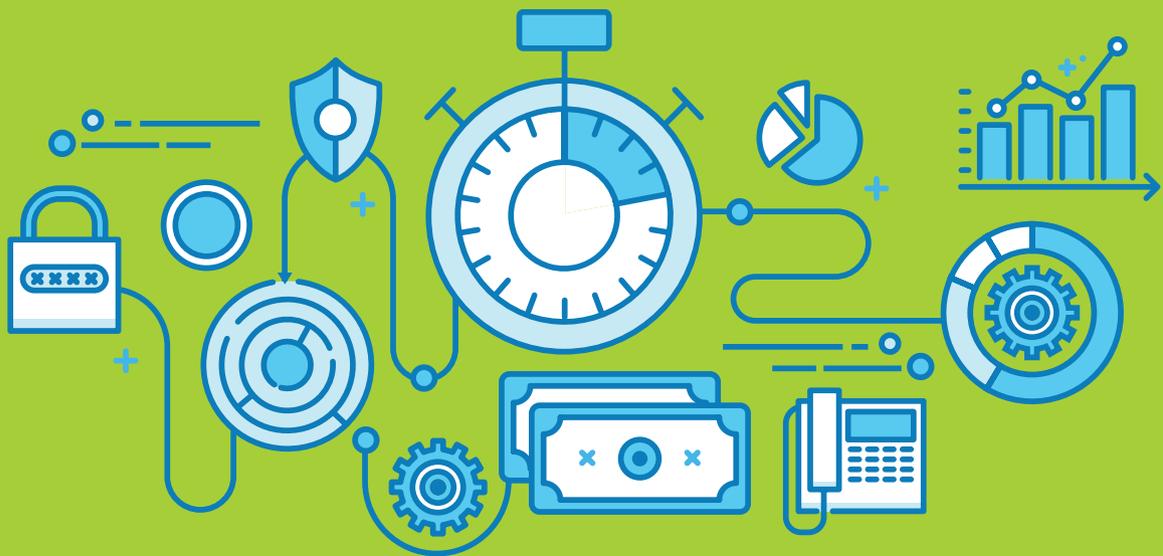
That said, the largest number of successfully closed investigations is recorded for cases concerning allocation of land plots and delays in issuing permission documents.

### Local government authorities: Statuses of closed cases by subjects



## Financial and non-financial result

The Council helped companies to receive a refund worth **UAH 1 010 000** in cases when businesses faced malpractice of LGAs.



As for the non-financial impact, we ceased

**25** episodes of state bodies malpractice

helped entrepreneurs to obtain

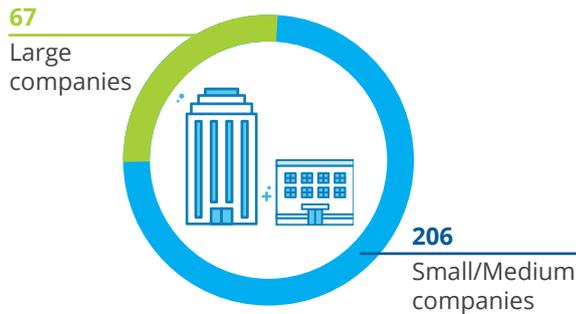
**18** licenses and permits and sign a number of contracts with state bodies

## Local government authorities: non-financial impact



Malpractice ceased by complainee	25
Permit/license/conclusion/registration obtained	18
Contract with state body signed/executed	4
State official fired/penalized	1
Legislation amended/enacted; procedure improved	1

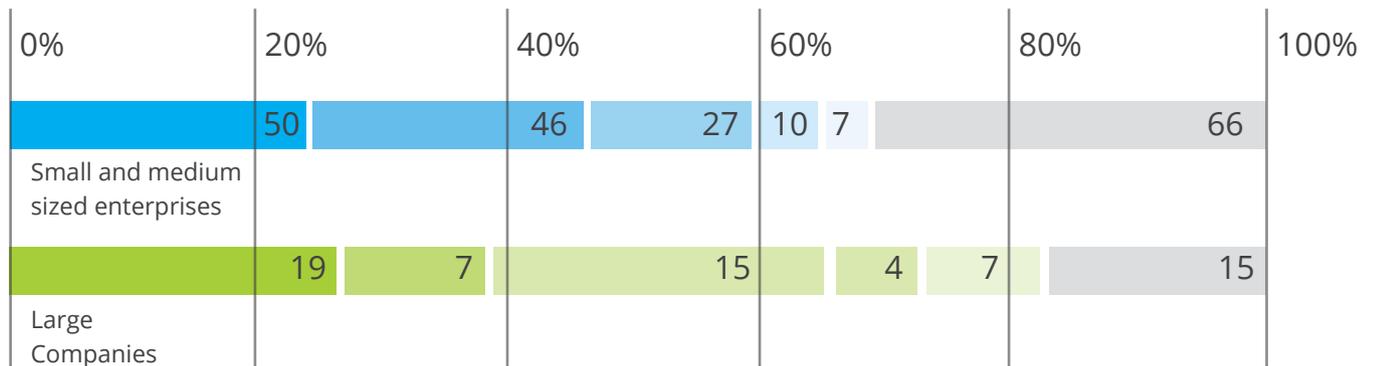
## Local government authorities: size of company



The share of large companies submitting appeals on LGAs (25%) was 3 pp lower than the average share of large enterprises in total appeals.

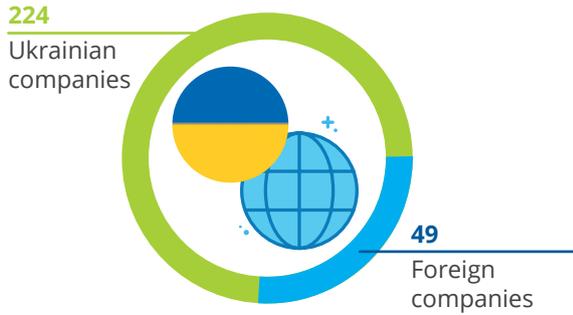
The portfolio of appeals from large companies seems to be more concentrated: their shares of complaints on allocating land plots, delays in issuing permits and non-fulfilment of financial obligations were higher than those of SMEs.

## Subjects of complaints on local government authorities: SMEs vs large companies



- Local councils/municipalities land plots
- Local councils/municipalities rules and permits
- Delays in issuing permission documents
- Local councils/municipalities investment disputes
- Non-fulfillment of financial obligations
- Other

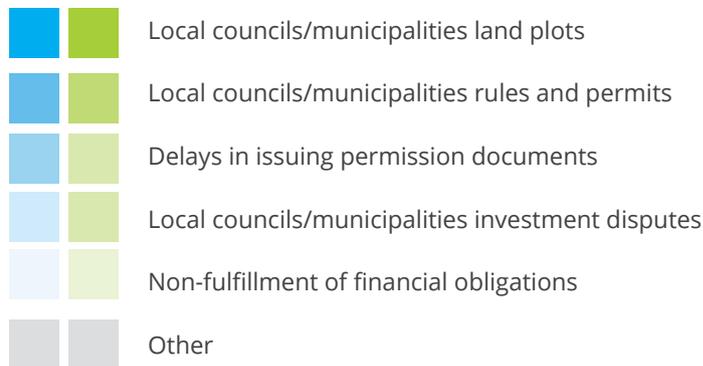
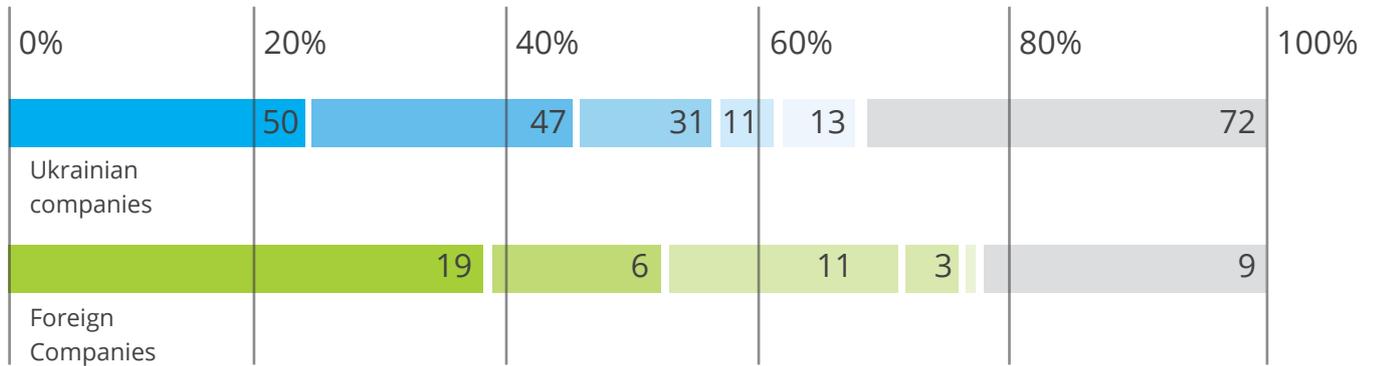
## Local government authorities: origin of investment



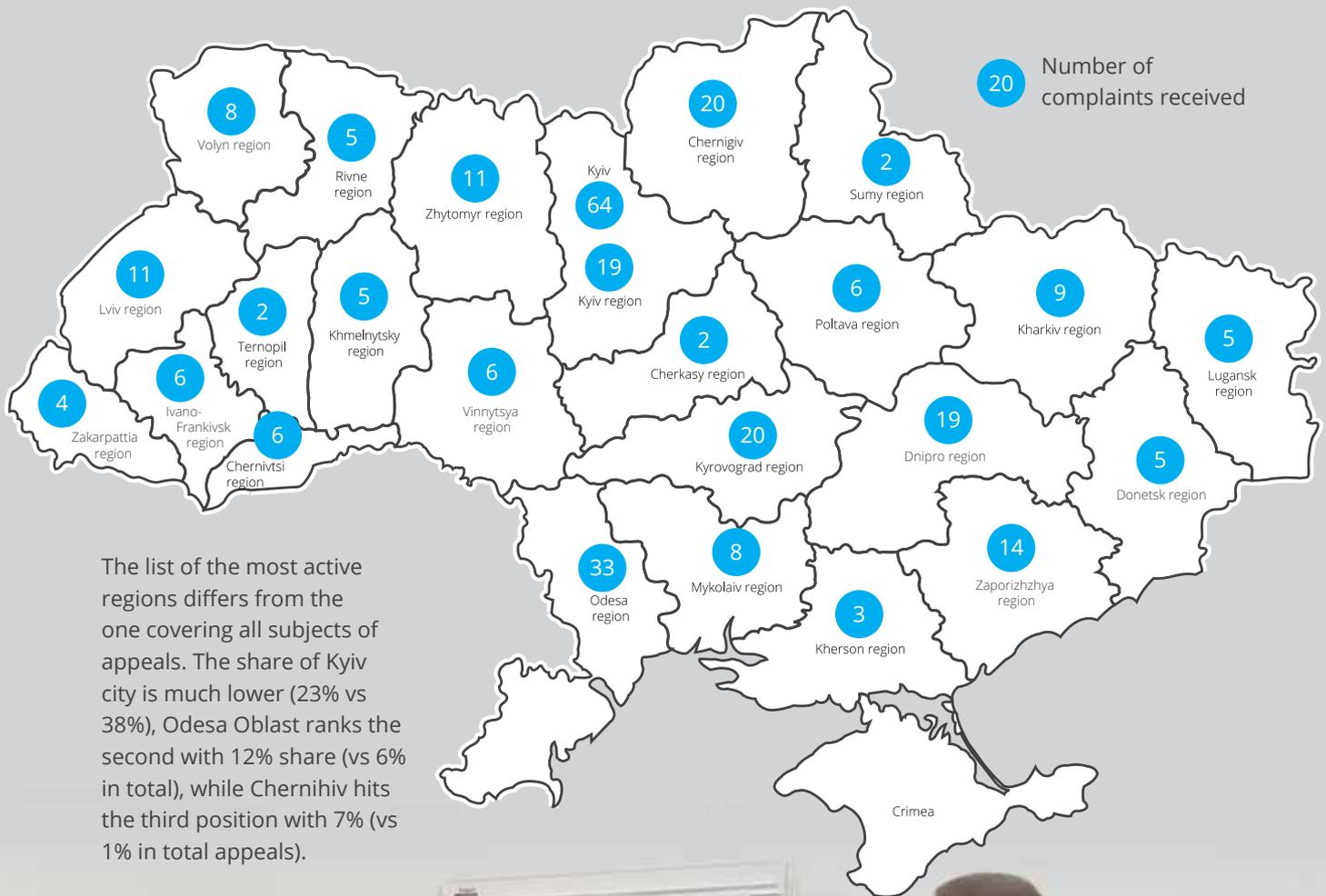
Among companies, that lodged complaints on LGAs the share of foreign entities (18%) was nearly the same (1pp higher), than in the general pool of our complainants.

The share of complaints on land plots, delays in issuing permissions was higher among foreign companies, while Ukrainian enterprises complained more about LGAs rules and permits.

## Subjects of complaints on local government authorities: foreign vs local companies



## Local government authorities: geography of received complaints



The list of the most active regions differs from the one covering all subjects of appeals. The share of Kyiv city is much lower (23% vs 38%), Odesa Oblast ranks the second with 12% share (vs 6% in total), while Chernihiv hits the third position with 7% (vs 1% in total appeals).



## Implementation of systemic recommendations issued in the report on local government authorities

The Business Ombudsman Council considers the decentralization reform one of the most successful government initiatives. It allowed to identify regulatory framework issues in relations between the business and local government authorities. Therefore, in order to consolidate and strengthen achievements, the Council has developed a series of recommendations, the implementation of which will help to finalize the reforming process.

In February 2017, we issued a systemic report on local government authorities, in which we recommended, in particular, to remove legal gaps and foster voluntary unification of territorial communities and to improve land lease procedures and the quality and level of administrative services provision.



Less than a half of systemic recommendations (41%) is already implemented – for instance, local councils enhanced land lease procedures and state bodies improved the quality and level of administrative services. Apart from it, a set of actions have been taken to remove legal gaps and foster voluntary unification of territorial communities.

Based on our recommendations, the Ministry of Regional Development (MinReg) introduced evaluation of the activities of local state administrations and their officials in order to increase the efficiency of the public administration

system, introduced development programs for employees of LGAs. The MinReg and the Association of Ukrainian Cities developed methodical recommendations to provide the recently elected territorial communities with necessary informational material.

Among still pending recommendations is the one for the MinReg to finalize drafting regulations governing decentralization in all spheres of administrative and social services provision. The Parliament should also establish a constitutional basis for regulating abuse of powers by local councils.

## 1.9. Feedback



In the reporting period we received

116

feedback forms from our applicants

97%



of them said they were satisfied with working with us.

Companies assessed 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 indicated what they were satisfied the most in dealing with us and specified areas that required improvement.



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

Michalis Alexandrakis  
Managing Director of Philip Morris Ukraine,  
PJSC

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

Vitaliy Shemet  
Director of Grand Autotrans Ukraine, LLC

"I would like to thank you so much for the support you provided, it was absolutely efficient and useful for the company. I am convinced that you contributed a lot in order to succeed and save the interest of the company."

I praise and promote the role played by the Business Ombudsman Council to support the French investors in Ukraine every time I can."

Nicolas Perrin  
Agriculture Counsel  
to the French Embassy in Ukraine

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

Olesya Olenytska  
GR and PR Director

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

Valerii Kovalenko  
Director of Lentaks-Yug, LLC

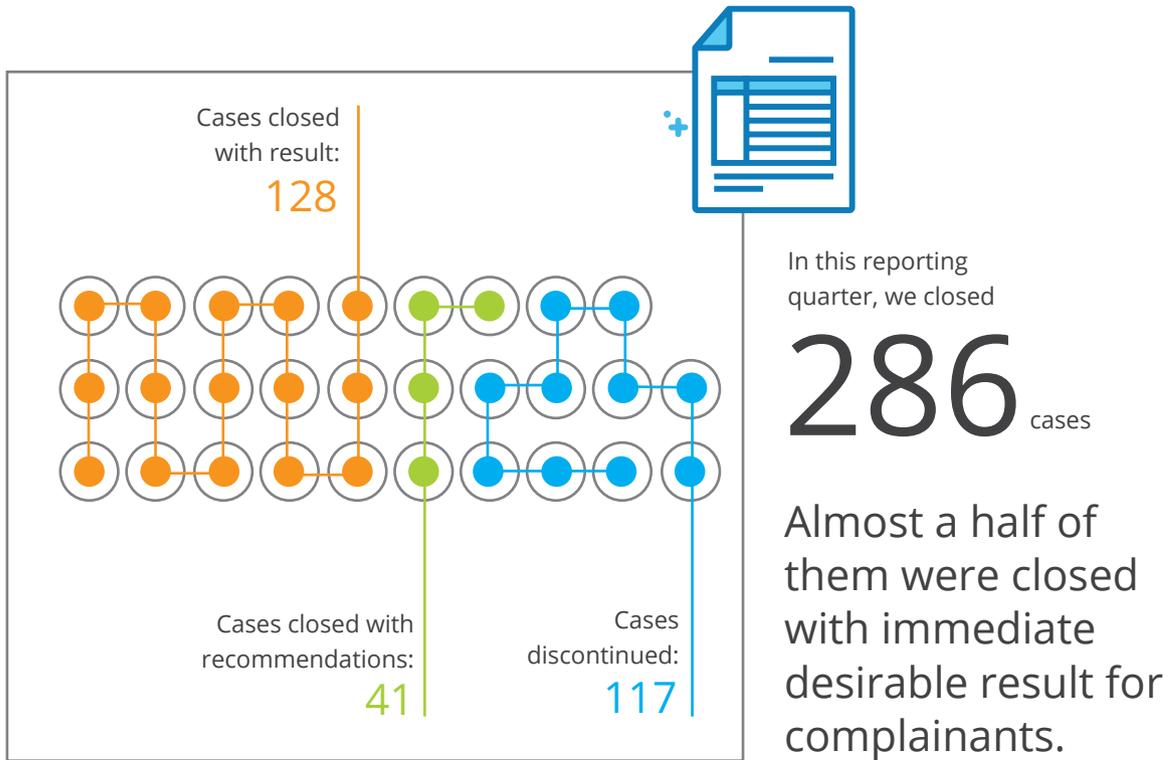
"We express our sincere gratitude for active participation and assistance of the BOC in protecting corporate rights of the company. "

Mykola Bliashyn  
Director of Mykola Bliashyn Law firm



## 2. Summary of key matters and follow-up of recommendations

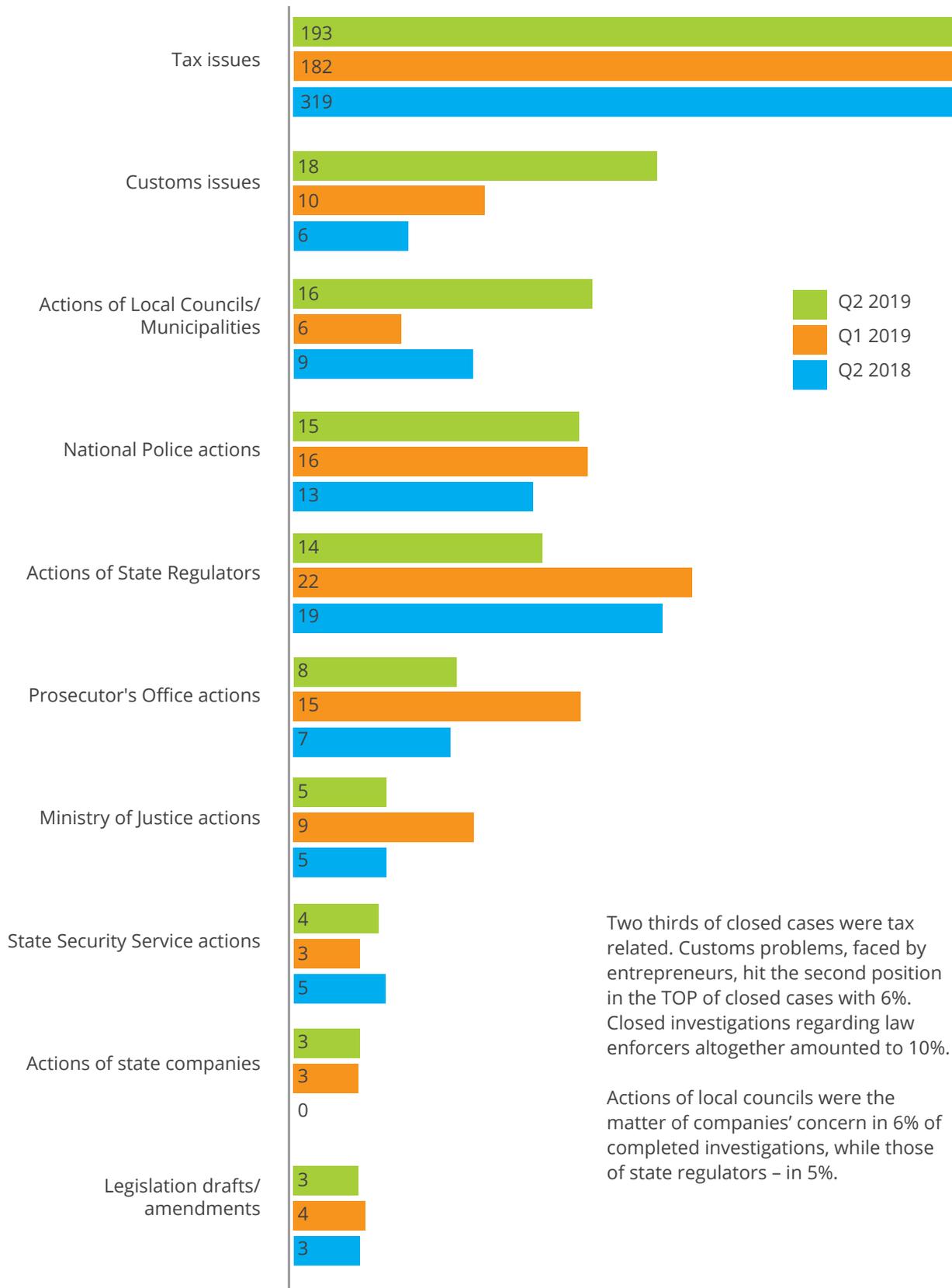
## 2.1. Information on closed cases and recommendations provided



Total number of closed cases since launch of operations:

**3803**

## TOP-10 Subjects of Closed Cases in Quarter II 2019:



## Financial impact in quarter II 2019:

UAH  
**3.5** bn

Tax inspections  
2.849.871.727

Tax other  
635.727.114

Tax VAT refund  
10.071.168

Tax VAT invoice suspension  
6.953.146

Tax VAT electronic administration  
4.871.634

State companies other  
1.623.858

Direct financial impact  
of BOC's operations  
20 May 2015 – 30 June  
2019 exceeds

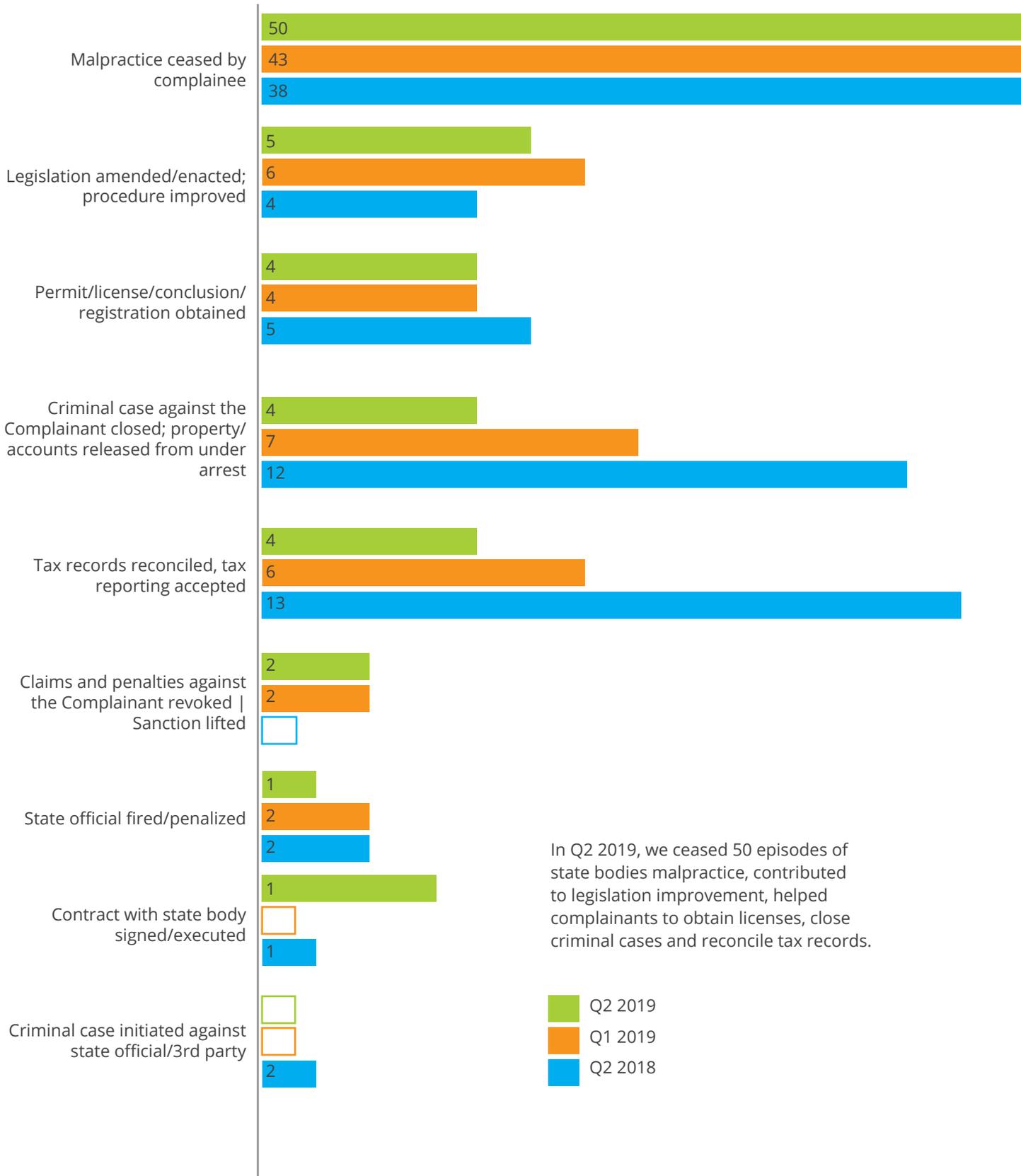
UAH **17** bn



The lion's share of the  
financial impact in Q2  
2019 was the result of  
successfully closed cases  
on tax inspections.

**81** %

## Non-financial impact of BOC's operations in quarter II 2019:



# Recommendations provided



Recommendations issued in quarter II, 2019:

169

Total number of recommendations issued since launch of operations:

2628

Number of recommendations implemented:

2373



Number of recommendations subject to monitoring:

126



## Government agencies whom the BOC issued recommendations in 2015-2019 (case-by-case basis) and ratio of implementation

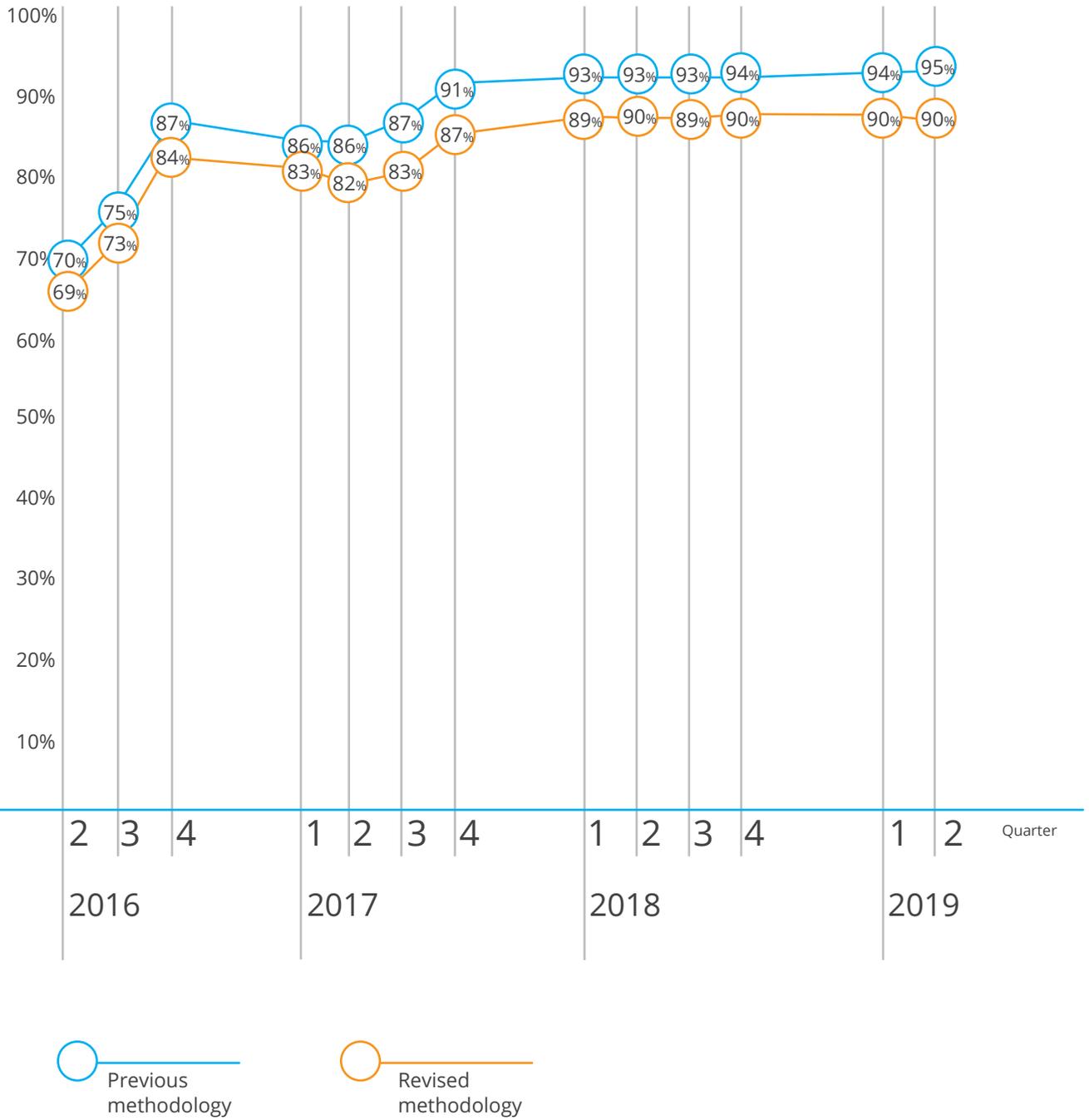
	Recommendations issued	Recommendations implemented	Q2 2019	Q1 2019	Q2 2018
			Implementation rate		
State Fiscal Service	1776	1654	93%	93%	93%
National Police of Ukraine	126	101	80%	84%	87%
Prosecutor's Office of Ukraine	124	97	78%	72%	74%
Ministry of Justice	93	86	92%	91%	90%
Local councils and municipalities	109	77	71%	73%	74%
State Security Service	52	51	98%	96%	98%
Ministry of Regional Development	51	50	98%	96%	100%
Ministry of Economic Development and Trade of Ukraine	43	38	88%	88%	82%
Ministry of Ecology and Natural Resources of Ukraine	36	34	94%	94%	86%
Parliament, the Cabinet of Ministers, the President of Ukraine	29	26	90%	75%	72%
State Enterprises	27	23	85%	78%	78%
Ministry of Social Policy and Labour of Ukraine	22	20	91%	90%	85%
Ministry of Finance of Ukraine	18	16	89%	94%	85%
Ministry of Internal Affairs	16	13	81%	79%	79%
Ministry of Health of Ukraine	11	11	100%	100%	100%
Ministry of Infrastructure of Ukraine	15	11	73%	82%	75%
National Commission for State Regulation of Energy and Public Utilities	11	10	91%	78%	100%

	Recommendations issued	Recommendations implemented	Q2 2019	Q1 2019	Q2 2018
			Implementation rate		
Ministry of Energy and Coal Industry of Ukraine	9	9	100%	100%	80%
Antimonopoly Committee of Ukraine	10	7	70%	70%	75%
Commercial and other courts	7	7	100%	100%	100%
Ministry of Agrarian Policy and Food of Ukraine	9	7	78%	78%	94%
State Service of Ukraine on Food Safety and Consumer Protection	7	5	71%	50%	75%
National Anti-Corruption Bureau of Ukraine	3	3	100%	100%	100%
National Bank of Ukraine	5	2	40%	40%	40%
State Funds	4	2	50%	40%	25%
Communal Services of Ukraine	2	1	50%	100%	0%
Ministry of Education and Science of Ukraine	1	1	100%	100%	100%
National Council of Ukraine on Television and Radio Broadcasting	1	1	100%	100%	100%
State Emergency Service of Ukraine	1	1	100%	100%	100%
Other	10	9	90%	90%	88%
<b>Grand Total</b>	<b>2628</b>	<b>2373</b>	<b>90%</b>	<b>90%</b>	<b>90%</b>

Data for Q1 2019 and Q2 2018 may not coincide with those previously published, as we revised the methodology of the ratio calculation in the reporting quarter. The chart below presents the overall result of this revision since Q2 2016, the first full quarter when the Case Management System became fully operational.

## Implementation of case-by-case recommendations: previous vs. revised methodology

(Cumulative since the start of operations in Q2 2015 until the end of the respective quarter)



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In Q2 2019, the Council issued 169 more individual recommendations to state bodies. In accordance with the new methodology, the average ratio has been stable for three quarters already – 90%.

Among state bodies, to whom we addressed 30+ recommendations, the majority of authorities either improved or maintained their performance in comparison with Q1 2019.

The State Fiscal Service has already implemented 93% of our recommendations, considering that we have issued quite many of them – 1776 or 66% of all issued recommendations.

As for law enforcement bodies, the State Security Service improved the ratio by 2pp up to 98%. The Prosecutor's Office also improved the ratio by 6pp up to 78%, which is still lower than the average rate of 90%. The National Police's ratio worsened by 4pp down to 80%.

The Ministry of Justice (92%), the Ministry of Regional Development (98%), the Ministry of Ecology and Natural Resources of Ukraine (94%) performed very well in terms of implementing individual recommendations, while the Ministry of Economic Development and Trade remained flat at 88%.

At this background we record the poorest performance among state bodies, whom we addressed 30+ recommendations, for local councils, who only implemented 71% of recommendations in Q2 2019. This is 2 pp less than in the previous quarter.

## 2.2. Systemic issues identified

1

In the reporting quarter we received 2% less complaints from businesses than in Q1 2019. It was due to a decrease in the number of appeals on the majority of TOP-10 subjects: actions of law enforcers, the Ministry of Justice, state-owned companies, drafting legislation and customs issues. Only three blocks – tax issues, actions of state regulators and local councils – performed a growth in the number of appeals as compared to Q1 2019.

2

Tax issues (60% of total appeals) performed a 6% growth. This was mainly driven by an increase of complaints concerning tax invoice suspension, VAT electronic administration and other tax issues. With respect to tax invoice suspension, we noticed a change in the matter of appeals – since the first quarter of 2019 we have been receiving complaints regarding the SFS failure to comply with court decisions on registering specific tax invoices. The number of complaints on tax inspections slightly went down (-4%), but the financial impact for businesses from challenging the fiscal body conclusions was enormous – we helped companies to cancel fiscal fines and additional payments worth almost UAH 3 billion. Companies lodged less appeals concerning tax criminal cases and VAT refund, as well as termination of agreements on electronic reporting and termination of VAT payers' registration.

3

Complaints concerning state regulators (9% of total appeals) went up by 13%. Companies complained more about actions of the DABI (+400%) and the StateGeoCadastre (+33%). At the same time companies lodged less appeals regarding the AMCU and other state regulators.

4

Companies lodged more complaints (+24%) regarding actions of local councils (5% in total). In recent quarters the number of complaints regarding actions of local government authorities has gone up, that's why we decided to devote a separate section of the report to analysis of appeals on this subject.

## 5

With respect to actions of law enforcement bodies, the number of complaints against all law enforcers either decreased or remained stable in comparison with the previous period. In particular, companies reported fewer episodes of procedural abuse by law enforcement bodies. Businesses lodged less appeals with respect to the National Police. Notably, the number of complaints concerning initiated criminal cases against businesses and other malpractice of the National Police went down. We also received fewer complaints regarding actions of the State Security Service as compared to both Q1 2019 and Q2 2018. The number of complaints concerning the Prosecutor's Office remained stable from the previous quarter, but went down as compared to Q2 2018. Companies did not report corruption episodes of the Prosecutor's Office, but informed us more about new criminal cases, initiated against businesses.

## 6

Since May 2015 we have received 273 appeals concerning actions of local government authorities (LGAs), which is 5% of total complaints. The quarter of appeals regarding LGAs related to allocation of land plots. 20% of complaints was about the LGAs resistance to issuing rules and permits, required by the business. A significant share of 15% regarded LGAs delays in issuing permissions. Companies also complained about investment disputes with LGAs, temporary constructions dismantled upon the LGAs order, failure to fulfill financial obligations by LGAs – each category constitutes a share of 5%. Refusal to follow a court decision (4%) and breaking the procurement procedure (3%) were also among the common issues, faced by entrepreneurs when dealing with LGAs.

## 7

Among closed cases on LGAs a half was closed successfully with the desirable result for complainants. It is worth mentioning that this figure is rather low in the background of the average success rate of 67%. In terms of implementations of individual recommendations, the performance of local government authorities is also, unfortunately, below average – 71% vs 90%.

## Systemic recommendations implemented

### Main Problems Faced by Business in Customs Sphere

#### Issue

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

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

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

#### BOC's recommendation

To introduce amendments to the Procedure for Refund of Advance Payments (Prepayment) and Erroneously and/or Excessively Paid Amounts of Customs Duties, approved by the Order of the Ministry of Finance of Ukraine, dated July 18, 2017 No.643, which would enable a declarant to attach to the application for refund of erroneously and/or excessively paid amounts of customs duties a court

decision rendering illicit or acknowledging unlawful decision or actions at the part of SFS authorities that led to (resulted in, caused) erroneous and/ or excessive payment of customs duties (i.e., as an alternative to enforcement letter (writ) issued by a court and/or a court decision explicitly authorizing refund of certain amount of customs duties).

#### Actions taken by government agencies

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

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

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

"The following shall be attached to the application:

[...]

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

[...]"

## 2.3. New Systemic Report on Administrative Appeal Procedure in Ukraine

### "Administrative appeal: current state and recommendations"

- In Ukraine, government agencies generate a significant number of disputable decisions (actions, omission). Hence, the possibility of eliminating defects created by the state apparatus promptly and without excessive costs is vital for both businesses and the State. It thus makes administrative (internal) appeal – a topic of the Council's new Systemic Report – a rather urgent one.
- Despite skepticism of business towards this mechanism, it nonetheless appears to be quite popular among entrepreneurs as an alternative to a lawsuit. Having a choice between administrative and judicial appeal procedures, 73.3% of 344 of business representatives who participated in the Council's survey would lodge an administrative appeal first, and only 26.7% of respondents would immediately go to court.
- The Report commences with an overview of the current situation in this sphere, where: (i) the optional nature of the administrative appeal procedure in Ukraine is highlighted; (ii) reasons for low confidence of business in the administrative appeal procedure and inclination to seek judicial protection are analyzed; and (iii) differences in the degree of development of administrative appeals procedure in different spheres are described.
- A wide range of problems and suggestions for its resolution reflected in the Report were categorized based on their belonging to one of the general principles of administrative procedure, observance of which, in view of the Council, is the key to a high-quality administrative (internal) appeal procedure.
- Thus, in the context of implementation of **the principle of accessibility and (convenience)** the Council suggested, inter alia, to set forth in the legislation that an administrative act becomes effective not earlier than the term for lodging an administrative appeal expires or – when the administrative appeal procedure is started – not earlier than this procedure is complete (with possible exceptions due to protection of critically important public interests, when the administrative act comes into force immediately).
- For implementation of **neutrality (impartiality) principle**, it is suggested to establish the legal framework enabling delegation of powers to resolve administrative cases as well as encourage public authorities to set up the special appeal commissions.
- **The principle of openness and transparency** is suggested to be implemented through publication in open sources of decisions adopted upon completion of administrative appeal procedure (with data depersonalization).
- For implementation of **the principle of timeliness and reasonable terms** it is suggested, inter alia, to stipulate the rule on satisfying appeals against decisions (administrative acts) based on the "tacit consent" principle.
- **The principle of reasonableness, consistency, and systemic nature** is recommended to be implemented, for instance, by specifying the list of issues due to be scrutinized by the appeal authority while reviewing disputed decisions (actions, inactions).
- In the context of **the effectiveness principle**, the Council suggested to set proper key performance indicators (the "KPIs") for executive authorities, whose functions include consideration of appeals filed according to the administrative appeal procedure, which would foresee, inter alia, KPI "level of confirmation of decisions made by courts according to the administrative appeal procedure".

## 2.4. Summary of important investigations

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

### TAX ISSUES

#### Subject: Tax inspections

**Unprecedented: SFS drops fine worth UAH 2.3 bn for METRO**

**Subject of complaint:**

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

#### Complaint in brief:

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

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

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

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

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

## Actions taken:

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

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

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

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

## Result achieved:

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

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

**Subject: Tax inspections****SFS drops UAH 194 mn of additional payment for shopping center developer****Subject of complaint:**

The Main Department of the State Fiscal Service (MD SFS) in Kyiv city of the SFS of Ukraine

**Complaint in brief:**

A developer building a shopping center in Kyiv on the order of the international megastores network turned to the Council. The complainant disagreed with the tax audit findings, according to which it had to additionally pay almost UAH 200 mn. Having checked the company's compliance with tax legislation in 2011-2018, the supervisory authority concluded that the company inflated a tax credit under an investment agreement. The tax authority insisted the investment contract was a long-term one and, therefore, the tax credit for it should have been formed according to long-term contract rules.

The complainant disagreed with this position, so it turned to the Business Ombudsman Council for help.

**Actions taken:**

The Council's investigators carefully studied case materials and relevant legislation provisions. They found out investment agreement conditions clearly stipulated a step-by-step delivery of performed works and their phased financing, thus, for the purposes of VAT taxation, an investment contract cannot be considered as a long-term one and it was necessary to apply general rules for formation of tax liabilities and the tax credit before transactions taxation under it.

The Business Ombudsman Council upheld the company's position and recommended to drop tax notifications-decisions. In addition, the Council's investigator participated in the consideration of the developer's complaint at the SFS of Ukraine, during which he emphasized the legality of the tax credit formation regarding operations of step-by-step construction works performance.

**Result achieved:**

The SFS of Ukraine accepted the Council's arguments and dropped the additional payment worth UAH 194 mn. The complainant thanked the Council for facilitation in solving the case.

**Subject: Tax inspections**

**SFS drops additional payment worth around UAH 2 mn for asset management company**

**Subject of complaint:**

The State Fiscal Service (SFS)

## Complaint in brief:

An asset management company (AMC), the portfolio of which includes a number of investment funds (IFs) turned to the Council. One of these funds financed construction of a residential complex. Under the terms of previous sale contracts (preliminary contract), future apartment owners transferred their funds to IFs. In its turn, AMC committed to concluding basic contracts and transferring ownership to apartment buyers after construction was complete.

During the audit, the tax officers concluded that AMC must pay income tax on funds raised under preliminary agreements.

It should be noted that construction financing through the IFs and AMC is quite a common business model on the real estate market. In the framework of the investigation we did not analyze whether such a model was balanced in terms of risks allocation and ensuring investors' rights and were focused only on tax consequences of such transactions for AMC.

## Actions taken:

The investigator examined inspection materials and the Complainant's position. He found out that Tax Code indeed did not contain a provision clear enough as to whether AMC had to pay income tax on obtained funds under preliminary contracts or not. At the same time, the SFS provided several individual tax advice that such funds were exempt from corporate profit tax. According to the Council, any government agency should act as consistently and predictably as possible, as required, in particular, by clarifications provided earlier. The Council urged the SFS to apply the approach set out in individual advice on the same issue for other taxpayers to the Complainant. The Council's investigator participated in the complaint consideration and stressed the need to adhere to the principle of presumption of legality of the taxpayer's actions.

## Result achieved:

The tax authority dropped the additional payment worth around UAH 2 mn of income tax and scheduled a new inspection on this issue. The issue raised in the complaint is important for all real estate market players as the described business model is quite common. In the Council's view, the SFS approach to tax consequences of such transactions should be as consistent and predictable as possible as well as meet equality principle of taxpayers.

**Subject:** Tax inspections**SFS drops additional payment worth almost half a million hryvnias for enterprise from Winner Group of Companies****Subject of complaint:**

Main Department of the State Fiscal Service of Ukraine (MD SFS)

**Complaint in brief:**

An enterprise belonging to the Winner Group of Companies, which is, in particular, known as an official car importer of the leading world brands, turned to the Council. The company disagreed with the tax audit conclusions, according to which it had to pay fines worth almost half a million hryvnias.

In late 2018, the SFS audited the company's activities and found the taxpayer, when making an advance payment on income tax (when paying dividends), made a mistake in the treasury account number. The regional SFS department believed such a mistake caused an untimely tax liabilities payment.

The company challenged the tax authority decision and approached the Council for support.

**Actions taken:**

Having thoroughly studied case materials, the Council upheld the Complainant's position and asked the SFS in writing to comprehensively and impartially consider the complaint of the Winner company. In addition, the Council's team participated in the case consideration at the SFS.

**Result achieved:**

Having accepted the Council's arguments, the SFS satisfied the company's complaint and dropped the payment of UAH 471k. The Complainant thanked the Council for help: "We believe it was the Business Ombudsman Council involvement and the reasoned and impartial position that helped us to get a positive decision of the SFS". The case was closed successfully.

**Subject:** Tax inspections**SFS drops additional payment worth UAH 673k against company from Kharkiv Oblast****Subject of complaint:**

The Main Department of the State Fiscal Service of Ukraine in Kharkiv Oblast (SFS)

**Complaint in brief:**

The Council received a complaint from a Kharkiv-based manufacturing company. The Complainant disagreed with the tax audit findings according to which it had to additionally pay almost UAH 700k.

The SFS questioned the reality of transactions of the Complainant with one of the contractors. According to the tax authority, the counterparty had no technical capacity and sufficient personnel to unload the cars with rubble. In particular, the SFS calculated the contractor had only 10 employees, half of whom were women. In addition, the SFS pointed out the works were performed in Kharkiv Oblast, while the counterparty was registered in Odesa.

Disagreeing with the tax authority conclusions, the company appealed its decision and asked the Council for support.

## Actions taken:

Having carefully studied case materials, the Council upheld the Complainant's position and asked the SFS in writing to thoroughly and impartially consider the company's complaint. The investigator stressed it was not the Complainant that should defend itself but the supervisory authority had to prove violations based on facts from primary documents, reconciliations with the counterparty and examinations findings. In addition, the Council's investigator also presented the relevant judicial practice of the Supreme Court, which testified in favor of the Complainant.

Given the fact the tax authority findings were based only on assumptions, the Complainant was able to prove the reality of transactions of unloading cars with the rubble.

## Result achieved:

The SFS accepted the Complainant's and the Council's position that the tax authority negative information on the taxpayer could not be the ground for conclusions about fictitious nature of economic transactions. Additional VAT payment worth UAH 673k was canceled. The SFS emphasized in its decision that it was the supervisory authority obligation to prove the charge was lawful.

The Complainant thanked the Council for assistance. The case was closed successfully.

**Subject:** Tax other

### **The State Treasury repays debt worth UAH 6 mn to agricultural trader**

**Subject of complaint:**

General Directorate of the State Fiscal Service (GD SFS)

## Complaint in brief:

The Council received a complaint from an agricultural trader, to which the State Treasury did not repay the debt worth over UAH 6mn.

In September, Kyiv Court of Appeal ordered to charge a penalty worth over UAH 6 mn from the state budget in favor of the Complainant. This penalty related to 2012-2015 arrears for a VAT refund. However, even after the court ruling, the State Treasury continued ignoring the company's appeal. Having a successful experience in refunding UAH 20 mn of VAT with the Council's assistance in 2016, the Complainant asked the institution for help again.

## Actions taken:

The Council's investigator examined case materials and prepared arguments in support of the company. He asked the State Treasury in writing to comply with the court order and repay the debt to the Complainant.

## Result achieved:

With the Council's involvement, the case got underway. The state authority repaid the debt to the company in full. The case was closed successfully.

**Subject: Tax other****SFS drops additional payment worth UAH 635 mn against Philip Morris Ukraine****Subject of complaint:**

The State Fiscal Service of Ukraine (SFS)

**Complaint in brief:**

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

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

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

**Actions taken:**

The BOC upheld the company's position but it failed to convince the tax authority. Upon unsuccessful completion of the administrative appeal procedure in the SFS authorities, four Philip Morris companies raised the issue of violation of Ukraine's commitments under international agreements on international investments protection and sent a notification on the investment dispute to the Government of Ukraine.

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

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

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

**Result achieved:**

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

## CUSTOMS ISSUES

**Subject:** Customs valuation

**Kyiv Customs drops customs value adjustment for furniture company**

**Subject of complaint:**

Kyiv City Customs of the State Fiscal Service (Kyiv Customs)

### Complaint in brief:

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

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

### Actions taken:

The Council's investigator thoroughly examined the complaint materials and provisions of relevant legislation. The Council prepared a detailed analysis of circumstances of the case and provided its own arguments regarding the necessity to cancel Kyiv Customs decision on customs value adjustment. Apart from it, the Council backed up its position with the relevant case law in favor of the Complainant. The Council appealed to the supervisory authority with a request to ensure a full and impartial consideration of the Complainant's case taking into account the Council's arguments.

### Result achieved:

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

**Subject:** Customs clearance delay**The procedure for customs clearance of agrochemicals established****Subject of complaint:**

Kyiv Customs of the State Fiscal Service (Kyiv Customs)

**Complaint in brief:**

A private company selling crop-protecting agents from German manufacturer turned to the Council with a complaint about the actions of Kyiv Customs.

Kyiv Customs completely stopped customs clearance of the importer's cargoes, since incomplete information about the country of origin of the products was indicated in its certificates. It resulted in blocking operations and losses of the Complainant. Products worth over UAH 60 mn got stuck during customs clearance.

Disagreeing with the government agency actions, the company applied to the Business Ombudsman Council.

**Actions taken:**

To find out the reasons for customs clearance suspension the Council's investigator arranged a meeting with the participation of both the Complainant and Kyiv Customs top management. In addition, the BOC brought up the company's issue at the meeting with the Head of the Department of Environmental Safety and Permit Activity of the Ministry of Ecology and Natural Resources (Minecology).

**Result achieved:**

The Council contributed to establishing an effective dialogue between Kyiv Customs and Minecology. Following the meetings, the parties considered the problem and developed an action plan. To complete the customs clearance, they approved the procedure for amending the State Registration Certificate for pesticides and agrochemicals mentioning the manufacturing plants based on the relevant statements of the Complainant. The case was closed successfully.

**ACTIONS OF NATIONAL POLICE****Subject:** National Police procedural abuse**Woodworking equipment returned to Chinese investor****Subject of complaint:**

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

**Complaint in brief:**

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

The Complainant imported a woodworking equipment and component parts to it that it planned to use in production to Ukraine. There was a dispute with the customs authority regarding possible undervaluation of its value during customs clearance. Unfortunately, this dispute failed to be resolved amicably. The police launched criminal proceedings,

and within the framework thereof they seized the property. The Complainant's lawyer promptly turned to the investigating judge, and he, having assessed the lawyer's arguments, ordered the police to return the seized property.

And that's when a surprise was waiting for the importer. The police supported by the Prosecutor's Office refused to return the property. In the refusal the authorities referred to the judge's "wrong" decision and intended to challenge it in courts of higher instances. They also motivated their refusal by the fact that the seized property had the status of material evidence, therefore, allegedly it couldn't be returned to the owner. Finally, the last argument from law enforcers was that an expert examination of the property was being carried out. Having received such several refuses, the company asked the Council for assistance.

### Actions taken:

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

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

### Result achieved:

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

## ACTIONS OF PROSECUTOR'S OFFICE

### **Subject:** Prosecutors Office inactivity

**Law enforcers return seized property after almost two years of delay**

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

### Complaint in brief:

A company specializing in processing of fruits and vegetables turned to the Council with a complaint about omission of the PGO.

Charging the company with tax evasion, in April 2017 law enforcers searched the Complainant's offices and seized computer equipment and hard drives with information. This blocked the company's activities, of course.

A few months later, the court ruled in favor of the Complainant and ordered law enforcers to return the seized property. According to the law, a court ruling is mandatory for execution. However, when the PGO failed to comply with the court decision for over six months, the company applied to the Council for help.

### Actions taken:

The Council addressed the PGO in writing, stressing that the court decision was subject to mandatory implementation. The law enforcers said in reply they did not understand exactly how to do it and, therefore, only in March 2018 they turned to the court for clarification of the procedure for implementation of the decision.

The Council's investigator brought up the company's complaint for expert group consideration between the PGO and the BOC. However, PGO representatives insisted that they would be able to comply with the aforementioned ruling only after consideration of their appeal by the court. A court session on this matter was postponed several times, and only in December 2018 the court refused to give explanation to the PGO, since the court order clearly defined procedure for its implementation.

### Result achieved:

In February 2019, the Council turned to the PGO again and requested to comply with the court decision. In March 2019, the PGO complied with the court ruling issued back in August 2017. All the seized property was returned to the company. The Complainant thanked the Council for its continued support and assistance in resolving the case.

## ACTIONS OF STATE COMPANIES

**Subject:** State companies other actions

### AMCU cancels heat energy public procurement results

#### Subject of complaint:

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

### Complaint in brief:

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

According to the Complainant, it has been supplying thermal energy on a competitive basis to the SE since 2015, continuously and fully fulfilling its contractual obligations, even despite long delays in payment. In January 2019, the SE decided to hold a tender in the Prozorro system and change the energy supplier, which generally is not prohibited. However, in the conditions description the SE indicated there was no competition in this market, so the procurement could be made only in the form of the negotiating procedure with one supplier. The buyer chose a potential partner on its own – and it was not the Complainant.

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

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

### Actions taken:

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

### Result achieved:

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

## ACTIONS OF STATE REGULATORS

**Subject:** Other State regulators – AMCU

**BOC contributes to protection of economic competition**

**Subject of complaint:**

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

### Complaint in brief:

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

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

### Actions taken:

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

### Result achieved:

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

## ACTIONS OF LOCAL COUNCILS

**Subject:** Local government authorities – other

### Rubizhne City Council procurement results found unlawful

#### Subject of complaint:

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

### Complaint in brief:

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

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

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

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

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

### Actions taken:

The Council's investigator analyzed the circumstances of the case. He drew attention to the fact that use of negotiation procurement procedure in that case was premature because there is competition between heat suppliers on the heat supply market. The Supplier 2 also violated the law after it had been announced the winner. It did not produce heat independently, as stipulated by law, but only acted as an intermediary. It purchased heat from another company and resold it to a state customer. In addition, in accordance with the law, winter cold, which allegedly made the customer apply a negotiating procedure, was not a reason good enough.

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

## Result achieved:

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

### Subject: Local government authorities landplots

#### BOC successfully manages to get fair payment for lease of land

##### Subject of complaint:

Zaporizhzhia Oblast State Administration, Main Department of the State Geocadastre in Zaporizhzhia Oblast

## Complaint in brief:

A foreign company that planned to build a solar park in Zaporizhzhia Oblast approached the Council. The company complained against local authorities that violated the terms of the previous agreements reached within the framework of the international cooperation program and transferred the plot to another tenant.

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

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

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

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

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

## Actions taken:

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

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

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

## Result achieved:

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

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

**Subject: Local government authorities landplots****Kyiv Regional State Administration malpractice ceased****Subject of complaint:**

Kyiv Regional State Administration (RSA)

**Complaint in brief:**

A hydroelectric power plant developer in Kyiv Oblast complaining about RSA actions turned to the Council. According to the Complainant, Kyiv Regional State Administration delayed the approval of technical documentation submitted by it.

**Actions taken:**

The Deputy Business Ombudsman and the Council's investigator in charge personally met with RSA Deputy Head to discuss the Complaint. The Council drew the government agency's attention to delay in handling incoming Complainant's documentation. To follow-up the issue, after the meeting, the Council repeatedly orally communicated with two RSA deputies in charge for the land allocation and infrastructure. However, when it became clear there was no progress in the case, the investigator reported on the company's complaint to the Head of RSA.

Not having received a response in time, the Council addressed the Secretariat of the Cabinet of Ministers of Ukraine in writing, paying attention to shortcomings in the work of RSA.

**Result achieved:**

The appeal to the Cabinet of Ministers worked. A few days later a special meeting was held at RSA, where the Complainant's issue was discussed. RSA top management issued a corresponding order to the Administration Head. Technical documentation on land allocation for the hydroelectric power plant was approved. The Complainant thanked the Council for assistance in resolving the case.

**Subject: Local government authorities/municipalities land plots****Mykolaiv-based company manages to extend land plot lease term with the Council's facilitation****Subject of complaint:**

Mykolaiv Regional State Administration (Mykolaiv RSA)

**Complaint in brief:**

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

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

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

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

### Actions taken:

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

### Result achieved:

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

## MINISTRY OF JUSTICE

**Subject:** MinJust Enforcement Service

**Working meetings with government agencies is effective tool for solving cases**

**Subject of complaint:**

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

### Complaint in brief:

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

In late 2018, Zaporizhzhia Administrative Court ordered the State Tax Service to register the Complainant's tax invoices worth UAH 4.5 mn. The Complainant sent the corresponding writ of execution to the MinJust, however in a month upon the document receipt, the Enforcement Service refused the company because of failure to provide documents confirming powers of the signatory. Therefore, the Complainant prepared an additional set of documents and sent them to the MinJust. After a repeated application, another month passed, but no response was ever received by the company.

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

### Actions taken:

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

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

### Result achieved:

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

## NATURAL MONOPOLIES

**Subject:** Natural Monopolies market barriers/abuse of monopoly

**We call on public utility companies to draw clear invoices**

**Subject of complaint:**

Kryvbasvodokanal  
Municipal Enterprise,  
(Kryvbasvodokanal)

### Complaint in brief:

Freshteks-Ukraine Subsidiary Enterprise from Kryvyi Rih dealing with processing and coloring textile materials turned to the Council. According to the Complainant, Kryvbasvodokanal overstated it the payment for additional wastewater volumes disposal formed from precipitation and snowmelt.

The Complainant is a commercial consumer of Kryvbasvodokanal centralized water supply and sewage services. These services are provided under the contract and the relevant procedure approved by municipal council. Legislation provides the cases in which consumers have to pay for services not only from the centralized waste water disposal but from additional volumes of waste water formed from precipitation. For example, this rule works when the company owns a land plot or a building, precipitates from which is diverted to the municipal water pipeline.

Kryvbasvodokanal charged the complainant a fee for additional waste water disposal services, the amount of which varied from a few hryvnias to several thousand a month. At the same time, the regulation provides that the cost of services should be calculated based on the amount of precipitation in a particular month. That is, the larger the amount of precipitation, the bigger the amount should be in the invoice. However, as noted by the Complainant, the amounts due from Kryvbasvodokanal were not always correlated with the amount of precipitation in a given month.

The Complainant, disagreeing with the existing practice, appealed to the Council and asked for a transparent mechanism for charging payment for this category of waste water disposal.

### Actions taken:

The Council asked the National Commission for State Regulation of Energy and Public Utilities (NKREKP) and the Ministry of Regional Development, Construction and Housing (MinRegion) in writing to express their opinion. In addition, the Council's investigator repeatedly discussed the complaint with the said institutions. According to the NKREKP position, no violations of licensing

conditions for provision of related services in Kryvbasvodokanal actions were found. However, according to MinRegion, legislation in this area was outdated and needed improvement. In fact, imperfection of current legislation in this area allows services abuse by suppliers when calculating the cost value. Based on the collected information in the course of investigation the investigator came to the conclusion that this situation might be treated as violation of legislation on protection of economic competition, and recommended the Complainant to lodge the application with the Antimonopoly Committee of Ukraine (AMCU). The enterprise sent a corresponding complaint, the Council provided its position as well. Based on the filed complaint, the Antimonopoly Committee began collecting information on this issue.

### Result achieved:

After a fairly long correspondence with the AMCU the case on possible violation of the legislation on the protection of economic competition by Kryvbasvodokanal started to be considered. The Council hopes that consideration of this case by AMCU will facilitate a resolution of a systemic problem of water disposal from precipitation. This issue is topical not only for Kryvyi Rih but also for the rest of Ukraine's cities.



### 3. Cooperation with stakeholders

One of the Business Ombudsman Council's key goals is providing effective systemic communication of business with the authorities, government and local self-government agencies, as well as state-owned enterprises or authorities being subordinate to government agencies.

### 3.1. Cooperation with state bodies



The BOC has signed

# 9

Memoranda of  
Cooperation with

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

### Expert group meetings

Expert groups are a platform for open and transparent consideration of specific complaints, as well as improvement of the legislation that regulates entrepreneurial activity, and removal of obstacles to conducting business in Ukraine.

	Number of expert group meetings	Number of cases addressed
State Fiscal Service	12	114
Ministry of Ecology and Natural Resources	2	12
State Security Service	2	7
Prosecutor's Office*	1	6
National Police	1	13
Kyiv City State Administration	1	4
Ministry of Justice	1	3

\* This expert group works on an informal basis

### 3.2. Cooperation with the Ukrainian Network of Integrity and Compliance



Compliant companies should join together. To support this vision, in 2017, the Council, with the active support of the EBRD and the OECD, initiated the Ukrainian Network of Integrity and Compliance. With the companies that followed the idea and joined the network, we strive to radically change the culture of doing business and prove that working honestly and transparently is beneficial.

April 18, 2019

#### the Second Annual General Meeting of Members



100 participants

- representatives of businesses
- government agencies
- donor financed projects
- leading business associations

#### We raised a number of issues during the Meeting:



The role of business in implementing effective anti-corruption reforms in Ukraine efficiently



Importance of continuous communication about compliance benefits for businesses



Global compliance trends that impact compliance practice development in Ukraine.





20-24 May 2019

### the Business Integrity Week

A series of events was held in Kyiv and Lviv.

May 24, 2019

### "Integrity in What We Do"

Forum in Horishni Plavni, Poltava region.

### 3.3. Public outreach and communications

In Q2 2019, the Business Ombudsman Council launched a new awareness campaign called

# “ZmiNEW”

about the possibilities of doing business transparently.

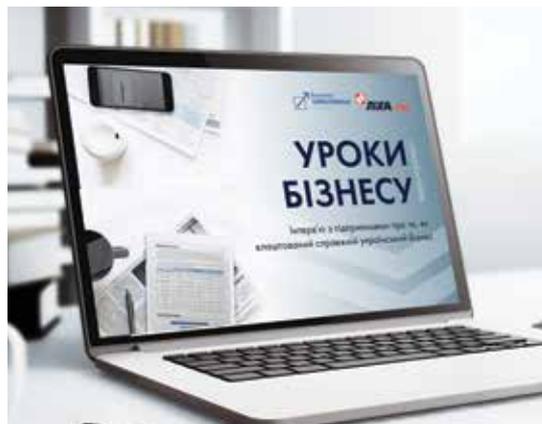
The Office set up a number of public projects together with its partners – leading Ukrainian media, key business associations, business schools and universities as well as government agencies.

The campaign has five components:

#### 1 Component one is realized together with LIGA.net media partner.

“Business Lessons” project involves a series of video interviews with the BOC’s complainants – famous top-managers and business owners.

Together with renowned journalists, the BOC draws attention to the issues of doing business in Ukraine and showcases the human stories smashing stereotypes about palm-greasing as the only way to succeed.



**Evgeny Shevchenko**, the CEO at Carlsberg Ukraine, was a hero of the first episode. The video got around 6000 views by the end of Q2. More episodes are to come out soon.



#### 2 Component two is aimed at cooperating with major business associations.

The BOC started in June with the American Chamber of Commerce launching a series of interactive seminars offering sound solutions to some of the acutest problems the business faces – searches, tax inspections and compliance.



Other business associations, members of the BOC’s Supervisory Board, are expected to join the initiative.

In Q2, we held a knowledge seminar “Searches and Law Enforcers: How Can the Business Ombudsman Council Help Your Business?”.

### 3 Component three is about dealing with business schools.

The BOC aims to hold a range of panel debates and workshops connecting entrepreneurs with state officials and shedding light on the most topical issues the BOC has raised in its systemic reports.

The BOC held the first workshop together with the International Institute of Management (MIM).



### 4 Component four is about driving change among youngsters through dealing with universities and youth organizations.

The focus here is to build a society of young and free individuals resilient to corruption by giving them more information on anticorruption practices.

The BOC started with a workshop for the students of Taras Shevchenko National University of Kyiv. We also showed the most active students around our office, got them acquainted with our team and the Business Ombudsman and offered mentorship.



### 5 Component five is about dealing with government agencies.

The BOC is holding a range of educational events for officials on how to best cooperate with the BOC to find efficient solutions to well-worn complaints from businesses.

The campaign seeks to educate the Ukrainian business community about the tools available to protect their lawful rights and promote a public service culture of openness, fairness and accountability.

The project is currently expanding and welcomes like-minded partners, who are ready to shape the future of Ukrainian business, to join in our "ZmiNEW" campaign.

## The media

Given the mission to protect legal rights of entrepreneurs and improve the business climate in Ukraine, we enjoy the willingness of journalists to communicate our work results. The level of legal expertise and the skill to convey the message through is also highly appraised by media channels – our experts are frequent authors at major online platforms, speakers at forums and seminars, guests in TV and radio studios.

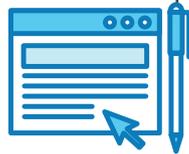


99% mentions being positive and constructive.

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

23500+

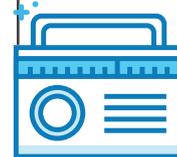
times



This quarter our interviews were published in the leading Ukrainian and international media:



TV and radio appearances



radio appearances (Radio Novoye Vremya) to mention a few.



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.

## Events

**03/04**

Meeting on the subject: "Has the Currency Liberalization of Ukraine Brought About a Free Movement of Funds from the EU?" organized by the Center for Economic Strategy and PwC

**05/04**

I Criminal Law Forum organized by Yuridicheskaya Praktika

**10/04**

VI International Tax Forum organized by Yuridicheskaya Praktika

**14-15/05**

Forum on Innovations in Anti-Corruption, organized by United Nations Development Programme – UNDP, Uzbekistan

**15/05**

Kyiv Law&Trade Forum, organized by Ukrainian Advocates' Association (UAA)

**15/05**

Round table on: "Completion of the Transition Period for Limited Liability Companies" organized by Dictum Law Firm and the Committee for Small and Medium Businesses at the Chamber of Commerce and Industry of Ukraine.

**16/05**

IV Forum on Business Protection organized by Yuridicheskaya Praktika

**17/05**

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

**21/05**

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

**25/05**

"Legal Business for Young" conference organized by the Coordinating Council of Young Lawyers of Ukraine

**29/05**

V Ukrainian Antitrust Forum organized by Yuridicheskaya Praktika

**31/05**

V International forum: "Transfer Pricing and International Tax Planning 2019" organized by International Fiscal Association, Pricing Transfer School and EUCON Legal Group

**07/06**

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

**10/06**

Meeting of the management of the Business Ombudsman Council, the Union of Ukrainian Entrepreneurs, European Business Association and American Chamber of Commerce in Ukraine with the leadership of the State Security Service of Ukraine (SSU)

**13/06**

Conference: "Business and Conflicts 2019" organized by the Association of Ukrainian Corporate Security Professionals

**13/06**

Consular Conference organized by the German Embassy

**21/06**

Meeting with the President and Foreign Business, organized by Administration of the President of Ukraine



## Social media

### What we do in social media:

Showcase successful stories. Take lessons from unsuccessful ones.



Communicate systemic business issues. Suggest possible solutions.



Post important news. Share thoughts and views.



Produce our own content. Capture videos.



Visualize things, prefer infographics.



Share our articles, columns and other useful content.



Announce our events, livestream them.



Communicate with followers, swiftly respond to their questions.



@BusinessOmbudsmanUkraine



@Рада бізнес-омбудсмена



@Business Ombudsman Council



@business\_ombudsman\_council



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