

REPORT

QUARTER III
2018

01 July – 30 September

REPORT FOCUS

Analysis
of complaints from
small/medium
and large business





BUSINESS OMBUDSMAN COUNCIL

www.boi.org.ua

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

FOREWORD OF THE BUSINESS OMBUDSMAN



Dear Friends, Colleagues,
and Partners,

It is my pleasure to present the Business Ombudsman Council's report for Quarter III 2018.

In the reporting quarter we received 308 appeals, which is 25% less than in Q2 2018. It is noteworthy that the number of complaints has been declining for the third consecutive quarter. This is mainly driven by a further decrease in the number of complaints regarding tax invoice suspension, which obviously indicates improvements in the work of system for their automatic registration.

It is worth mentioning that the number of appeals referring to other key subjects has also reduced. Complaints concerning tax inspections dropped down by almost one third as compared to Q2 2018. Entrepreneurs lodged less complaints against actions of law enforcement bodies. However, this decrease mainly refers to their inactivity, while as for the most pressing issues – procedural abuse and initiated criminal cases – we observed an increase in the number of appeals. Acknowledging evident progress, with respect to fiscal and law enforcement bodies, we still see considerable scope for improvement in their operational processes.

Remarkably, in the reporting quarter we received only 50 complaints from foreign companies, which is the lowest figure in the past two years.

A special theme related to peculiarities of complaints lodged by small/medium enterprises vs large companies was selected for this report. Although the general pattern tends to be the same, there are some interesting distinctions, we would like to pay your attention to.

By the end of the reporting quarter, state bodies implemented 93% of our recommendations. The level of complainants' satisfaction with our cooperation reached 95%. The direct financial impact of Q3 2018 amounts to UAH 390 mn. Apart from it, we ceased dozens of malpractices by state bodies, helped complainants submit dozens of tax reports and obtain permits.

We are pleased to highlight some systemic wins that occurred in Q3 2018. The Verkhovna Rada adopted the law (known as #MaskShowStop2) expanding mechanisms for challenging illicit actions or inactions on the part of law enforcers and bringing them to personal liability. Besides, as recommended in our systemic report on raidership, due to software/technical changes implemented by the Ministry of Justice, state

registrars are no longer able to carry out registration actions with immovable property with the breach of territoriality rules. And last but not least – the law introducing a “single window” approach to customs clearance has become effective, – thus ensuring fulfillment of the respective recommendations set forth in our systemic reports on international trade and customs.

To enhance cooperation with regional enterprises we visited eight Ukrainian cities in a series of events, initiated by the Ukrainian Network of Integrity and Compliance. Since transparent companies are much easier to advocate, we presented our best practices and encouraged companies to improve their level of compliance and hence grow immunity to corruption.

The third quarter of 2018 ends up with almost 4500 of complaints from various businesses doing business in Ukraine. Realizing that we have already done a lot, we would like to be even more effective with new opportunities, envisaged in the Law on the Business Ombudsman Institution. We believe that its adoption would strengthen our capacity in protecting legal rights of our complainants.



Sincerely,
Algirdas Šemeta
Business Ombudsman

Q3 2018 AT A GLANCE

UAH
390 mn

direct financial
impact

308
complaints received

303
cases
closed

95%
of complainants

are satisfied
with working
with the BOC

93%
of recommendations
to state bodies
implemented

TOP-5 SUBJECTS OF COMPLAINTS



TOP-5 INDUSTRIES



25%
Wholesale
and Distribution



12%
Manufacturing



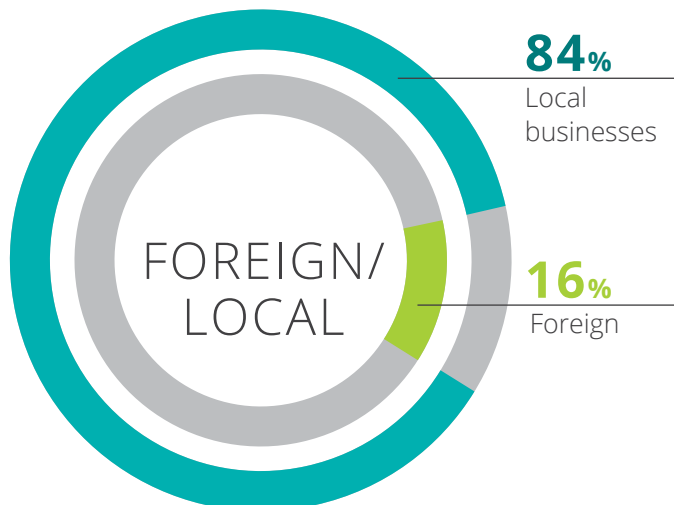
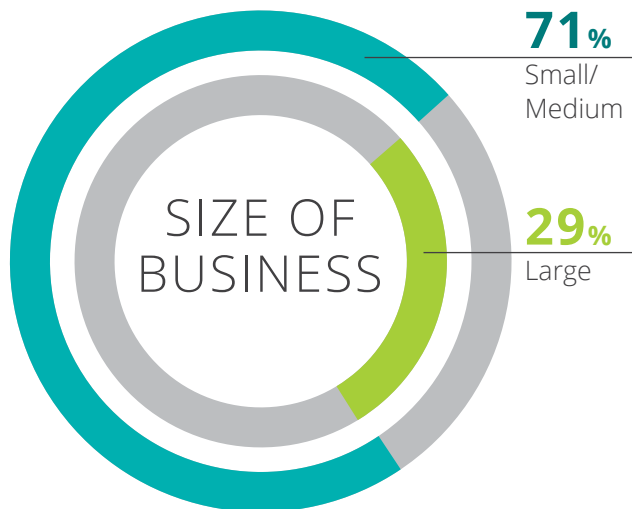
9%
Agriculture
and Mining



9%
Individual
Entrepreneurs



7%
Real Estate
and Construction



TOP-5 MOST ACTIVE REGIONS

37% Kyiv
9% Odesa oblast
8% Dnipropetrovsk oblast
8% Kharkiv oblast
6% Kyiv oblast

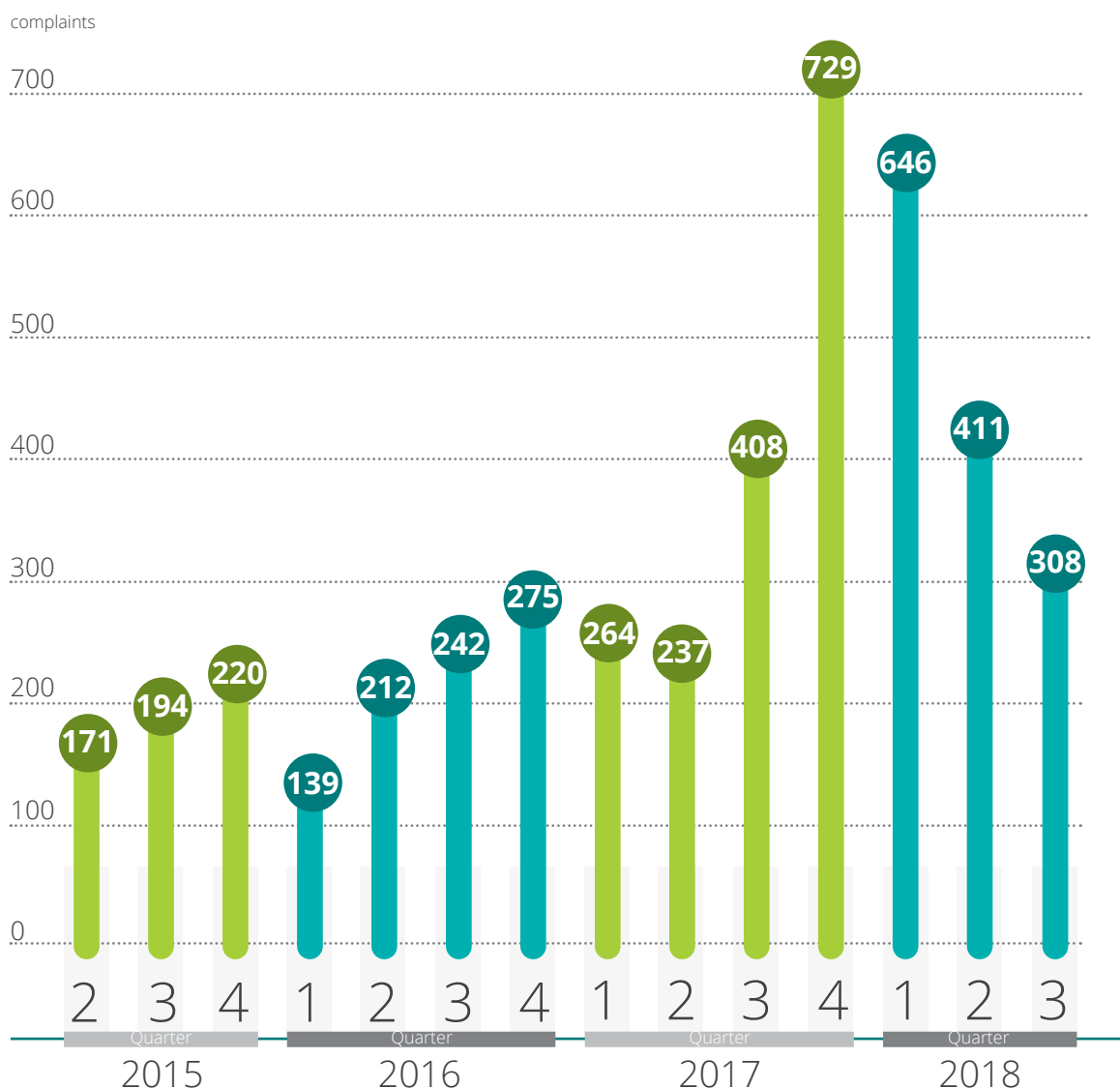


1. COMPLAINTS' TRENDS

1.1. Volume and nature of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

In the reporting period the Business Ombudsman Council received 308 complaints. This is almost quarter less than in both Q2 2018 and Q3 2017.



Total number of complaints received since launch of operations in May 2015:

4457

TOP-10

SUBJECTS OF COMPLAINTS IN Q3 2018

	Q3 2018	Q2 2018, % change	Q3 2017, % change
Tax issues	147	-42%	-42%
VAT invoice suspension	51	-56%	-69%
Tax inspections	45	-27%	36%
Tax criminal cases	14	17%	56%
VAT refund	9	80%	13%
VAT electronic administration	6	-60%	-50%
Tax termination of agreement on recognition of electronic reporting	0	-100%	-100%
Tax termination/renewal/refusal of VAT payers registration	0	-100%	-
Tax other	22	-41%	16%
Prosecutor's Office Actions	28	12%	56%
Prosecutor's Office procedural abuse	17	21%	240%
Prosecutor's Office criminal case initiated	8	60%	167%
Prosecutor's Office corruption allegations	0	-100%	-100%
Prosecutor's Office inactivity	0	-100%	-100%
Prosecutor's Office other	3	50%	50%
Actions of State Regulators	25	-14%	-24%
Other state regulators AMCU	2	-	100%
Other state regulators StateGeoCadastre	2	100%	-
Other state regulators DABI	1	-50%	0%
Other state regulators	20	-23%	-35%
National Police Actions	23	-28%	28%
National Police procedural abuse	9	0%	0%
National Police criminal case initiated	3	50%	-25%
National Police corruption allegations		-100%	-
National Police inactivity	5	-69%	0%
National Police other	6	100%	-

	Q3 2018	Q2 2018, % change	Q3 2017, % change
Actions of Local Councils/Municipalities	18	20%	-25%
Local councils/municipalities land plots	0	-100%	-100%
Local councils/municipalities rules and permits	6	20%	100%
Local councils/municipalities investment disputes	0	-	-100%
Local councils/municipalities other	12	71%	-20%
Legislation drafts/amendments	10	11%	11%
Legislation drafts/amendments		-	-100%
Deficiencies in regulatory framework tax	1	-75%	-50%
Deficiencies in regulatory framework state regulators	4	0%	33%
Deficiencies in regulatory framework other	5	400%	67%
Customs issues	10	25%	-9%
Customs valuation	1	-50%	-50%
Customs criminal proceedings	0	-	-100%
Customs clearance delay/refusal	2	0%	100%
Customs overpaid customs duties refund	2	100%	0%
Customs other	5	67%	0%
Ministry of Justice actions	10	25%	-9%
MinJustice Enforcement Service	4	0%	-43%
MinJustice Registration Service	6	50%	50%
State Security Service Actions	8	-11%	-43%
State Security Service procedural abuse	6	20%	20%
State Security Service criminal case initiated	2	-50%	-33%
State Security Service corruption allegations	0	-	-100%
State Security Service other	0	-	-100%
Actions of state companies	7	75%	0%
State companies other	7	75%	0%

In Q3 2018 a downwards trend of received complaints, observed in previous two quarters, continued. In total, the number of appeals decreased by 25% from the previous quarter. But the decline was not proportional – some noteworthy tendencies in the pattern of complaints have been observed.

TAX ISSUES

01

The share of this block dropped by 14pp from the previous quarter and now amounts to 48%. The BOC received 42% less appeals on tax issues as compared to both Q2 2018 and Q3 2017. This mainly caused the drop in the total number of appeals.

02

Entrepreneurs submitted 56% less complaints regarding tax invoice suspension in comparison with Q2 and 69% less in comparison with Q3 2017. This testifies that on the whole the system of tax invoice automatic registration is working properly.

03

The number of complaints concerning tax inspections decreased by 27% in comparison with Q2 2018. Still, this is over one third more than in Q3 2017.

04

A decrease in the number of appeals concerning VAT electronic administration is also observed – half less than in both previous quarter and the same reporting period of 2017.

05

Meanwhile, businesses lodged more complaints regarding tax criminal cases and VAT refund. This applies to both Q2 2018 and Q3 2017.



LAW ENFORCEMENT BODIES

01

One reached an unprecedented share of 19%, which is +3pp from the previous period. Entrepreneurs submitted more complaints regarding the Prosecutor's Office. This was driven mainly by the increase in the number of appeals concerning the agency's procedural abuse and initiated criminal cases.

02

The BOC received less complaints as for the State Security Service: -11% and -43% as compared to Q2 2018 and Q3 2018 respectively.

03

The number of appeals regarding the National Police dropped by almost one third in comparison with Q2 2018, but was higher by the same figure in comparison with Q3 2018.

STATE REGULATORS

01

This block share increased by 1pp from Q2 2018 and now amounts to 8%. Although, the number of appeals concerning these state bodies decreased as compared to both previous quarter and the same reporting period of 2017.

OTHER SUBJECTS

01

Interestingly, in comparison with Q2 2018 there was a growth in the number of complaints by the rest of subjects in TOP-10 categories: local councils +20%, drafting legislations +11%, customs issues +25%, Ministry of Justice +25%, state companies +75%.

1.2. Timelines of the preliminary review of complaints

(Clause 5.3.1 (b) of Rules of Procedure)

The average time for preliminary review of a complaint:

9.8
working
days

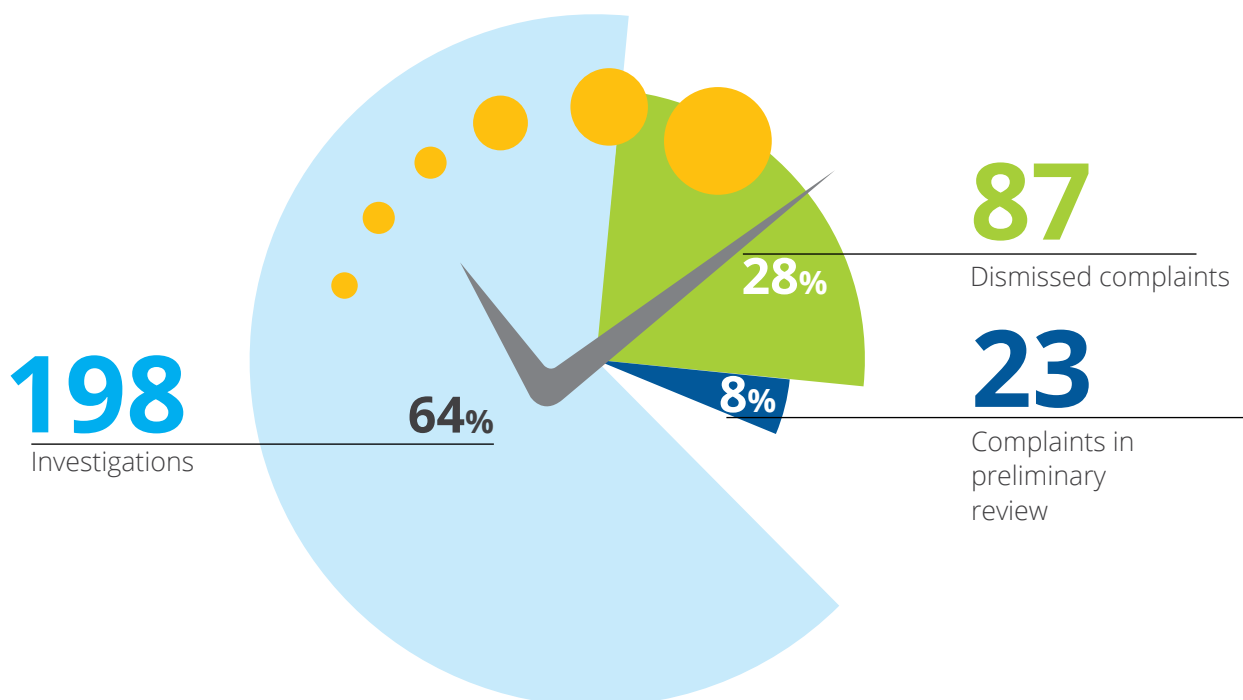
For reference – according to the BOC Rules of Procedure, the average time for preliminary review should not exceed

10
working
days



1.3. Number of investigations conducted and grounds for declining complaints

(Clause 5.3.1 (c) of Rules of Procedure)

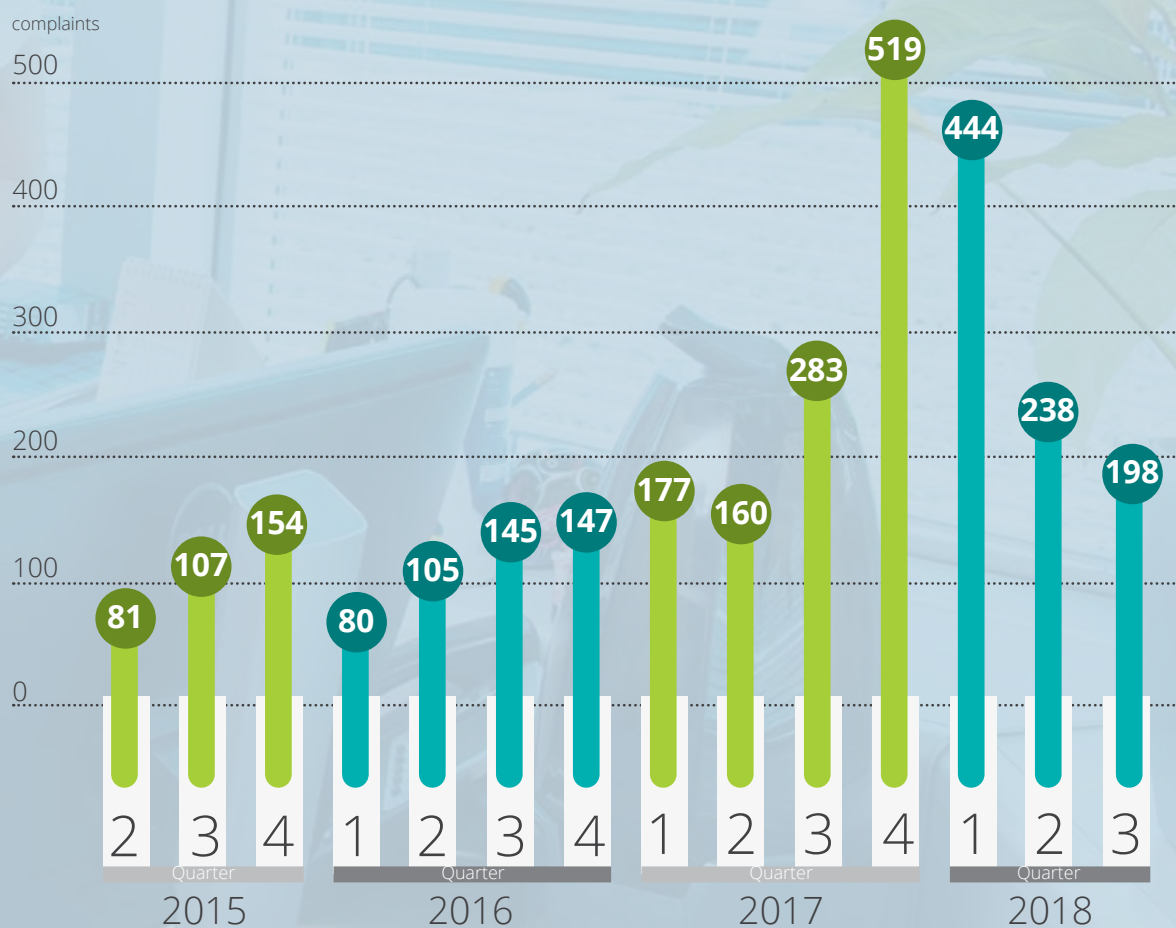






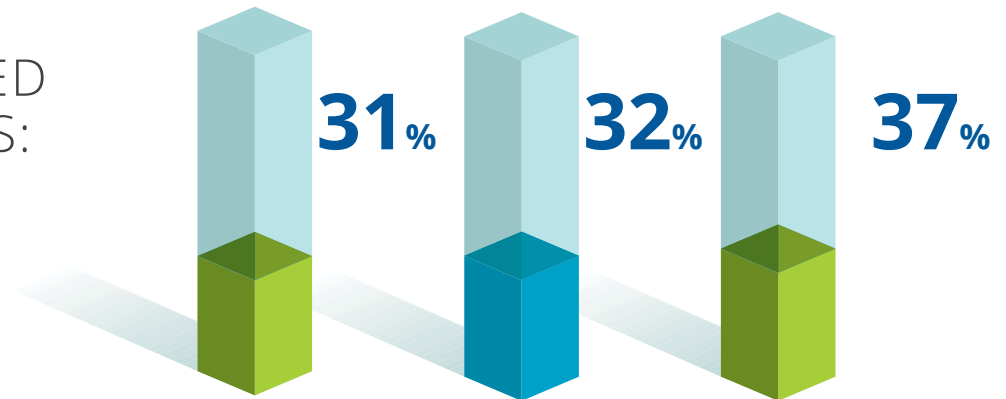
NUMBER OF INITIATED INVESTIGATIONS:

Taking into account a decreased number of received complaints, in the reporting quarter the BOC initiated 17% less investigations than in Q2 2018 and 30% less than in Q3 2017.

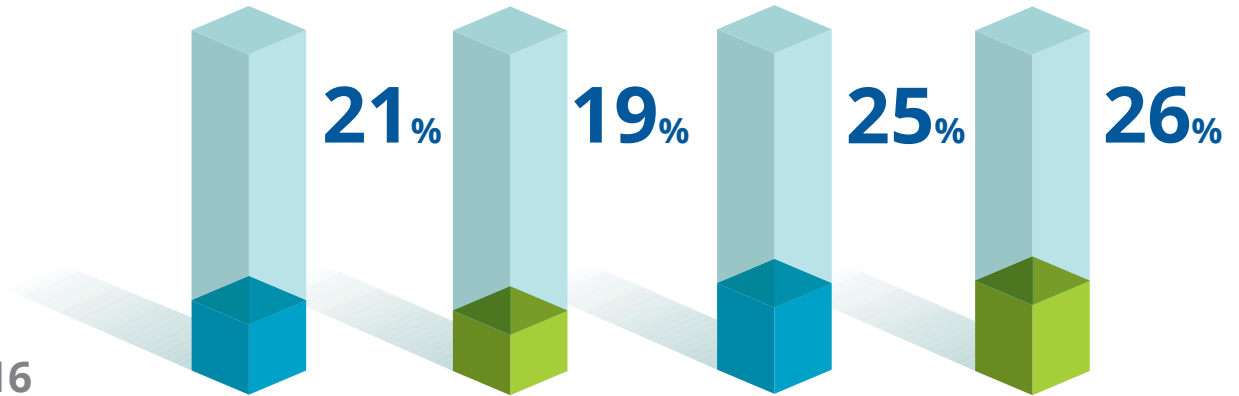


RATIO OF DISMISSED COMPLAINTS:

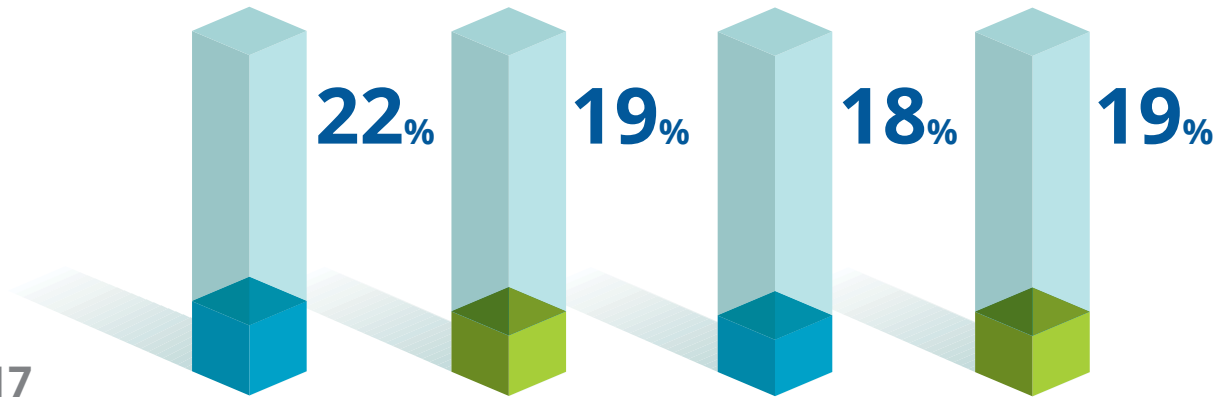
2015



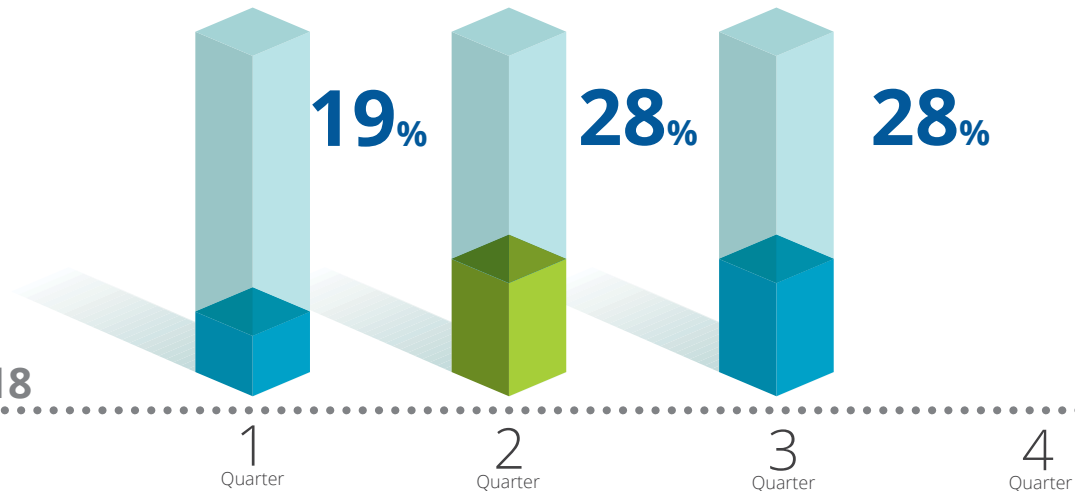
2016



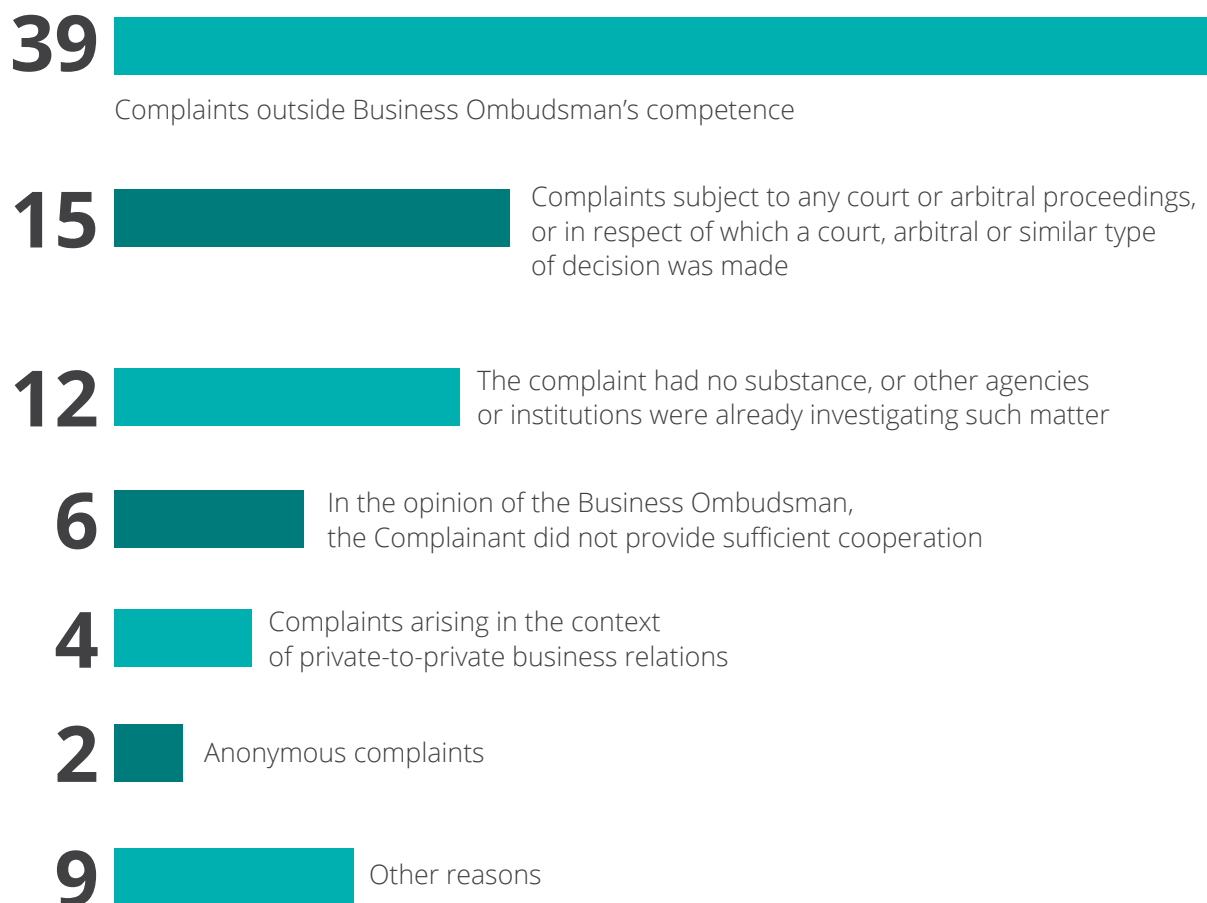
2017



2018



MAIN REASONS FOR COMPLAINTS' DISMISSAL IN QUARTER III 2018



The most widespread
reason

45%

for complaints
dismissal – they
were outside of the
Business Ombudsman's
competence

Were also typical

active court
proceedings

17%

absence
of substance

14%

1.4. Timelines of conducting investigations

(Clause 5.3.1 (d) of Rules of Procedure)

In the reporting
quarter, the BOC
closed

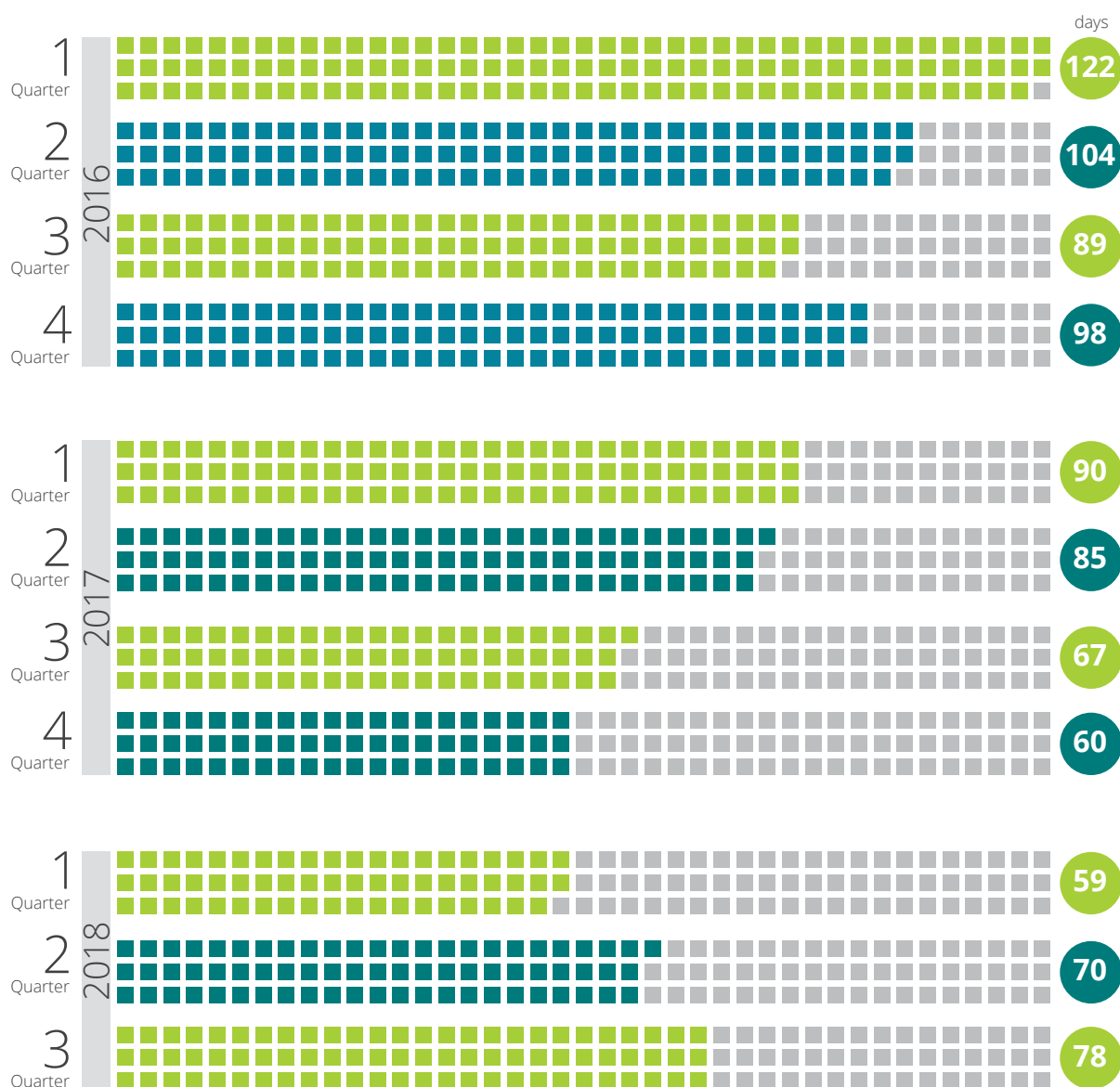
303
cases

Average time for
conducting these
303 investigations:

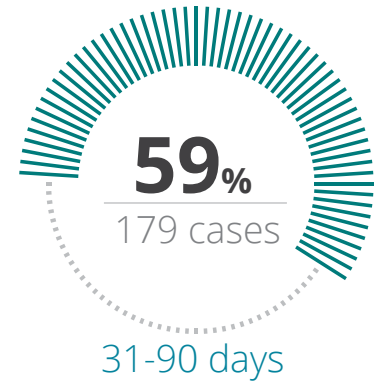
78
days

In Q3 2018, the BOC perfectly fit its Rules of Procedure's average investigation duration of 90 days.

AVERAGE TIME FOR CONDUCTING INVESTIGATIONS SINCE 2016:



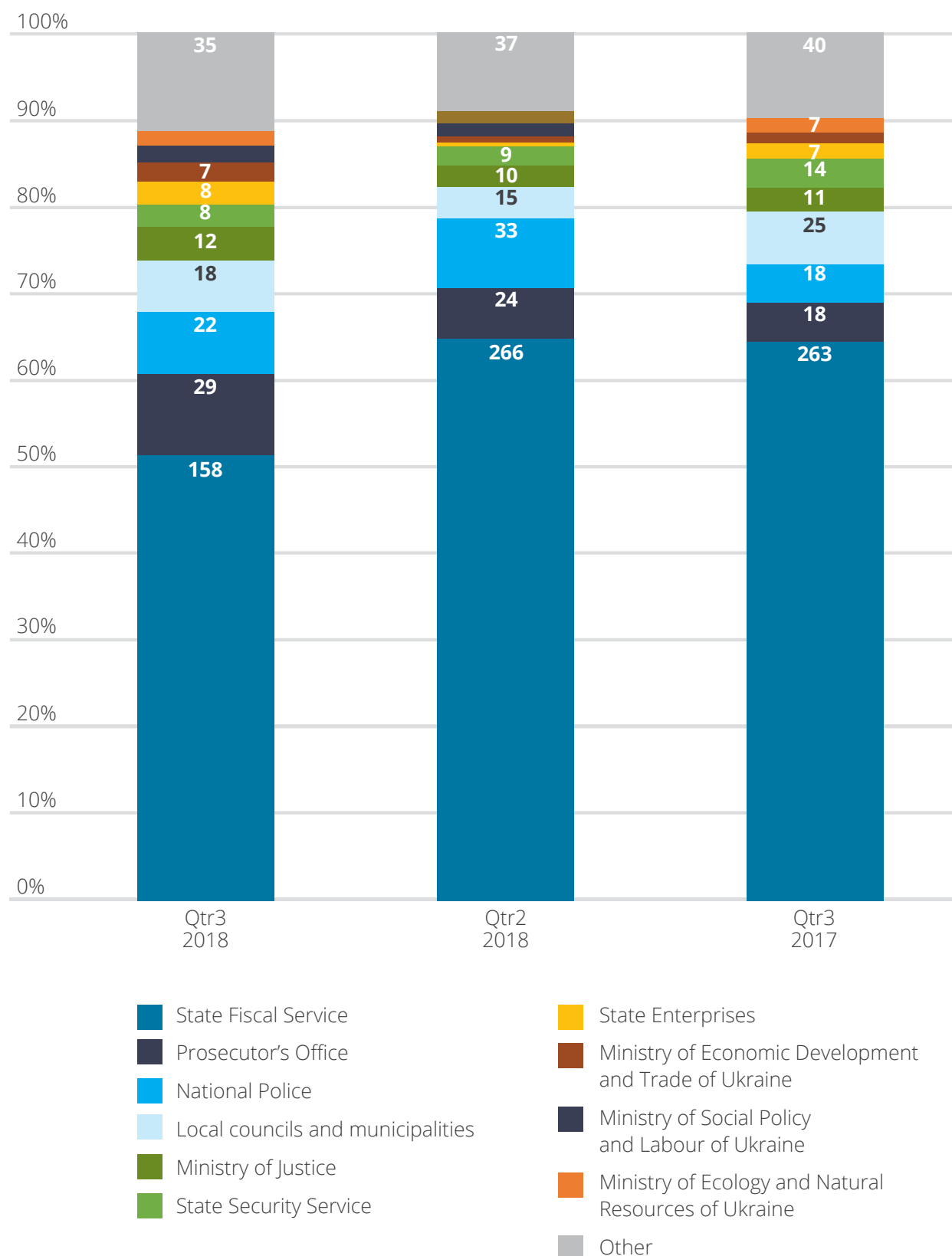
RATIO
OF CLOSED
CASES
BY DAYS:



The biggest part of cases – 227, which is 75% of all closed investigations in Quarter III – was conducted within 90 days as the Rules of Procedure envisage. Circa 3% took over 180 days to investigate.

1.5. Government agencies subject to the most complaints

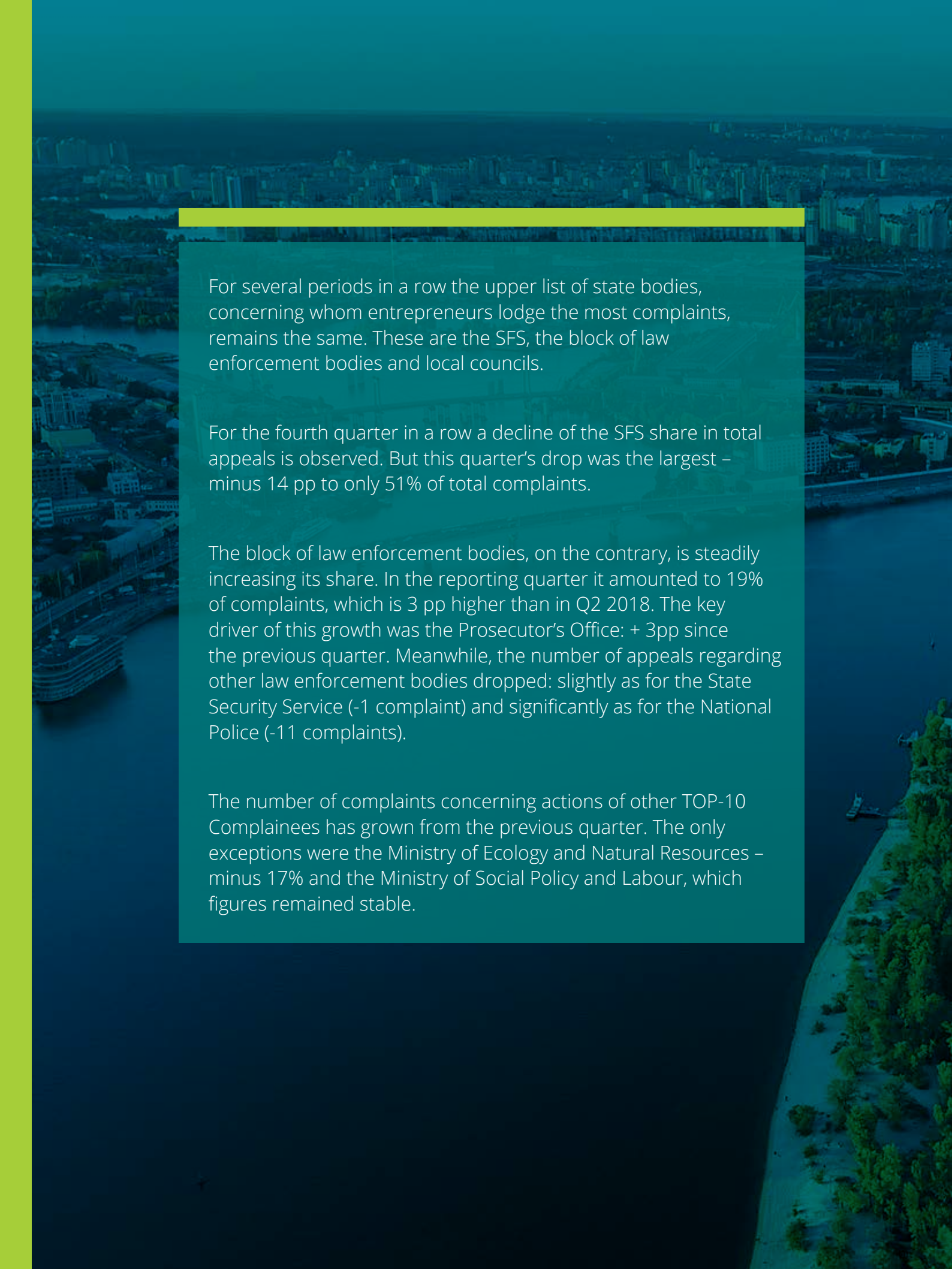
TOP-10 GOVERNMENT AGENCIES SUBJECT TO THE MOST COMPLAINTS



OTHER COMPLAINNEES INCLUDE:

Parliament, the Cabinet of Ministers, the President of Ukraine	4
Ministry of Regional Development	4
State Funds	3
Ministry of Finance of Ukraine	3
National Commission for State Regulation of Energy and Public Utilities	3
Ministry of Infrastructure of Ukraine	2
State Regulatory Service of Ukraine	2
State Forest Resources Agency of Ukraine	1
Ministry of Health of Ukraine	1
Antimonopoly Committee of Ukraine	1
Ministry of Agrarian Policy and Food of Ukraine	1
Other	10
Total	35



An aerial photograph of a city, likely St. Petersburg, Russia, showing a wide river (the Neva) and numerous high-rise apartment buildings. A solid yellow horizontal bar is positioned at the top of the image. A semi-transparent teal rectangle is overlaid on the right side, containing white text.

For several periods in a row the upper list of state bodies, concerning whom entrepreneurs lodge the most complaints, remains the same. These are the SFS, the block of law enforcement bodies and local councils.

For the fourth quarter in a row a decline of the SFS share in total appeals is observed. But this quarter's drop was the largest – minus 14 pp to only 51% of total complaints.

The block of law enforcement bodies, on the contrary, is steadily increasing its share. In the reporting quarter it amounted to 19% of complaints, which is 3 pp higher than in Q2 2018. The key driver of this growth was the Prosecutor's Office: + 3pp since the previous quarter. Meanwhile, the number of appeals regarding other law enforcement bodies dropped: slightly as for the State Security Service (-1 complaint) and significantly as for the National Police (-11 complaints).

The number of complaints concerning actions of other TOP-10 Complainees has grown from the previous quarter. The only exceptions were the Ministry of Ecology and Natural Resources – minus 17% and the Ministry of Social Policy and Labour, which figures remained stable.

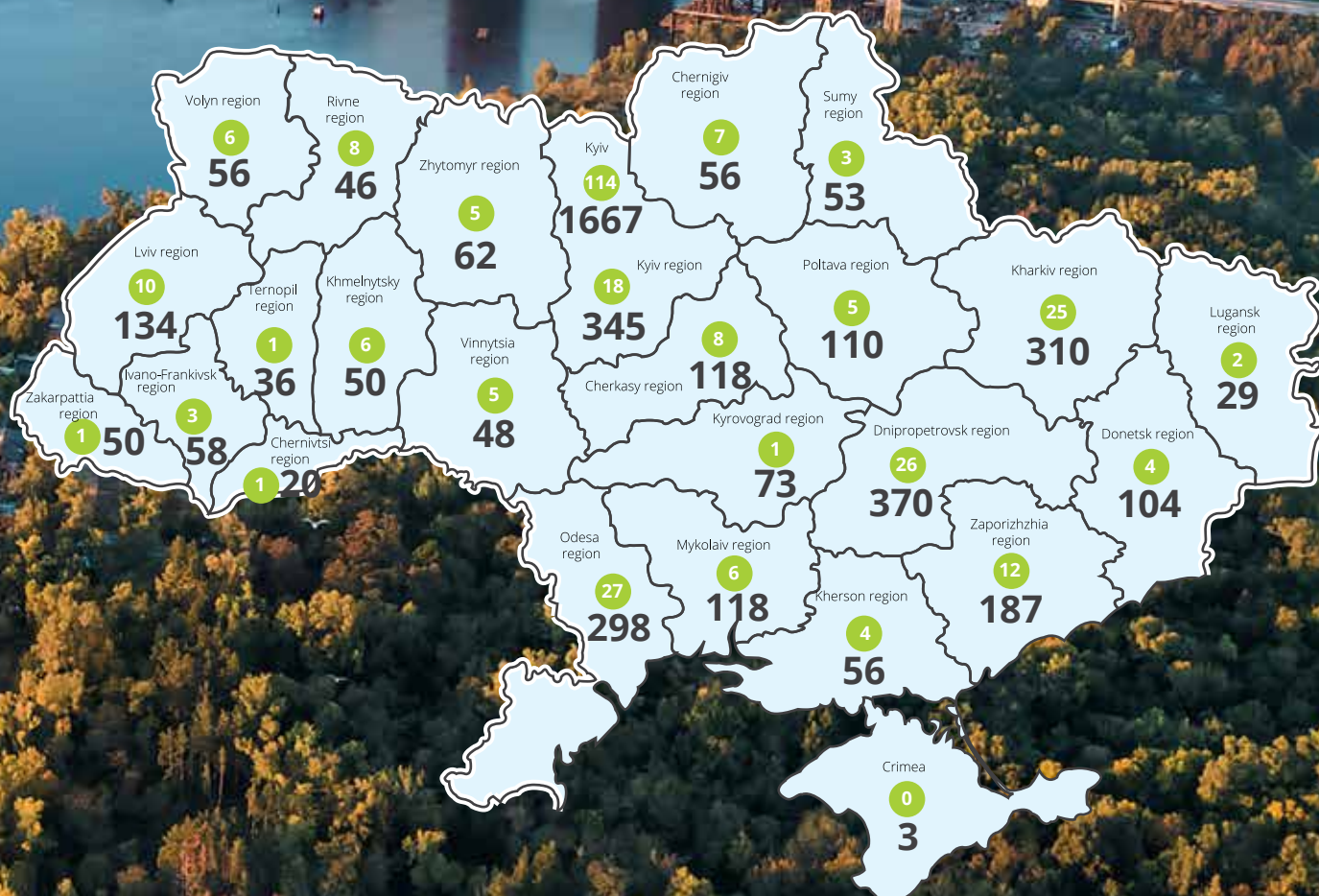
1.6. Geographical distribution of complaints received

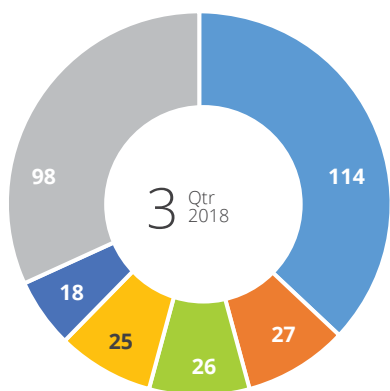
Quarter 3, 2018

308

Grand Total

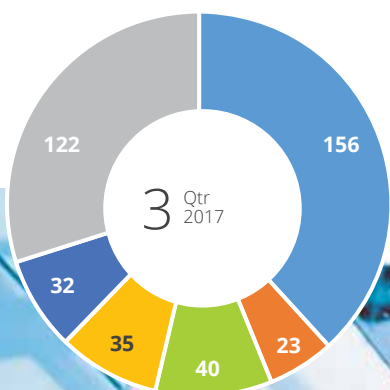
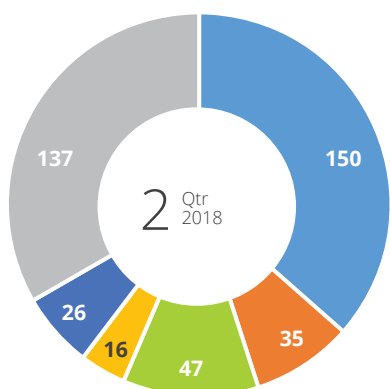
4457





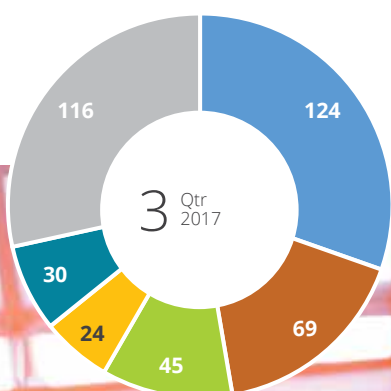
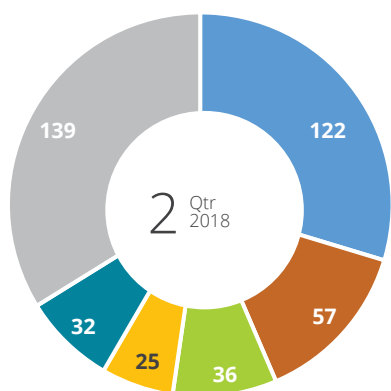
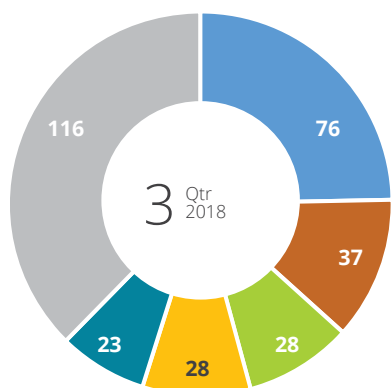
TOP-5 REGION

- Kyiv
- Odesa region
- Dnipropetrovsk region
- Kharkiv region
- Kyiv region
- Other



From quarter to quarter, an established list of most active regions is observed. Among them are the City of Kyiv, Odesa, Dnipropetrovsk, Kharkiv and Kyiv Oblasts. In quantitative terms the BOC received less complains from all regions. The only exception was Kharkiv, which performed +56% growth as compared to the previous quarter, and hence gained 4pp in total regional structure.

1.7. Complainants' portrait



TOP-5 COMPLAINANTS' INDUSTRIES

- Wholesale and Distribution
- Manufacturing
- Agriculture and Mining
- Individual Entrepreneur
- Real Estate and Construction
- Other

Complaints were coming predominantly from wholesalers and distributors, manufacturers, agriculture and mining, real estate and construction, as well as individual entrepreneurs. There was a decrease in the number of complaints from all the abovementioned industries, except for individuals. The sharpest drop is recorded for wholesale and distribution – 38% less as compared to Q2 2018, which stands for 5pp share drop.

OTHER INDUSTRIES:

Retail

16

Physical Person

13

Auto transport

5

Financial Services

5

Repair and Maintenance
Services

4

Advertising

4

Fishing services

4

Health, Pharmaceuticals,
and Biotech

4

Restaurant business

4

Scientific research and
development

4

Activities in the field of
culture and sports, recreation
and entertainment

3

Engineering, geology
and geodesy areas activity

3

Farming

3

Processing Industry

3

Public Organizations

3

Telecommunications

3

Transportation and Storage

3

Consulting

2

Electric installation works

2

Insurance

2

IT companies

2

Maintenance of buildings
and territories

2

Private security firms activity

2

Wastes collection and
disposal

2

Accommodation services

1

Activities in the field
of employment

1

Activity in the field of law

1

Air Transport

1

Computer and Electronics

1

Conferences and trade
exhibitions organizing

1

Education

1

Supply of electricity, gas,
hot water, steam and air
conditioning

1

Forestry and logging

1

Ground and pipeline
transport

1

State Enterprise

1

Energy and Utilities

1

Technical testing and research

1

Warehousing

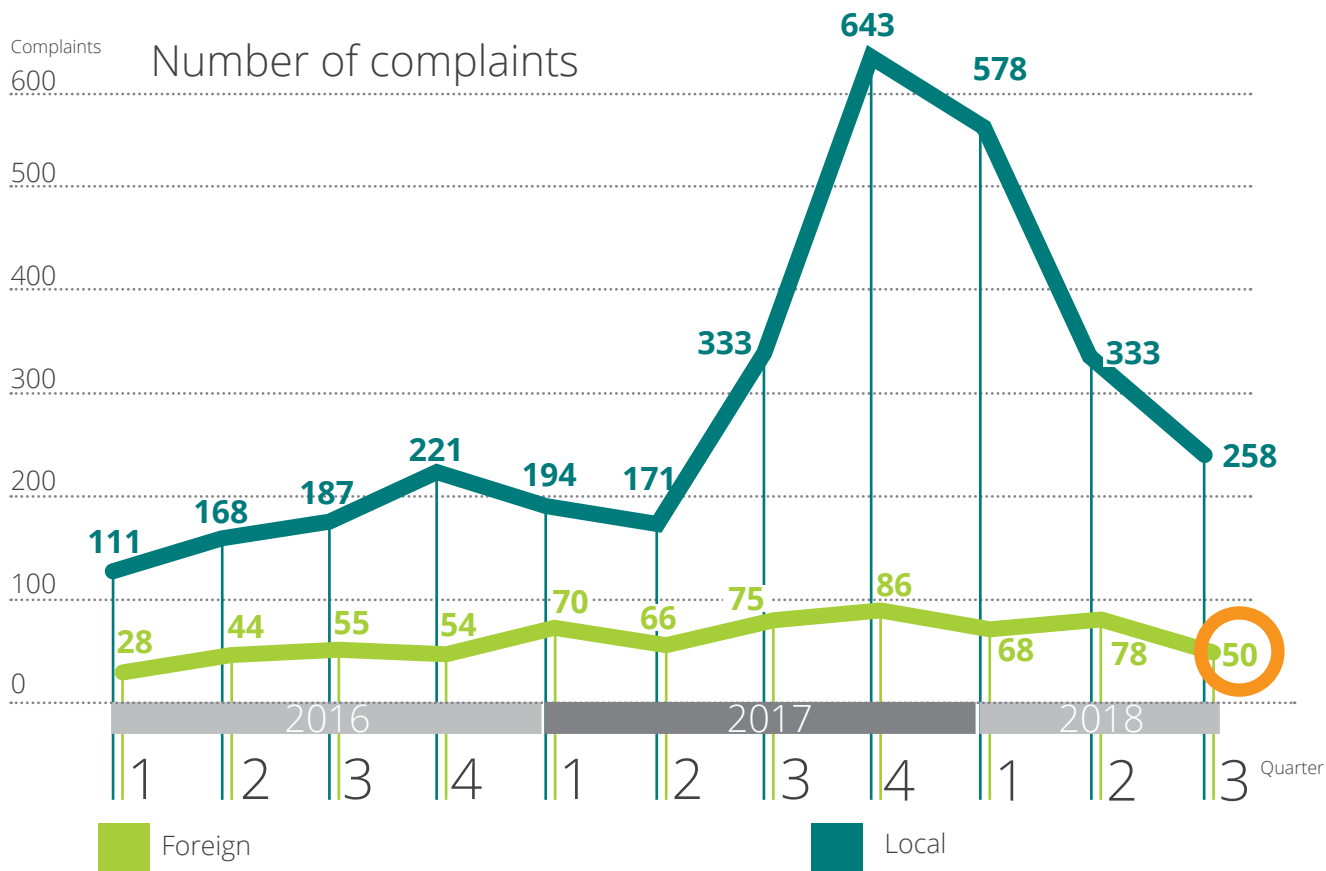
1

Other

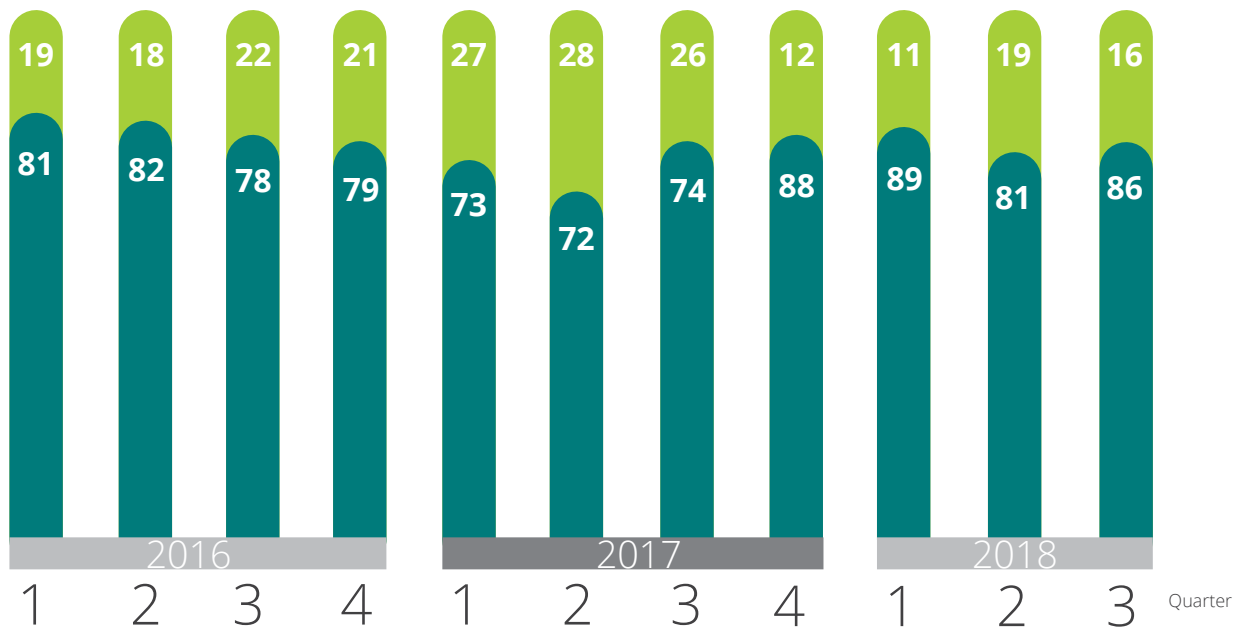
4



LOCAL VS FOREIGN COMPLAINANTS



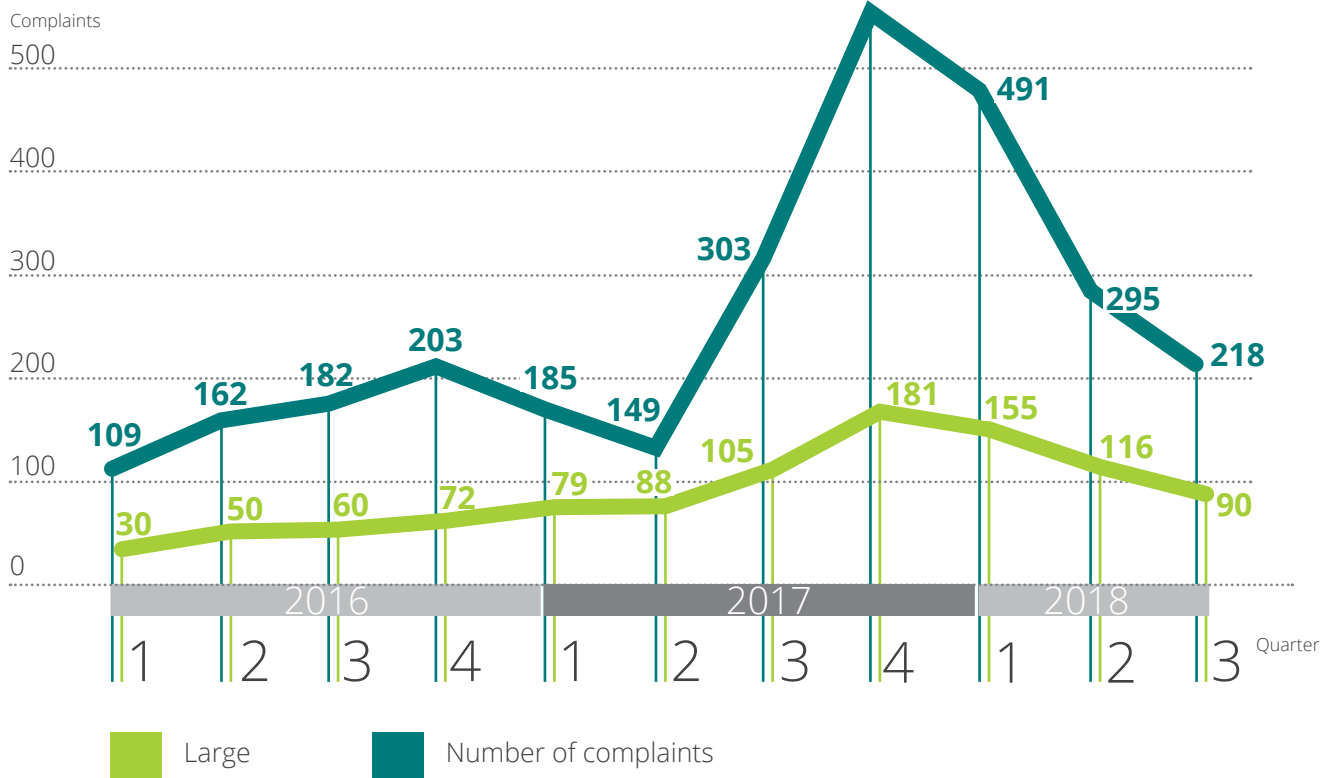
Structure



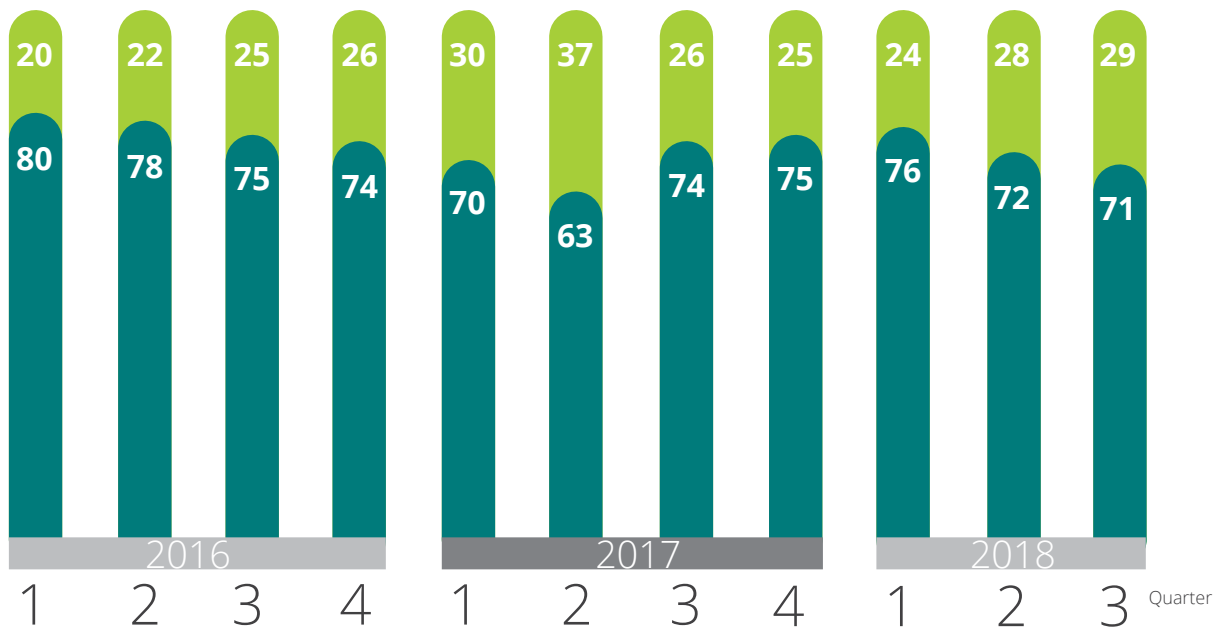
In the reporting quarter, the BOC received 50 complaints from foreign companies, which is the lowest figure since Q2 2016.

SIZE OF BUSINESSES

Number of complaints



Structure



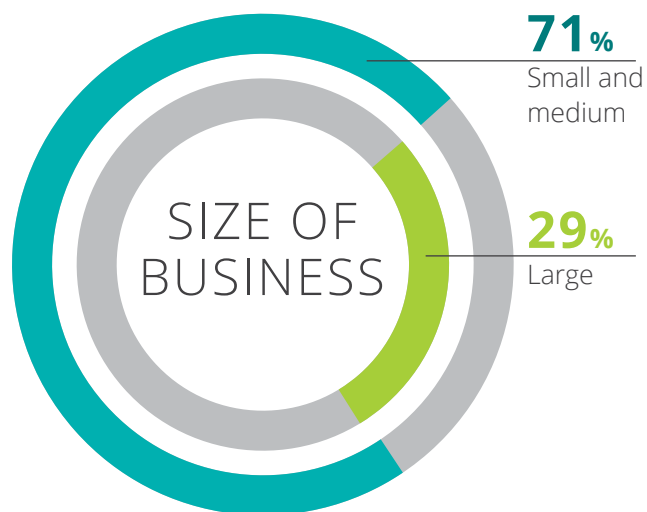
The structure of complaints, based on the size of companies, who submitted them, remained almost the same. 29% of appeals came from large companies. This is 1 pp more than in the previous quarter. Please, see next section devoted to a deeper analysis of small and medium-sized business that turned to the BOC for support.

1.8. Small/medium vs. large business: analysis of complaints

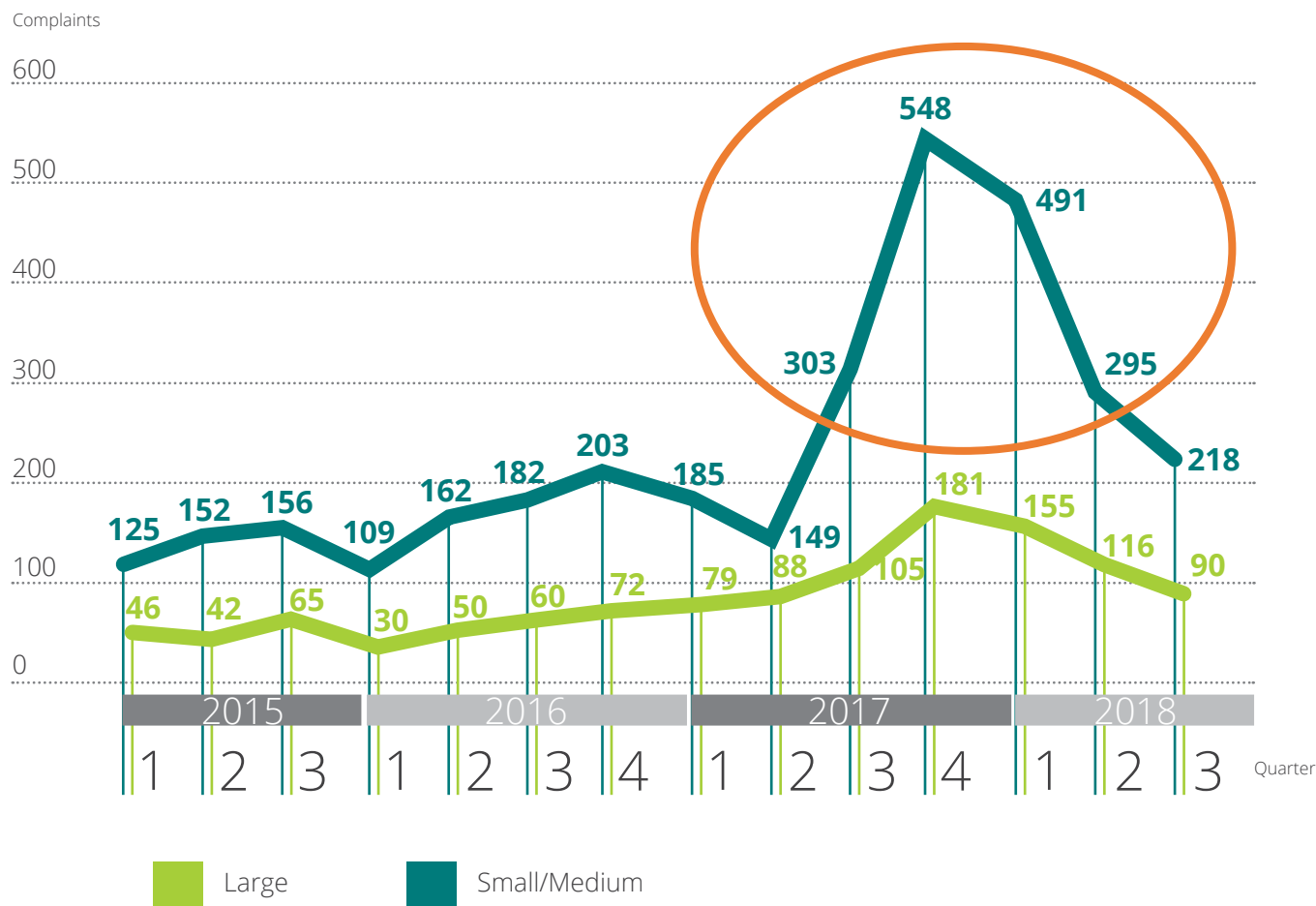
Since launch of operations in May 2015, the BOC has received 3278 complaints from small and medium enterprises, which is 71% of total complaints.

According to the State Statistics Service of Ukraine, in 2017 there were 338 254 enterprises registered in Ukraine. 99,9% of them were small and medium companies, which produced circa 60% of products and services.

http://bit.ly/stat_4boc

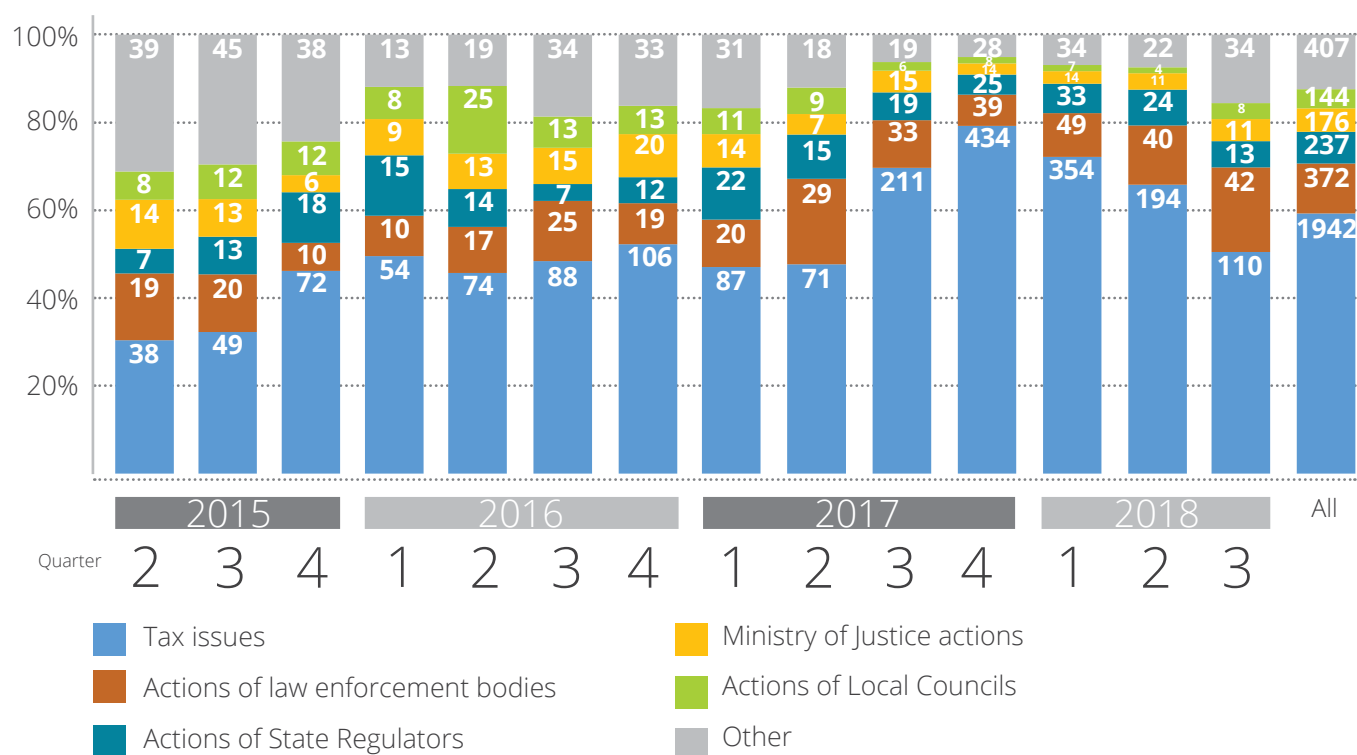


SMALL AND MEDIUM VS. BIG COMPANIES: NUMBER OF COMPLAINTS RECEIVED




A trend break above was driven by an influx of complaints on tax invoice suspension. Such appeals were mainly (up to 98%) lodged by small and medium companies.

SMALL AND MEDIUM: TOP-5 BLOCKS OF COMPLAINTS



SMALL AND MEDIUM VS. BIG COMPANIES: TOP-5 BLOCKS OF COMPLAINTS





Since launch of operations tax issues amount to 59% of complaints lodged by small and medium-sized companies. This block share reached its peak – 79% – in Q4 2017, when appeals concerning tax invoice suspension prevailed in the BOC portfolio. Since then the share has been declining steadily, and in the reporting quarter it amounted to 50%.

Unlike smaller companies, the share of tax issues in the total structure of big enterprises' complaints is much lower – just 45%.

At the same time, small and medium ones would be of less interest for law enforcement bodies. This block share is only 11%, which is 4 pp less in comparison with big companies.

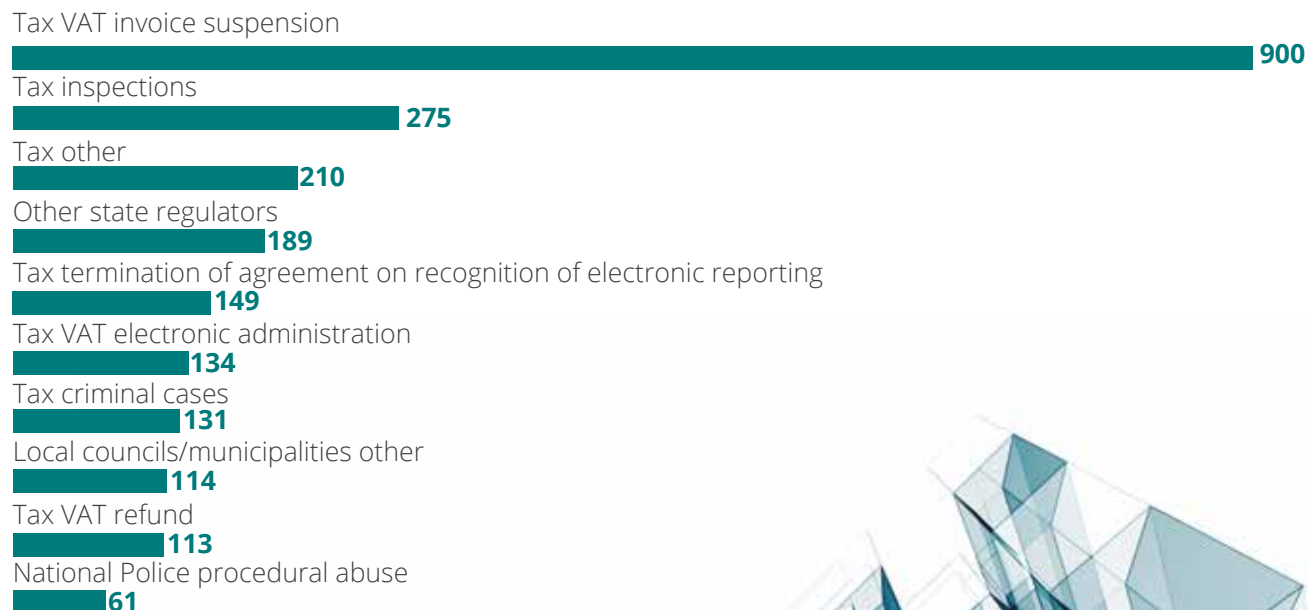
The share of complaints regarding actions of state regulators is 4 pp less as for small and medium enterprises than for big ones: 7% and 11% respectively.

A share of appeals concerning local councils is the same both for small/medium and big companies – 5%.

The fifth position in groups analyzed is occupied by different subjects: legislations drafts (5%) as for small and medium and the Ministry of Justice actions (6%) as for big enterprises.

SMALL AND MEDIUM VS. LARGE COMPANIES: **TOP-10** SUBJECTS OF COMPLAINTS

SMALL/MEDIUM



LARGE



VAT INVOICE SUSPENSION

The most common issue (900 appeals and 27% in total), with which small and medium businesses turned to the BOC, is suspension of tax invoices. In contrast to them large companies lodged 8 times less complaints on this subject, which holds the second position in the TOP list.

TAX INSPECTIONS

The most appeals of large enterprises concerned tax inspections – 185 complaints or 16% in total. It is worth mentioning, that this is also a rather pressing issue for small companies – 275 complaints or 8%.

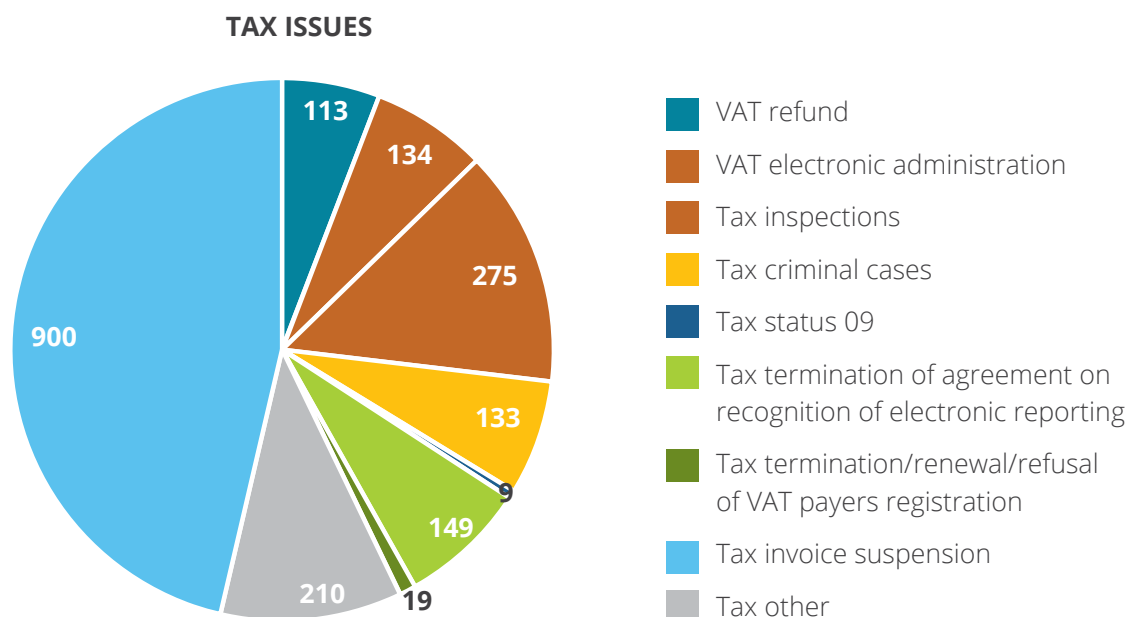
STATE REGULATORS

occupy the third and the fourth positions for small/medium and large companies respectively.

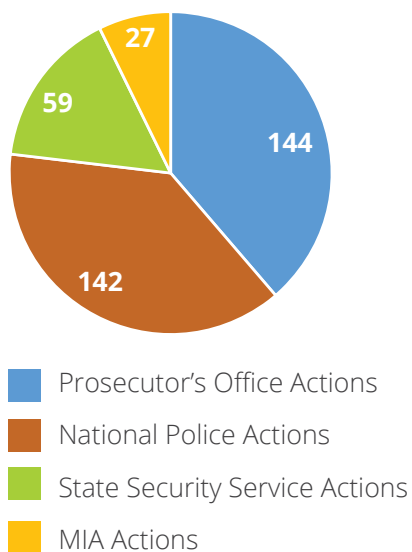
TAX TERMINATION OF AGREEMENT ON ELECTRONIC REPORTING

which is known to be among the most severe SFS tools, is applicable mainly to small and medium companies alleged of fictitious operations. Unlike small and medium business, actions of MinJustice Enforcement Service and Prosecutor's Office criminal case initiated hit the list of ten most common subjects of complaints from large companies.

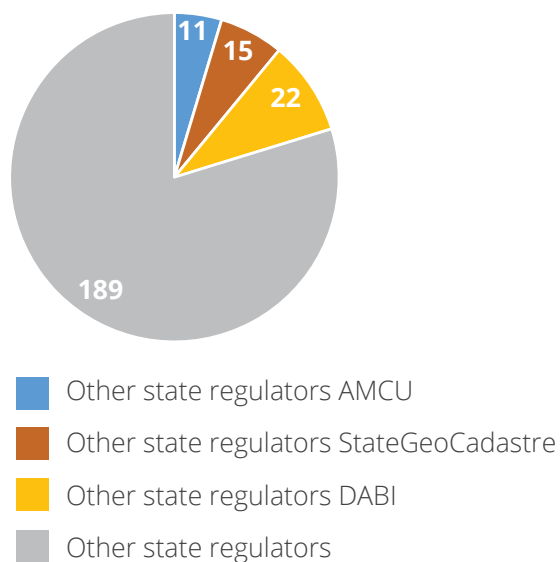
SMALL AND MEDIUM COMPANIES: SUB-CATEGORIES OF COMPLAINTS



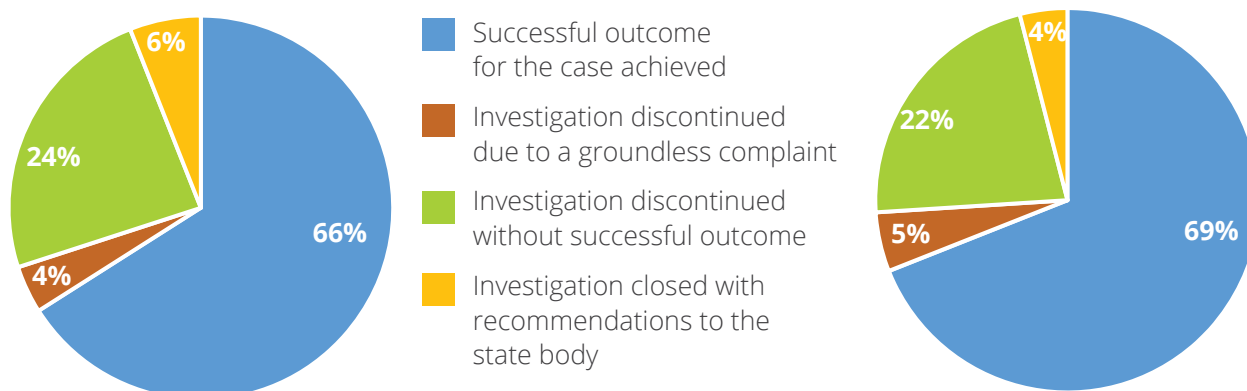
ACTIONS OF LAW ENFORCEMENT BODIES



ACTIONS OF STATE REGULATORS



SMALL AND MEDIUM VS LARGE COMPANIES: STATUSES OF CLOSED CASES



The share of successfully closed cases is 3 pp higher for small and medium companies, than for large ones. In case the successful outcome is not achieved during the investigation period of 90 days, the Council issues recommendations – this figure is 2 pp higher for large companies.

SMALL AND MEDIUM VS LARGE COMPANIES: **TOP-10** SUBJECTS OF CLOSED CASES

SMALL AND MEDIUM	Total closed cases	Successfully closed cases	Share of successfully closed cases in total cases
Tax VAT invoice suspension	765	632	83%
Tax inspections	202	76	38%
Tax other	133	87	65%
Tax termination of agreement on recognition of electronic reporting	123	82	67%
Tax VAT electronic administration	107	70	65%
Tax VAT refund	103	80	78%
Other state regulators	96	61	64%
Tax criminal cases	69	56	81%
Local councils/municipalities other	54	31	57%
National Police procedural abuse	33	21	64%

LARGE	Total closed cases	Successfully closed cases	Share of successfully closed cases in total cases
Tax inspections	148	59	40%
Tax VAT invoice suspension	95	85	89%
Tax VAT refund	65	51	78%
Other state regulators	61	38	62%
Tax other	47	32	68%
MinJustice Enforcement Service	35	26	74%
Tax criminal cases	33	27	82%
Tax VAT electronic administration	27	16	59%
Local councils/municipalities other	22	12	55%
Prosecutor's Office criminal case initiated	18	13	72%

TOP-10 SUBJECTS OF CLOSED CASES

concerning both small/medium and large companies are almost the same. The difference lies only in tax termination agreements and the National Police procedural abuse, which are typical of SME, as well as actions of MinJust Enforcement Service and Prosecutor's Office criminal cases initiated, which were the matter of particular concern for large companies.

SMALL AND MEDIUM COMPANIES

The highest share of successfully closed matters prevailed at tax subjects: VAT invoice suspension (83%), tax criminal cases (81%) and VAT refund (78). On the contrary, the level of success in investigations concerning local councils is rather low – 57%.

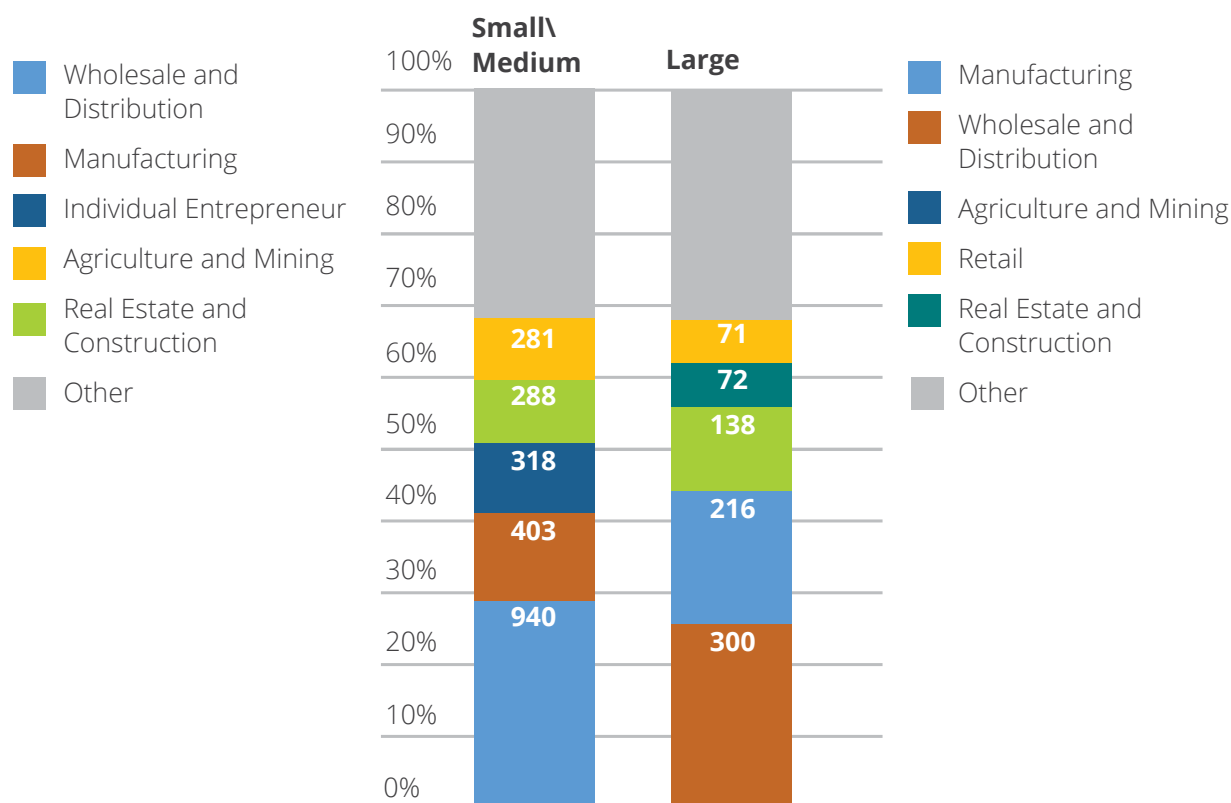
LARGE COMPANIES

The best performance in TOP-10 is recorded for cases on VAT invoice suspension (89%) and tax criminal cases (82%). The share of success in cases regarding local councils, VAT electronic administration and actions of other state regulators is slightly lower than those of SMEs.

TAX INSPECTIONS

The worst result in TOP-10 for both small/medium and large companies is recorded for cases on tax inspections – only 38% and 40% of successful outcomes respectively. However, as presented in the Q2 2018 report, the result for complainants, achieved with the BOC participation (up to 40% of success) is almost three times better than the one received without the BOC participation (up to 14% of success). Moreover, the BOC monitors court proceedings of cases previously supported by the BOC. And the statistics indicates that in 9 cases out of 10, courts ruled in favor of the complainant.

SMALL AND MEDIUM VS LARGE COMPANIES: **TOP-5** INDUSTRIES



Among small and medium companies, the most complaints (29%) were lodged by wholesalers and distributors. By a large margin goes a share of manufacturers – 12%.

Among big ones, these industries' positions completely shifted: the first place (25%) is occupied by manufacturers, the second one – with wholesalers and distributors.

Individual entrepreneurs, which held the third position in the TOP-5 list of small and medium-sized companies, clearly, didn't hit the list of big companies.

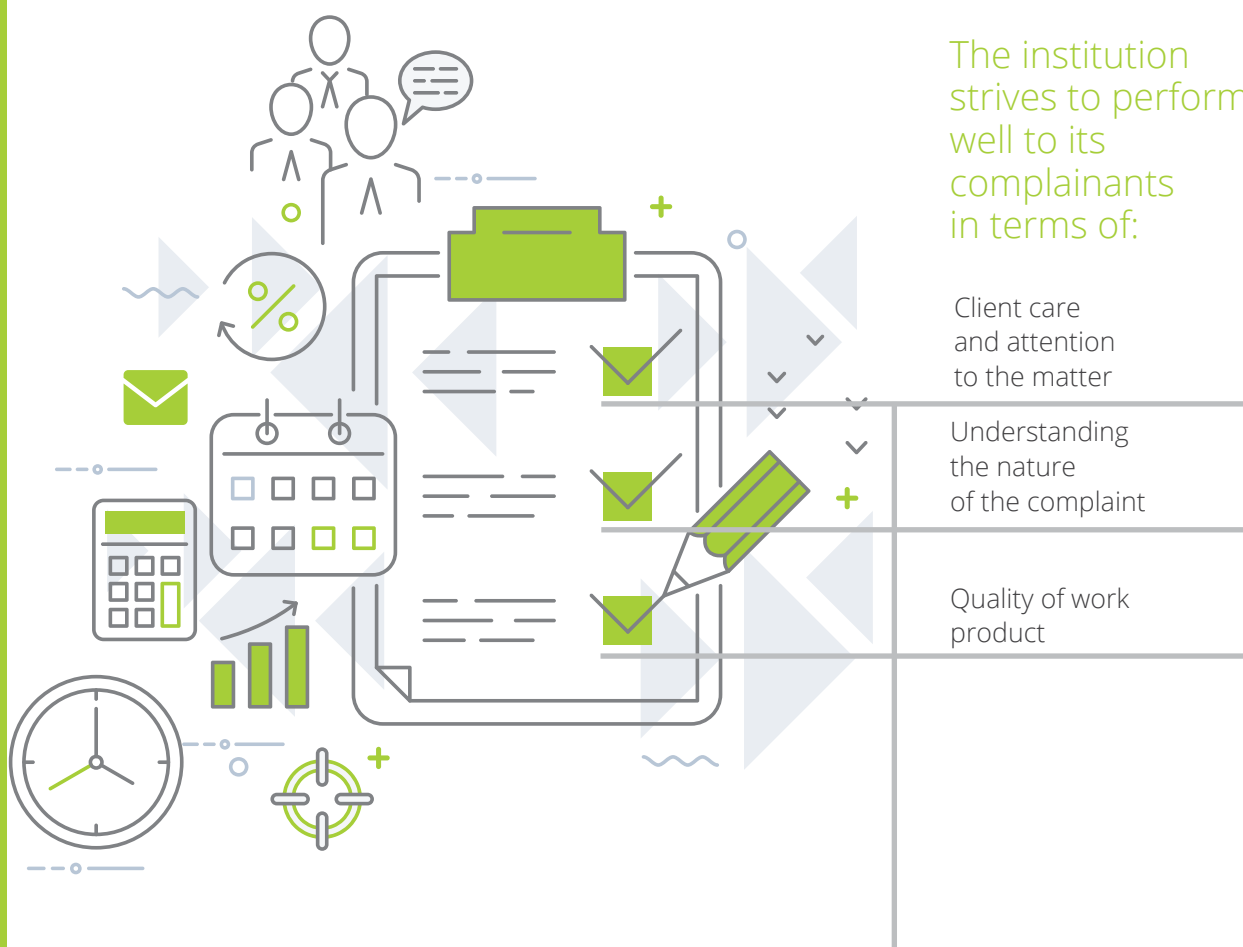
Representatives of small and medium agriculture and mining firms lodged 9% of complaints, while this figure is higher for big ones (12%). Meanwhile, the share of real estate and construction sphere for small and medium is more than for big enterprises – 9% versus 6%.

SMALL AND MEDIUM VS. LARGE COMPANIES: GEOGRAPHY OF COMPLAINTS



1.9. Feedback

The Business Ombudsman and his Office are committed to conducting impartial investigations and solving systemic issues, faced by entrepreneurs.



Having closed each case, the Council sends out a questionnaire to complainants, asking to assess it by the abovementioned criteria.

In the reporting quarter
the BOC received

130

feedback forms.

An absolute
majority –

95%

of complainants – said they felt
good about working with the
Business Ombudsman Council.

Iryna Varagash

President of the company,
FDI Econia, LLC

We express our sincere respect to your team for the active and unchanging position in protecting the legitimate rights and interests of Ukrainian business”.



Vladyslav Kolodyazhny
Director
of Gaztron-Ukraine LLC

Thank you for your work, support and transparency in doing business in the country”.



Alisher Tiazhyng

General Director
of KUSTO AGRO TRADING, LLC

The Business Ombudsman Council gives hope for restoring confidence and transparency in business management in the real economy sector in Ukraine”.

Renato Ruschik

General Director of State
Enterprise Lactalis-Ukraine

We express you deep respect our gratitude for protecting interests of business in Ukraine”.





Vyacheslav Kolesnikov
Director of OTS-Ukraine, LLC

Good luck to the Business Ombudsman Council's team in improving the transparency of Ukrainian state bodies work".

Volodymyr Karas
Director of VOSKHOD
Agriculture LLC

Thanks to the work of the Council, interaction and resolving of issues with state bodies has become more transparent and deprived of bureaucracy and formalism".



**КАМ'ЯНЕЦЬ – ПОДІЛЬСЬКЕ ПУБЛІЧНЕ АКЦІОНЕРНЕ ТОВАРИСТВО
"ГІПСОВИК"**
32397, Хмельницька обл., м. Кам'янець – Подільський, пров. Індустріальний, 1
Телефони: (03947) 491044/491045, 491046/491047 факс 3-19-73
Регістраційний номер № 2008170819 ПАТ АБ «Укрзаїлля» м. Київ
код ЄДРПОУ 22996119, МФО 329478
<http://www.gipsovik.com.ua>
e-mail: office@gipsovik.com.ua

№ _____ На № _____ від _____

Бізнес-омбудсмену
Альгірасу Шенеті

Повідомляю, що у листі Державної служби геології та надр України, отриманому Кам'янцем-Подільським ПАТ "ГІПСОВИК" 20.09.2018р. йдеться: "наказом Державної служби геології та надр від 31.08.2018 № 298 поновлено дію спеціального дозволу на користування надрами № 4984 від 11.06.2009, наданого Кам'янцем-Подільському ПАТ "ГІПСОВИК" з метою видобування доломіту родовища Слобідсько-Рихтівське".

Додаю копію штованого листа та повідомляю, що за адресою: https://gipsovik.blogspot.com/2018/09/blog-post_10.html, опубліковано подання усім причетним до позитивного вирішення нашого питання, у тому числі - колективу юристів офісу Бізнес-омбудсмена.

Оскільки дію спеціального по Слобідсько-Рихтівському родовищу продовжено, прошу завершити розгляд скарги з цього питання.

Щиро вдячний за допомогу:

Голова правління
Кам'янець-Подільського ПАТ "ГІПСОВИК" *В.І. Постовий*

Volodymyr Postoviy
Chairman of the Board
Kamianets-Podilsky
PJSC Gipsovik

We thank the Business
Ombudsman Council
for help".

Khrystyna Mygal
Managing partner of JSC
Gradum

We express gratitude
to your team
for professionalism
and efforts made".

Gradum
law company

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www.gradum.com.ua

«02» липня 2018 року
№ 68-02/18-1/18-Вк-44

Бізнес-омбудсмену
Альгірасу Шенеті
04070, м. Київ, вул. Спаська, 16А

Представника ПП «ЕКОГІДРОТЕХ»
Керуючого партнера
АО «Градум», адвоката
Мігаль Христини Орестівни
03053, м. Київ, вул. Боршівська, 206, оф. 104

Шановний пане Альгірасе!

Адвокатське об'єднання «Градум» виражає Вам свою подяку та глибоку вдячність за виконану роботу по розгляду скарги на незаконні дії Міністерства енергетики та теплоенергетики України у відношенні з підприємством.

Завдяки своєчасно представленим Рядом Бізнес-омбудсмена, зокрема інспектора Володимира Кузнецова, досягнуто позитивного результату для керівника. На сьогоднішній день Міністерством усунуто порушення порядку видачі ліцензійного розряду, а підприємство має можливість продовжити ведення господарської діяльності з повноцінним збереженням доходів.

У зв'язку з чим об'єднання ще раз висловило свою вдячність Вашому колективу за професіоналізм та докладні зусилля у пошуках прав підприємств.

З повагою
Керуючий партнер АО «Градум» *Х. Мігаль*

Х. Мігаль



Sergey Zelenko

General Director of Institute
for radio-measuring equipment



The Business Ombudsman Council as a modern and democratic institution, gives hope for the further genuine establishment of entrepreneurship freedom principle in relations between the business environment and state bodies".


Svitlana Gordevskaya

Head of legal department of PJSC "Melkom"



The Business Ombudsman Council has made efforts to solve this issue, which is extremely important for the majority of VAT payers of Zaporizhzhya Oblast".

2. SUMMARY OF KEY MATTERS AND FOLLOW-UP OF RECOMMENDATIONS



In this reporting quarter, the BOC closed 303 cases

If to compare it with the number of complaints received, this amounts to

98%
which is an absolute record since launch of operations.



2.1. Information on closed cases

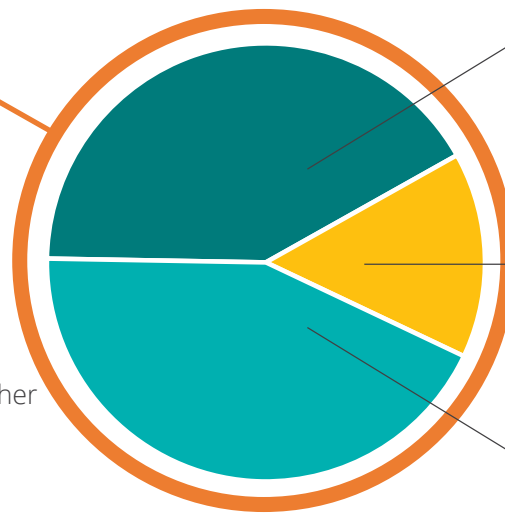
Closed cases in the reporting period:

303

In the reporting quarter, the BOC closed

57%

of cases with immediate desirable (either financial or non-financial) outcome for complainants or recommendation subject to monitoring



Cases closed with result:

126

Cases closed with recommendations:

46

Cases discontinued:

131

Complaints

500

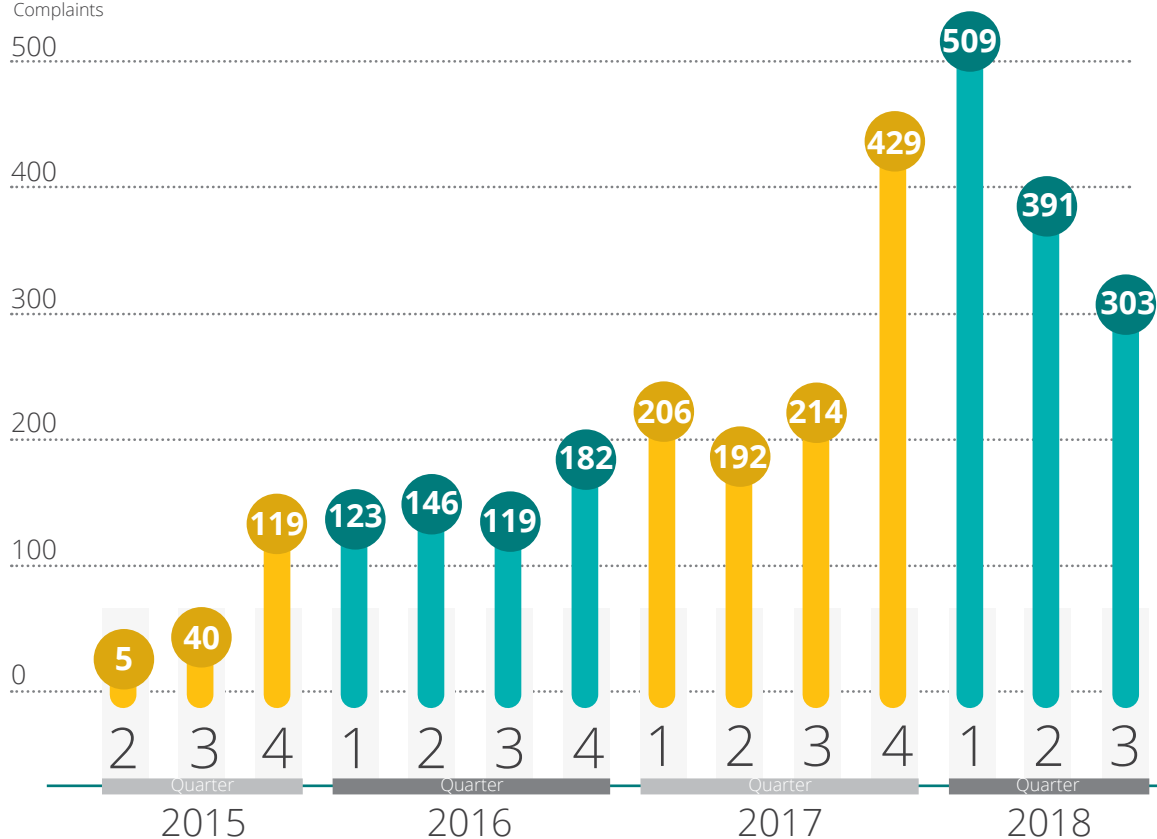
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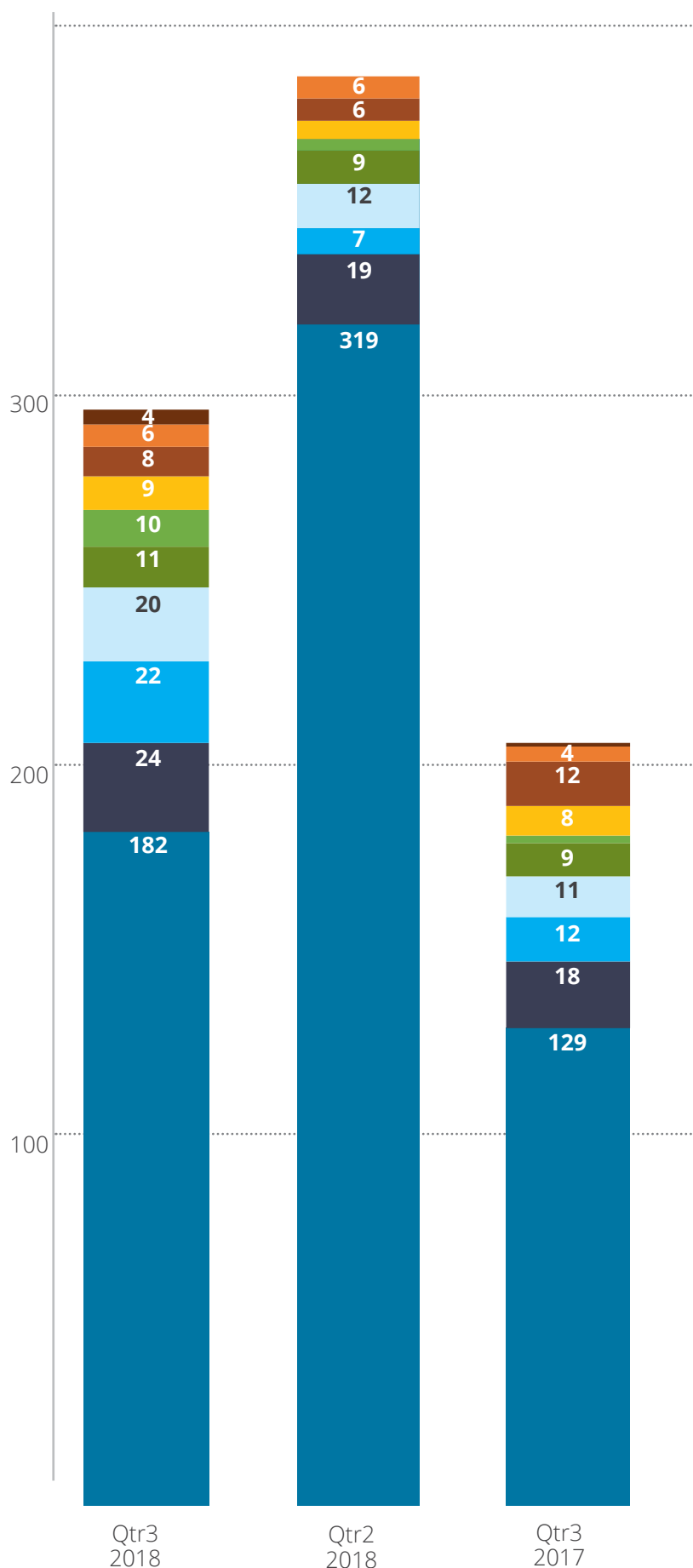



Total number of closed cases since launch of operations:

3004

TOP-10 SUBJECTS OF CLOSED CASES IN QUARTER III 2018:

- Actions of state companies
- State Security Service actions
- Customs issues
- Ministry of Justice actions
- Legislation drafts/
amendments
- Actions of local councils/
municipalities
- National Police actions
- Prosecutor's Office actions
- Actions of state regulators
- Tax issues





Following the decreased number of complaints, the Council understandably closed less cases. However, this was half more than in Q3 2017.

Tax-related issues lost 22 pp in the BOC portfolio of closed claims from the previous period. In Q3 2018 they amounted to 60% of all closed investigations.

On the contrary, share of closed cases concerning law enforcement bodies malpractices increased by 10 pp, compared to the previous quarter, and currently amount to 16%. The BOC closed the largest number of cases against the Prosecutor's Office – over three times more than in the II quarter of 2018.

The number of closed cases concerning absolutely all other state bodies from TOP-10, increased. The Council particularly moved forward in finalizing cases on drafting legislation, which is known as a low speed process.



FINANCIAL IMPACT IN QUARTER III 2018:

UAH
390mn

Direct financial
impact of BOC's
operations
20 May 2015 –
30 September 2018:
exceeds

UAH
13bn

Tax inspections	331 777 684
Tax other	29 456 510
Tax VAT invoice suspension	9 838 942
Tax VAT electronic administration	8 422 113
Overpaid customs duties refund	4 663 738
Customs other	4 307 785
Prosecutor's Office – funds refund	1 408 420

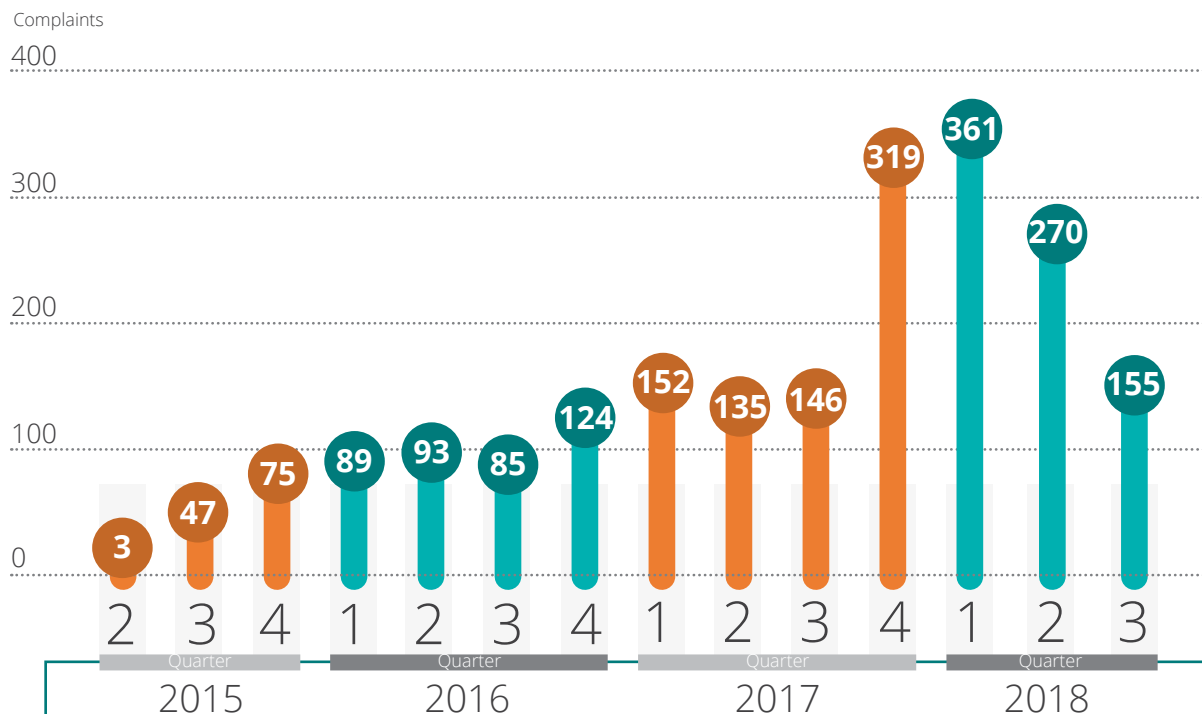
NON-FINANCIAL IMPACT OF BOC'S OPERATIONS IN QUARTER III 2018:

	Q3 2018	Q2 2018	Q3 2017
Malpractice ceased by complaine	42	38	37
Tax records reconciled, tax reporting accepted	11	13	19
Permit/license/conclusion/registration obtained	8	5	4
Criminal case against the Complainant closed; property/accounts released from under arrest	7	12	12
Legislation amended/enacted; procedure improved	4	4	5
Claims and penalties against the Complainant revoked Sanction lifted	2	-	3
Contract with state body signed/executed	-	1	1
State official fired/penalized	-	2	4
Criminal case initiated against state official/3rd party	-	2	-

The BOC works hard to cease officials' malpractice. It remains the key non-financial impact of its work. Talking of Q3 2018, accepted tax reporting and obtained permits are also worth mentioning. These issues are always topical and this reporting quarter was not an exception.

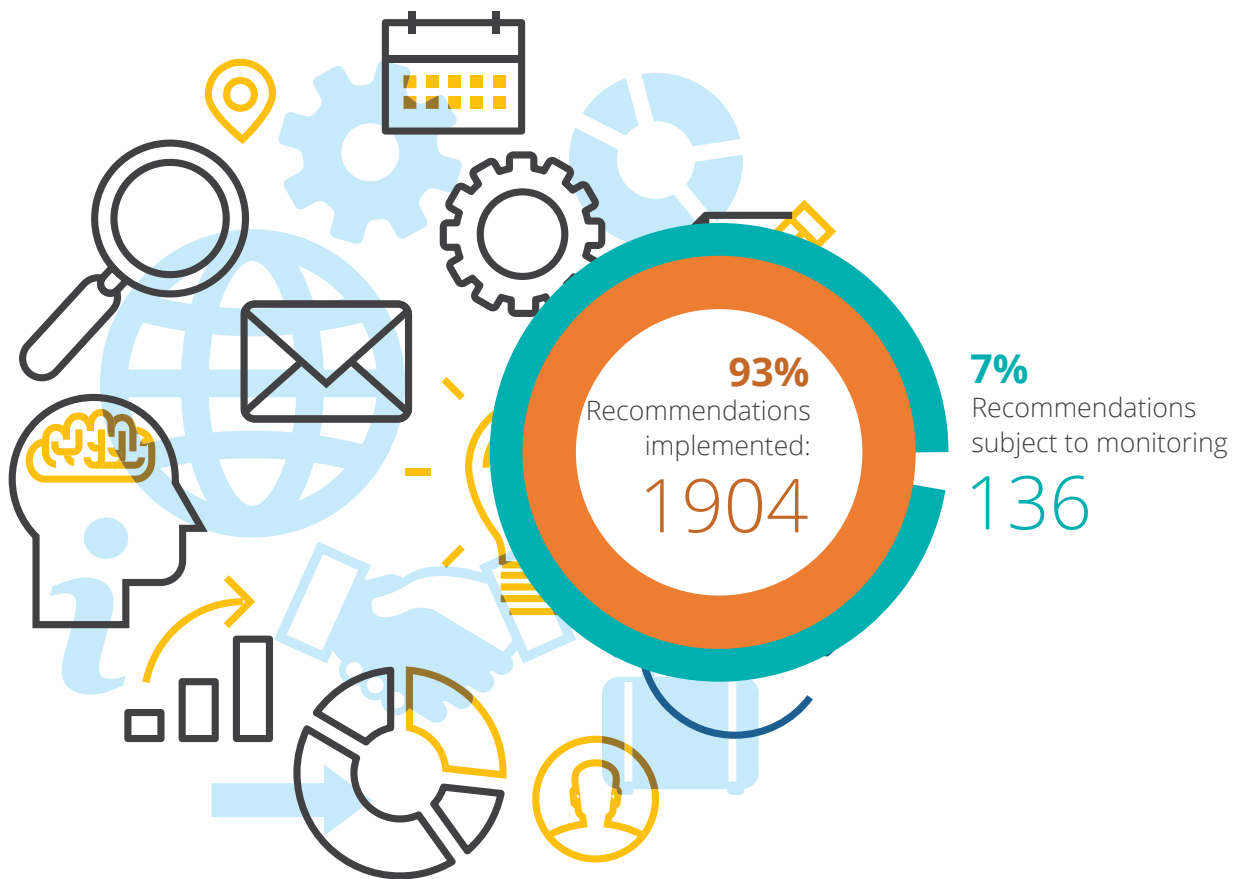
2.2. Recommendations provided and systemic issues solved

The BOC provides recommendations to government agencies on case-by-case basis and monitors their implementation.



Total number of recommendations issued since launch of operations:

2040



GOVERNMENT AGENCIES WHOM THE BOC ISSUED RECOMMENDATIONS IN 2015-2018 (CASE-BY-CASE BASIS) AND RATIO OF IMPLEMENTATION

	Recommendations implemented	Recommendations issued	Ratio of implemented to issued Q3 2018	Ratio of implemented to issued Q2 2018	Ratio of implemented to issued Q3 2017
State Fiscal Service	1351	1413	96%	95%	90%
Prosecutor's Office of Ukraine	70	86	81%	81%	73%
Local councils and municipalities	66	76	87%	86%	75%
Ministry of Justice	69	71	97%	97%	96%
National Police of Ukraine	59	71	83%	87%	85%
State Security Service	42	45	93%	98%	96%
Ministry of Regional Development	38	40	95%	100%	93%
Ministry of Economic Development and Trade of Ukraine	29	34	85%	85%	85%
Ministry of Ecology and Natural Resources of Ukraine	27	30	90%	86%	100%
Parliament, the Cabinet of Ministers, the President of Ukraine	19	23	83%	78%	64%
Ministry of Internal Affairs	19	22	86%	90%	90%
Ministry of Social Policy and Labour of Ukraine	16	18	89%	85%	86%
State Enterprises	15	18	83%	88%	92%
Ministry of Finance of Ukraine	13	14	93%	85%	100%



	Recommendations implemented	Recommendations issued	Ratio of implemented to issued Q3 2018	Ratio of implemented to issued Q2 2018	Ratio of implemented to issued Q3 2017
Ministry of Health of Ukraine	9	9	100%	100%	100%
Other	9	9	100%	100%	83%
Ministry of Agrarian Policy and Food of Ukraine	7	8	88%	97%	75%
Ministry of Energy and Coal Industry of Ukraine	7	8	88%	80%	100%
Ministry of Infrastructure of Ukraine	7	8	88%	86%	67%
National Commission for State Regulation of Energy and Public Utilities	7	8	88%	100%	67%
Commercial and other courts	7	7	100%	100%	71%
Antimonopoly Committee of Ukraine	6	6	100%	100%	43%
State Service of Ukraine on Food Safety and Consumer Protection	3	4	75%	75%	50%
NABU	3	3	100%	100%	100%
State Funds	1	3	33%	33%	50%
National Bank of Ukraine	2	2	100%	100%	100%
Communal Services of Ukraine		1	0%	0%	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%
Grand Total	1904	2040	93%	93%	87%





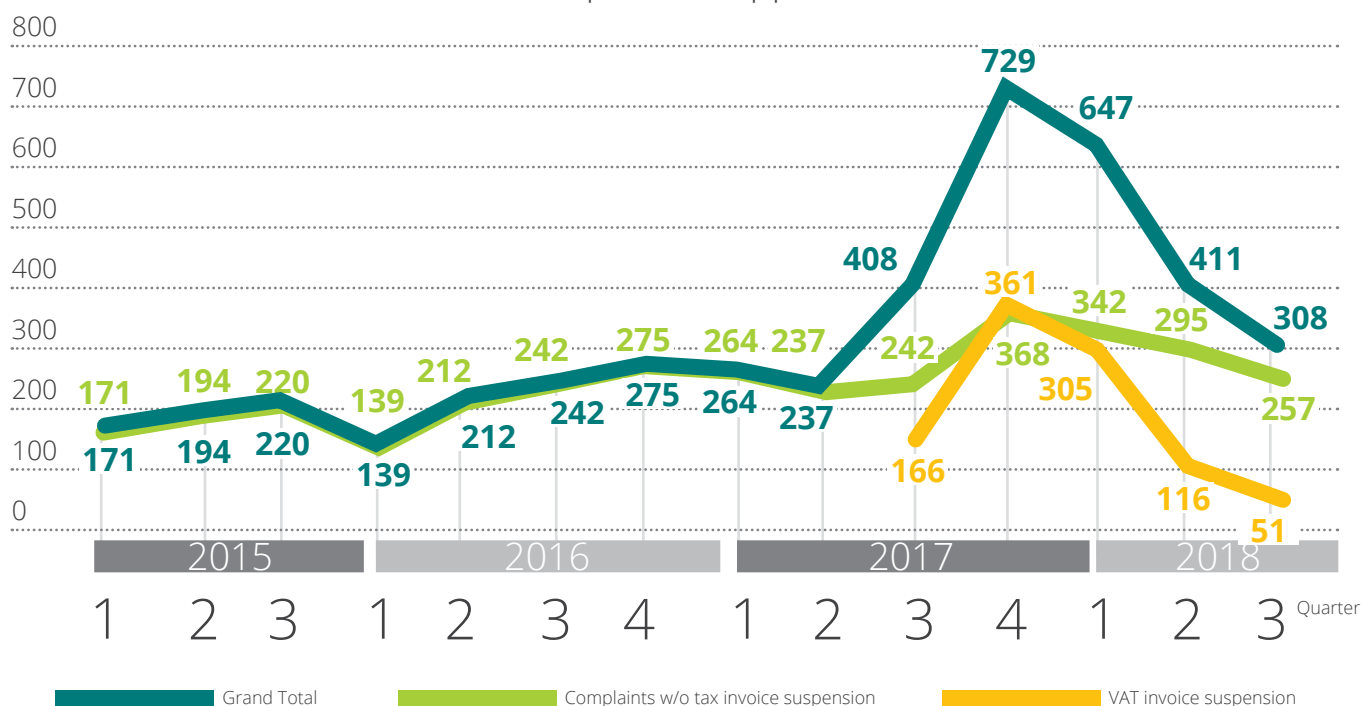
By the end of the reporting quarter, government agencies implemented

93%
of all recommendations
issued by the BOC

- At large, one can observe an improvement of the performance by almost all state bodies, if compared to the same reporting period of 2017. It resulted in a 6 pp growth by the end of the reporting period. Government agencies have implemented 93% of all recommendations issued by the BOC since launch of operations.
- The State Fiscal Service, concerning which the BOC issued most of recommendations (1413), performs a high ratio and a good progress in implementing the Council's recommendations. By the end of the reporting period the ratio amounted to 96%, which is a 6 pp growth since Q3 2017.
- Among law enforcement bodies, the State Security Service and the National Police worsened their positions by 5pp and 4pp respectively in comparison with Q2 2018. Meanwhile, the Prosecutor's Office implemented 81% of our recommendations, which is a 8 pp growth since Q3 2017.
- Local councils improved their performance significantly as compared to Q2 2018 (+12pp), still the rate of 87% is lower than the average one. On the contrary, the Ministry of Justice (97%) and the Ministry of Regional Development (95%) remain among the best performers among state bodies whom the Council issued the most recommendations, although the latter has lost 5 pp since Q2 2018.
- Although the implementation ratio of the Parliament, the Cabinet of Ministers and the President is below the average yet, this block improved the performance as compared to Q2 2018 and Q3 2017 by 5 pp and 19 pp respectively.

SYSTEMIC ISSUES IDENTIFIED

The number of complaints received:
with and without tax invoice suspension appeals



For the third consecutive quarter the BOC observes a decrease in the number of complaints received. This was mainly caused by a drop in the number of appeals concerning tax invoice registration. However, even if to eliminate this declining subject, as illustrated above, one can observe a downwards trend in the total number of appeals starting from Q1 2018.

A share of tax issues block went 14 pp down to 48%. A number of complaints concerning tax inspections dropped by almost one third, which is a good sign for the Ukrainian business climate. The number of complaints concerning VAT electronic administration also decreased. Meanwhile, entrepreneurs lodged more complaints regarding tax criminal cases and VAT refund. This applies to both Q2 2018 and Q3 2017.

Entrepreneurs lodged 9% less complaints against law enforcement bodies in comparison with Q2 2018. However, a decrease was mainly observed in the number of complaints concerning law enforcement bodies inactivity (-74% since Q2 2018), while as for procedural

abuse and initiated criminal case one can record +14% and +18% growth respectively. Since these types of malpractices exert the most pressure on business, it becomes the matter of the Council's concern to be monitored hereafter. On the whole, the share of law enforcement bodies reached an all-time high 19%, which is +3pp from the previous period.

The share of state regulators grew by 1pp from Q2 2018 and now amounts to 8%. Although, the number of appeals concerning these state bodies decreased as compared to both previous quarter and the same reporting period of 2017.

Although, the number of complaints concerning key subjects decreased as compared to Q2 2018, the number of complaints on the rest of state bodies in TOP-10 increased. In comparison with the previous period the number of appeals regarding actions of local councils increased by 20%, drafting legislations – by 11%, customs issues – by 25%, Ministry of Justice – by 25%, state companies – by 75%.

SYSTEMIC ISSUES SOLVED



Department of State Enforcement Service under the Ministry of Justice (SES)

ISSUE ARISING FROM INVESTIGATION

The SES refused to initiate enforcement proceedings based on court decision since "the writ itself was not in compliance with the law because the first name, patronymic and surname of the judge who signed it were not indicated, only surname and initials. The state enforcer referred to Para. 1 of Art. 4 of the Law "On Enforcement Proceedings", which provides that "the writ shall include the name and date of issue of the document, the name of the agency, and the first name, patronymic, surname and title of the official who issued it."

RESULT ACHIEVED WITH THE BOC FACILITATION

In the Council's opinion, the SES interpreted provisions of the law incorrectly. Such conditions should not apply to court decisions.

The BOC had seen similar cases in the past, so it saw the problem as systemic. After several rounds of negotiations, MinJust issued a letter urging SES departments to equally apply the provisions of the law: the first name, patronymic, surname and the title are required only for documents issued by the named official. For documents issued by courts and other government agencies, this requirement does not apply. A systemic problem was resolved.



Zaporizhzhyaoblenergo State Enterprise PJSC (Zaporizhzhiaoblenergo)

ISSUE ARISING FROM INVESTIGATION

The Tax Code stipulates that entrepreneurs may attribute VAT paid amounts to the tax credit without registering tax invoices based on invoices issued by oblenergos. However, due to a regulatory gap in the EAS, there was no such an option for them.

RESULT ACHIEVED WITH THE BOC FACILITATION

Having determined existing systemic discrepancies between legislation and EAS service functions, the Council's representatives repeatedly discussed the Complainants' issue at the SFS Expert Group meetings.

Finally, the Ministry of Finance changed EAS functioning procedure. Adjustments were introduced in the test mode in July after submission of tax reporting by companies along with new version annexes to declarations filled out.

A systemic gap, which Zaporizhzhya Oblast entrepreneurs suffered from, was finally filled.



Poltava Oblast General Directorate of the SFS (SFS)

ISSUE ARISING FROM INVESTIGATION

The SFS did not agree to take into account specifics of the country's counterparty legislation when collecting debts and charging fines to enterprises.

The point is that currently in Belarus, the presence of debt, which is not denied by the counterparty, can be confirmed by notaries rather than courts as in Ukraine.

RESULT ACHIEVED WITH THE BOC FACILITATION

Since the issue was systemic, the Council recommended that the Ministry of Finance amend domestic legislation, specifically to not impose fines in cases where Ukrainian companies have appealed not only to the courts, but also to agencies qualified to resolve cases of non-resident debt collection.

On July 4, 2018, the President signed the Bill "On Currency" into law, which fully implemented the Council's recommendations

SYSTEMIC RECOMMENDATIONS IMPLEMENTED

In this quarter, we managed to achieve some prominent results regarding state bodies implementing systemic recommendations provided in our systemic reports.

ISSUE

Even though legislation restricts the principle of extraterritoriality, in practice there are still instances of registrations occurring outside the territory within which the registration action may be carried out pursuant to the law

BOC'S RECOMMENDATION

Exclude the possibility of breaching territoriality rules at the technical level. In particular, the Ministry of Justice of Ukraine, in cooperation with SE "National Information Systems", shall make appropriate changes in the software of relevant state registries.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

Commencing mid-September 2018, the functioning of the State Register of Real Rights Over Immovable Property has (at the technical/ software level) been enhanced by the mechanism barring/preventing state registrars from the ability to carry out registration actions vis-à-vis immovable objects located outside the territory, where such a right is granted by law.



SYSTEMIC REPORT

Combatting raidership: current state and recommendations

ISSUE

Absence of or a restricted access to development and zoning plans complicates activity in construction sector.

BOC'S RECOMMENDATION

MinRegion: To prepare amendments to the Law of Ukraine "On Amendments to the Law of Ukraine" On Regulation of Urban Development" inducing local authorities to develop and publish territories development and zoning plans.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

The Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine dated August 15, 2018, No.220, registered with the Ministry of Justice of Ukraine on September 11, 2018, under No. 1044/32496 "On Approval of Requirements for the Structure and Format of Publishing of Information on Urban Development Documents on the Internet" obliged MinRegion, city planning and architecture authorities to publish information about city planning documentation on the Internet. This project was implemented in the framework of international technical assistance in cooperation with Better Regulation Delivery Office NGO (BRDO).



SYSTEMIC REPORT

Natural monopolies vs. competitive business:
how to improve relations

2.3. Summary of important investigations

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

TAX ISSUES

SUBJECT: TAX OTHER

#1

SFS reimburses income tax overpayment to a construction company

Subject of complaint:
The General Directorate of the State Fiscal Service in Kyiv (GD SFS)

Complaint in brief:

On April 25, 2018, a company belonging to the group of a French building materials retailer appealed to the Council. The Complainant could not refund an overpayment of the income tax amounting to UAH 110 thousand.

According to the tax return for 2014, in February 2015, there was an overpayment of the income tax on the Complainant's account. According to the law, a taxpayer has three years to claim the refund of excessively paid amounts. During 2017, the company applied to the SFS twice to return funds. Both times the tax authority acknowledged that, indeed, there was an overpayment, and the Complainant requested it on time. However, according to the SFS, it was impossible to refund it because the company had not been inspected for a long time – since 2011.

However, the legislation does not stipulate that the absence of inspections may be the ground for non-refund of overpayment. Therefore, the Complainant by applying to the SFS for the third time, was entitled to such a refund.

Actions taken:

The BOC investigator has thoroughly studied legislation and case law on this issue. The company indeed has three years to apply for and it did so. The Council also did not agree with the SFS argument that after the expiration of a three-year term the Complainant totally loses the right to such a refund. This Council's argument was backed by the court practice, and it informed the tax authority thereof in writing. Nevertheless, the tax authority rejected a request for a refund in writing, while the Council received an ungrounded response. After that the Complainant informed the Council of his intention to apply to the court.

Under these circumstances, the Council's investigator after a two week's break, met twice with the GD SFS management and reasonably upheld the Complainant's position.

As a result, the Head of the SFS personally instructed his deputy and the SFS audit department to consider the Complainant's issues.

Result achieved:

With the assistance of the Council, the parties have agreed that overpayment would be used to pay a personal income tax. On July 18, the SFS reimbursed an overpayment for the Complainant. The company that was ready to go to the court finally proved its point. "We are extremely grateful for your professionalism and fruitful work!", the Complainant wrote in an e-mail to the BOC investigator.

SUBJECT: TAX INSPECTIONS

#2

SFS drops an additional payment against the bank worth over UAH 28 mn

Subject of complaint:
Large Taxpayers' Office (LTO) of the State Fiscal Service of Ukraine

Complaint in brief:

On May 23, 2018, the Council received a complaint from an international bank, which did not agree with the LTO tax inspections conclusions.

Based on the company's activities analysis for 2011-2017 the tax authority found a number of tax and currency law violations. In particular, the LTO pointed out transactions regarding which, in its opinion, the company had to pay a military fee and an individual income tax. In addition, it was subject to fines and penalties – totally worth over UAH 28 mn.

The Bank appealed the tax authority decision and turned to the Council.

Actions taken:

The BOC investigator studied case materials thoroughly and supported the bank's position. The investigator requested the SFS to consider the bank's case impartially.

Result achieved:

With the Council's involvement, the tax authority accepted the Complainant's arguments and dropped 99.5% of additional tax payments. The case was successfully closed.

#3

SFS drops an additional payment worth over UAH 5 mn against a French agricompany

Subject of complaint:
Large Taxpayers' Office (LTO) of the State Fiscal Service of Ukraine.

Complaint in brief:

On May 29, 2018, a French leading grain exporter in Ukraine, turned to the BOC. The Complainant disagreed with the LTO tax inspections conclusions.

As it turned out during the inspection, the Complainant purchased wheat, barley and corn from companies against which criminal proceedings were initiated. Therefore, the LTO treated the Complainant's transactions with these counterparties as fictitious. For the company it meant failure to receive a VAT refund for the said transactions and imposition of significant fines.

Actions taken:

After examining case materials, the Council's investigator found that the tax authority conclusions were based rather on assumptions than evidence. To check the Complainant's position, he requested additional documents from the company. In response, the company provided the Council with several hundreds of Consignment Notes confirming purchase of grain for further export. Having supported the company's position, the investigator applied to the SFS in writing with a request to consider the Complainant's case comprehensively and impartially. In addition, the Council participated in the case consideration at the SFS.

Result achieved:

According to complaint consideration results, the tax authority dropped an additional payment worth over UAH 5 million. The case was successfully closed.

#4

Systemic issue with non-return of foreign exchange earnings from different jurisdictions is fixed

Subject of complaint:
Poltava Oblast General Directorate of the SFS (SFS)

Complaint in brief:

On June 17, 2017, an exporter of corn from Poltava approached the BOC. The Complainant challenged fines imposed by the SFS worth UAH 60 mn for a failure to return foreign exchange earnings.

According to the company, it has been exporting corn to Belarus for many years and quite often has to deal with indebted buyers. Since 2015, it has become procedurally simpler to collect a debt in Belarus, as debts can now be confirmed by a notary rather than courts, as in Ukraine.

When a Belarusian buyer owes the company, the Complainant applies to a notary to forcibly collect the debt under Belarus law. This action became the subject of the SFS inspection.

According to the tax authority, the Complainant violated foreign exchange earnings rules because the company hadn't appealed particularly to a court on time, it had to pay a fine of over UAH 60 mn.

All the Complainant's and the Council's arguments concerning legality of the company's actions and lack of justification for the fines were ignored by the SFS. The exporter then decided to challenge the SFS decision in court.

Actions taken:

After reviewing the case materials, the BOC investigator found the company's complaint substantiated. In his opinion, it was inappropriate to apply penalties to the company, since it had taken all possible measures to return foreign exchange earnings to Ukraine in accordance with the legislation of the debtor's country.

This problem was systemic, so the Council recommended that the Ministry of Finance amend domestic legislation, specifically not to impose fines in cases where Ukrainian companies appealed not only to courts, but also to agencies qualified to resolve cases of non-resident debt collection.

During the past year, the Council monitored the progress of recommendation and the bill with the proposed amendments.

Result achieved:

On July 4, 2018, the President signed the Bill "On Currency" into law, which fully implemented the Council's recommendations. This systemic problem was resolved.

On July 10, the Council's investigator was present in the Complainant's court hearing. The Court of Appeals ruled in favor of the company and found the decision of the SFS and the Court of the First Instance unsubstantiated. The case was closed successfully.

#5

The SFS continues interpreting the law in its favor

Subject of complaint:
General Directorate
of the SFS in Kyiv (GD SFS)

Complaint in brief:

On April 19, 2018 a Kyiv transport company turned to the Council. The company did not agree with the SFS fine regarding failure to provide reports on the amount of tax privileges with VAT (Reports).

According to the Complainant, under the law, he did not have to submit such Reports at all. The company's arguments were as follows. The company acted as a freight forwarder during international transportation of goods for which a preferential VAT 0% rate is applied. Right before the transportation the Complainant engaged a third-party organization. It is the carrier, in this case that bore costs for purchasing fuel, maintenance of cars for providing international transportation services, since it was he who formed the cost of such services and received income from their provision.

Thus, it was the carrier that may have had unpaid taxes and duties to the budget by applying the preferential rate of 0% and should provide such a Report while the freight forwarder should not, because tax relief is not applied to the latter.

It is worth noting that when the forwarder is also acting as a carrier, the Report should be provided, as the cost of international transportation services is generated and revenue from providing them is received.

The SFS imposed a small fine, about UAH 2000. However, the company was convinced of its being right and firmly determined and, therefore, appealed to the Council for support.

Actions taken:

The investigator carefully analysed the complaint materials and the legislation governing its subject matter. Indeed, the CMU resolutions and tax regulations require accounting specifically amounts of unpaid funds to the budget, rather than transactions related to preferential tax rates application. Only the fact of performing transactions at a reduced rate of 0% VAT, formation of tax invoices and displaying such transactions in the VAT return, provided absence of unpaid funds to the budget, does not oblige the entity to submit a Report.

The Council described its position in a letter to the SFS. With this position, the Council participated in the consideration of the Complainant's case at the SFS.

Result achieved:

The SFS did not satisfy the company's complaint. The company could have challenged such a decision further in court, however, decided to refuse to do so, as the court costs would be much greater than UAH 2000. The Council closed the case without a successful outcome for the Complainant.

#6

**Renovation completed:
SAMSUNG proves reality
of received services
to the SFS**

Subject of complaint:
Large Taxpayers' Office
(LTO of the State Fiscal
Service (SFS))

Complaint in brief:

On June 27, 2018, SAMSUNG, a world's electronics manufacturer turned to the Council. The company did not agree with the violations detected by the LTO in the course of inspection in the amount of over UAH 300k.

The subject of the dispute was the renovation recently performed in the Complainant's premises. According to the tax authority, a construction company the company concluded the contract with, did not have enough human and material resources to make such a renovation. Therefore, the contractor engaged third parties to perform these works. And, as it turned out, these individuals appeared in a criminal case on suspicion of conducting fictitious activities. Therefore, the tax authority insisted that the renovation was a fictitious operation. That's why the LTO decided to deprive the Complainant of the right to a VAT refund, charged an additional income tax and imposed a fine on it.

However, the company insisted that the renovation of the premises still took place, and it had paid for it. Contractors' relationships with third parties, according to the company, were beyond its control.

Actions taken:

Having examined case materials, the Council's investigator found out that renovation services received were real. He participated in the Complaint hearing at the SFS and upheld the company's position.

Result achieved:

On August 22, the company informed the Council by e-mail of successful completion of Complaint consideration. The SFS fully cancelled a fine of over UAH 300 thousand taking into consideration the position of the Council. The case was closed.

#7

SFS drops additional payment worth UAH 280 mn to agroholding company

Subject of complaint:
State Fiscal Service, Large Taxpayers' Office (LTO) of the SFS

Complaint in brief:

On June 21, 2018 a leading Ukrainian agroholding company turned to the Council. The enterprise did not agree with the additional payments charged by the tax authority in the amount of about UAH 280 mn.

In May, LTO conducted a tax audit of the company. According to its results, the company had to pay additionally about UAH 280 mn. The tax audit found company's income tax understatement, sales of products and real estate at a reduced cost, unreasonable expenses for advisory services. Disagreeing with the LTO conclusions, the agroholding challenged them in the SFS and asked for support from the Council.

Actions taken:

Having analysed case materials, the Council's investigator supported the company's position. The Council prepared and expressed its position regarding circumstances of the Complaint in writing and sent it to the SFS. On July 19, the Council's representatives participated in the administrative review of the Complaint at the SFS.

Result achieved:

On August 3, the SFS dropped an additional payment to the enterprise worth almost UAH 280 mn. The case was closed successfully.

SUBJECT: TAX CRIMINAL CASES

#8

#MaskShowStop law in action: example from Luhansk Oblast

Subject of complaint:
Investigative Department of Financial Investigations of the SFS in Luhansk Oblast (Tax Police)

Complaint in brief:

On April 26, 2018, the Interdepartmental Commission for Ensuring Rights and Legal Interests of Citizens by Law Enforcement Agencies (Commission) sent the BOC a complaint from Luhansk-based company regarding Tax Police abuses.

In the autumn of 2016, the Tax Police conducted a search of the company. As a result, law enforcers withdrew the Complainant's laptops and hard disk drives. Repeated appeals to the investigator and prosecutor resulted in run-around replies or were completely ignored. For almost two years, the Complainant could not get its property back that significantly hindered its economic activity.

However, with the adoption of the # MaskShowStop law the company had the opportunity to appeal against refusal

#9

Tax evasion criminal case is dropped as ungrounded

Subject of complaint:
State Fiscal Service (SFS),
Large Taxpayers' Office
(LTO)

to comply with investigation reasonable time frame. That was the reason why he appealed to the Commission dealing with such issues.

Actions taken:

The Council's investigator asked the General Directorate of the SFS and the Prosecutor's Office of Luhansk Oblast in writing to check the time frame of conduct of pre-trial investigation. He also stressed all withdrawn computer equipment and documents had to be returned to the Complainant.

Result achieved:

On June 20, criminal proceedings against the company were closed. On July 17, all the seized property was returned to the Complainant.

Complaint in brief:

On July 26, 2017, an official regional distributor of the international FMCG company applied to the BOC. The company complained about a criminal case on tax evasion.

Complainant sold baby diapers and women's hygiene products. As these products were sold by the Complainant in July-September 2014, the State Service on Medicines registered them as medical products, then a reduced VAT rate – 7%, instead of the standard 20% applied to this group of goods. Having purchased the products at a reduced rate, the company also sold them at a reduced rate.

However, during tax audit, the SFS treated this as tax evasion. A criminal proceeding against the distributor was launched.

A criminal case against the supplier was also initiated for similar reasons but then it was closed. Courts ruled in favor of the Complainant and the supplier and refuted tax audit conclusions. Despite this, the criminal proceeding against the distributor still remained open. Active criminal proceedings not only damaged the business reputation of the Complainant, but also overwhelmed its economic activities.

Actions taken:

The Council recommended that the Prosecutor General and the Head of the SFS observe reasonable timeframes and take the appropriate procedural decision. The Council's investigator brought up a company's issue at expert meetings at the Tax Police. In addition, he discussed the complaint with the First Deputy of Prosecutor General. At that time, law enforcement officers had already performed an economic examination, the conclusions of which evidenced in favor of the company.

Result achieved:

With the facilitation of the Council, the Tax Police dropped a criminal proceeding against the Complainant due to absence of a crime.

CUSTOMS ISSUES

#10

Kyiv Customs refunds over UAH 4 mn to Fozzy Food

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

Complaint in brief:

On January 24, 2018, Fozzy Food a leading Ukrainian retailer appealed to the Council regarding a refund of excessively paid customs duties.

Disagreeing with the imported products' customs value designated by the Complainant, Kyiv Customs adjusted it up. Accordingly, the Complainant paid more taxes to the budget. In order to prove the correctness of the declared customs value and return the overpayment, the retailer appealed relevant decisions of Kyiv Customs in courts.

In 2013-2014, courts made a number of decisions in favor of the Complainant and ordered customs authorities to refund overpaid amounts. However, with regard to most supplies, Kyiv Customs refused to return funds. The reasons for the refusal were quite formal. In particular, the customs authorities insisted that the courts did not revoke the decisions on adjustment, and "only recognized them as unlawful." Meanwhile, the amount of return on other deliveries and litigation were gradually increasing.

Actions taken:

Having examined case materials, the Council fully supported the Complainant's position and appealed to the SFS and Kyiv Customs

with a request to comply with the court's rulings. In early February, the parties met and developed an action plan for the refund.

Result achieved:

With the assistance of the Council, the Complainant and Kyiv Customs developed a constructive dialogue. After the meeting the Customs promptly satisfied several claims of the Complainant regarding the refund of UAH 3.9 mn. A disputable issue worth several hundreds of thousands of hryvnias, which remained on the agenda, was finally considered at the Council and the SFS Expert Group meeting. The latter confirmed the possibility of the refund in this case.

Thanks to the Council's support, the excessively paid customs duties worth over UAH 4 mn were refunded to the Complainant. The case was closed successfully.

SUBJECT: CUSTOMS OTHER

#11

RUUKKI: "A single window" principle when applying a preliminary customs declaration gets underway

Subject of complaint:
Chernihiv Customs
of the State Fiscal Service
(Chernihiv Customs)

Complaint in brief:

On March 21, 2018, Ruukki, a Finnish manufacturer of building materials, applied to the BOC. The company complained that Chernihiv Customs officers of the SFS ignored its requests for phytosanitary control of goods when applying an "EA" type customs declaration (a preliminary customs declaration) when importing goods into Ukraine according to a "single window" principle.

On February 1, 2018, the Cabinet of Ministers introduced a "single window" – an electronic data exchange system. This allows the customs and various controlling services to exchange information about the cargo that passes across the border and the results of its state control. It enables importers and exporters to go through all customs procedures at one customs point. Moreover, such a principle reduces corruption risks through interaction of information systems and processes automation.

At the same time, according to the CMU Resolution a mark of phytosanitary control should be assigned automatically based on the conclusions of the analysis and risk management system. However, as reported by the Complainant, during the customs clearance of imported goods at Chernihiv Customs a "single window" did not work. Having prepared all the necessary documents in advance and drawn up the preliminary customs declaration, he arrived at the checkpoint with the goods – rolled steel on special wooden pallets. It is worth mentioning that wood, as a rule, is subject to more severe control requirements. However,

in the Complainant's case, wooden pallets were only a part of packaging, an accompanying material, rather than the main product.

The company's case for carrying out radiological and phytosanitary control of the goods was received by the customs along with the declaration. However, customs officers refused to conduct phytosanitary control in accordance with the formed case.

A phytosanitary expert was not allowed to inspect the goods.

Besides, no official explanations by customs officers were given.

The Complainant had to go to another customs control zone at Kyiv Customs, where the control procedure was already carried out under internal rules. For the company it meant additional monetary and time burdens.

In order to look into the situation and ensure proper clearance of the next batches without significant financial costs for logistics, the company appealed to the Council.

Actions taken:

The BOC investigator has addressed the SFS twice in writing requesting to check the situation and explain how customs officials should act in case of presence of an accompanying wooden material as in the Complainant's case. In addition, the Council brought up Ruukki case to the SFS Expert Group meeting.

In early June, the SFS solved the company's problem locally by instructing the heads of customs to provide an opportunity of carrying out state control at checkpoints via the border in the order of information exchange when applying "EA" type preliminary customs declaration.

Result achieved:

On 19 July, the Complainant confirmed that rules in the part of phytosanitary control of goods while importing goods into Ukraine according to a "single window" principle when applying "EA" type customs declaration were working, and goods were cleared based on a "single window" principle without any problems. The Complainant's problem was successfully resolved.

#12

Energy Customs refunds UAH 4 mn to Gaztron

Subject of complaint:
Energy Customs
of the State Fiscal Service
of Ukraine (Energy
Customs).

Complaint in brief:

On April 16, 2018, an international importer of liquefied gas and oil derivatives Gaztron-Ukraine turned to the Council with a complaint against Energy Customs. The Complainant could not refund an overpayment worth over UAH 4 million.

When importing a liquefied gas in May 2015, the company hoped to be exempted from an excise duty as provided by the Customs Code. However, the Energy Customs refused to grant privileges to the Complainant. He had to pay an excise duty to receive the freight, thus overpaying more than UAH 4 mn.

Disagreeing with the refusal of the Energy Customs, the company challenged its actions in court. The investigation of the case lasted in courts of all instances for 2 years. In September 2017, the Higher Administrative Court of Ukraine ruled in favor of the Complainant. The privileges were found grounded, and the actions of the customs – illegal.

However, for more than half a year, the Energy Customs Court neither complied with the decision, nor did it return the money and the repeated appeals of the company were unsuccessful. The Complainant applied to the BOC to protect its legitimate rights.

Actions taken:

Having examined the materials of the complaint, the Council upheld the Complainant's position and asked the Energy Customs in writing to comply with the court's judgement. In addition, the BOC's investigator arranged a meeting between the management of both parties with personal involvement of the Deputy Business Ombudsman. During the meeting Energy Customs clarified the procedure for adjusting documents in Poltava Energy Customs, the procedure and deadlines for filing applications for refund of funds. The government agency recommended that the company submit a new application taking into account these points.

Result achieved:

On July 20, the company finally received funds on its account. The Complainant thanked the Council "for the established communication with the Energy Customs, a professional approach and prompt actions of the team".

PROSECUTOR'S OFFICE

SUBJECT: PROSECUTOR'S OFFICE PROCEDURAL ABUSE

#13

**PGO returns
UAH 1.4 mn of seized
cash to a credit union**

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

Complaint in brief:

On July 18, 2018, a credit union appealed to the Council with a complaint about the inactivity of the PGO. The Complainant could not return UAH 1.4 mn. seized by investigators during a search.

In late February 2018, investigators conducted the search in the Complainant's office under the criminal proceeding. As a result, UAH 1.4 mn in cash was seized. Then the PGO appealed to the court to arrest the money, the Court of First Instance arrested it, however the Court of Appeal dismissed the arrest. Shortly afterwards, the PGO appealed to the court again to impose an arrest, however, the situation repeated itself: the Court of First Instance imposed the arrest, while the Court of Appeal dismissed it.

According to the procedure, law enforcers had to return the money seized from the company. However, law enforcement officers were slow on money return. At this point the Complainant turned to the BOC for help.

Actions taken:

On August 1, the Council's investigator applied to PGO in writing. He stressed that cancellation of the arrest was the basis for terminating temporary seizure of property and urged the Prosecutor's Office to return funds to the Complainant.

Result achieved:

The PGO accepted the Council's arguments and returned the money to the company on August 13. The case was closed successfully.

MINISTRY OF JUSTICE ACTIONS

SUBJECT: MINJUSTICE REGISTRATION SERVICE

#14

**Raider attack against
Econia is stopped**

Subject of complaint:
Ministry of Justice
(MinJust)

Complaint in brief:

On July 23, 2018, Econia, a producer of drinking water and baby food, addressed the Council over a raider attack at their plant in Cherkasy Oblast.

According to the Complainant, on July 19, about 15 people broke into company's premises claiming that they owned the plant. Apparently, these individuals had, through illegal registration actions at the State Register of Property Rights to Real Estate, registered ownership of assets that were actually and legally owned by the Complainant. These unlawful registration actions were the result of a court order dated back to 2007.

Company management noted that it wasn't the first attempt to takeover their business. The raider story began in 2008, when Econia purchased the premises of a bankrupt company. In 2010, the first attempt to takeover the plant was made, but the court confirmed that Econia had acquired the building legally.

Actions taken:

Having examined the materials of the Complaint, the Council supported the company's position. On July 26, the Council asked the Commission for Considering Complaints in the Sphere of State Registrations (Commission) to review the Complainant's appeal impartially and promptly. On August 9, the Council's investigator took part in a meeting of the Commission to consider the company's case.

Result achieved:

With the Council assistance, on August 10, MinJust satisfied the company's appeal and declared the unauthorized registration actions null and void. The case was closed successfully.

ACTIONS OF LOCAL COUNCILS/MUNICIPALITIES

SUBJECT: LOCAL COUNCILS/MUNICIPALITIES LAND PLOTS

#15

Helping businesses to establish effective and transparent communication with the authorities

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

Complaint in brief:

On March 27, 2018, a grain company from Dnipropetrovsk region addressed the Council. According to the company, Dnipropetrovsk RSA refused to lease to the company a land plot where its grain complex is situated.

The Complainant has appealed to Dnipropetrovsk RSA three times to extend the lease term. However, each time due to incomplete set of documents or mistakes in submission, a local authority rejected the company's appeal

Having got tired of refusals and doubting the impartiality of the regional administration actions, the Complainant appealed to the Council.

Actions taken:

Having examined the complaint materials, the Council's investigator found out that all refusals of Dnipropetrovsk RSA were grounded. However, realizing that this plot is vital for the company to continue its operations, the Council helped the Complainant. The investigator asked Dnipropetrovsk RSA to consider the company's appeal impartially and comprehensively.

Result achieved:

The Council managed to establish an effective dialogue between the Complainant and Dnipropetrovsk RSA. The company took into account all the remarks and filed a new petition. At the end of July, the Complainant received the mentioned land plot on lease. The case was closed successfully.

SUBJECT: ENFORCEMENT SERVICE

#16

Systemic problem with interpreting the law is resolved with state enforcement agency

Complaint in brief:

On June 6, 2018, a European satellite communication operator turned to the BOC because the SES was refusing to initiate mandatory enforcement proceedings against the company's debtor.

Over 2011-2014, the Complainant provided satellite communications services to UkrKosmos, the state-owned space enterprise. However, it turned out later that the state operator did not have enough funds to pay for the services.

In 2014, the International Court of Arbitration ruled that the debt of over US \$3 million was to be recovered from UkrKosmos.

Subject of complaint:
Department of State
Enforcement Service
under the Ministry
of Justice (SES)

For three years, the ruling was appealed in various courts in Ukraine until it finally came into force in March 2017.

The Complainant appealed to the SES to initiate enforcement against UkrKosmos. However, state enforcers repeatedly refused to do so, by giving an unprecedented reason: the writ itself was not in compliance with the law because the first name, patronymic and surname of the judge who signed it were not indicated, only surname and initials. The state enforcer referred to Clause 1 of Art. 4 of the Law "On Enforcement Proceedings," which provides that "the writ shall include the name and date of issue of the document, the name of the agency, and the first name, patronymic, surname and title of the official who issued it."

Actions taken:

The BOC investigator thoroughly studied the case materials. According to the Council, the writ was valid and had been issued by an authorized court. Judging the SES refusal insufficiently justified, the investigator met twice with the SES and expressed the Council's position.

Result achieved:

On July 23, 2018, the Complainant informed the Council that the SES had finally initiated enforcement proceedings. The case began to move forward at last.

In addition, the Council's investigator brought up the issue of different interpretations of provisions of the law and the resulting baseless decisions by state enforcers before the Ministry of Justice. The BOC had seen similar cases in the past, so it saw the problem as systemic. After several rounds of negotiations, MoJ issued a letter urging SES departments to equally apply the provisions of the law: the first name, patronymic, surname and the title are required only for documents issued by the named official. For documents issued by courts and other government agencies, this requirement does not apply. And so, a systemic problem was resolved.

#17

**BOC facilitates
establishment
of a constructive
dialogue between
government
and business**

Complaint in brief:

On February 9, 2018, an agricompany from Chernihiv region with a complaint against the top management of Kozelets Regional State Administration turned to the BOC. The company could not register lease contracts for land plots.

In August 2013, the company leased a land plot in Chernihiv region. Eight months before the contract expiration date, the company began to negotiate an extension of the contract. However, it faced certain difficulties. According to the Complainant, his appeals were ignored, personal appointments with the Head of Kozelets RSA were always cancelled and postponed. Even

Subject of complaint:

Kozelets District
State Administration
of Chernihiv Oblast
(Kozelets Regional State
Administration (RSA))

after assurance in registration of lease relations it turned out that relevant land plots had been leased to another company for 25 years. The company was officially refused to lease, after which lengthy litigation began.

At the same time, in January 2018, contracts with the new lessee were early terminated. The company had hope of returning them. It was then that the Complainant turned to the BOC for support.

Actions taken:

The Council's investigator asked Kozelets RSA in writing to impartially consider the Complainant's appeal followed by a reply in which an explanation of the reasons why the lease of land plots had been rejected was given. As it turned out, the parties had a number of outstanding issues (concerning the total area of cultivated land in the region, and even the amount of rent paid under previously concluded contracts), which did not allow them to reach an agreement and achieve a mutually beneficial result.

Therefore, the investigator arranged a meeting between the Complainant and top management of Kozelets RSA, in which the BOC acted as an Ombudsperson, due to which problematic issues were clearly identified and agreement on their gradual solution reached.

Result achieved:

With the assistance of the Council, the parties have established a constructive dialogue. With all disputable points settled, the lease agreement was finally signed in July. The case was closed successfully.

ACTIONS OF STATE REGULATORS

SUBJECT: STATE ARCHITECTURAL AND CONSTRUCTION INSPECTION

#18

**Council supports
transparent registration
of documents**

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

Complaint in brief:

On June 12, 2018, a company from Odesa region approached the Council with a complaint about DABI inactivity.

Starting from April 24, the Complainant tried to submit to DABI a notification on the start of a car wash construction. He could not start construction works without document registration. According to the procedure, registration is performed automatically within 1 day. However, during a month DABI did not register the notification. A month later, the inspection returned the documents and indicated the reasons for refusal: the applicant incorrectly wrote the word "pavilion", without the letter "i". In addition, the city was in the address but "Odessa region" was missed.

SUBJECT: OTHER STATE REGULATORS

#19

**The NSDC drops
erroneously imposed
sanctions on IT-company**

Subject of complaint:
The National Security
and Defence Council
of Ukraine (NSDC)

According to the Complainant, an intermediary offering “to speed up the process and solve the issue at DABl” turned to him. Disagreeing to give bribes, the company appealed to the BOC.

Actions taken:

Considering the refusal of DABl groundless, the Council asked the inspection in writing to register the Complainant's documents.

Result achieved:

With the assistance of the Council, the company's notification on the start of construction process was registered. The case was closed successfully.

Complaint in brief:

On 5 June, 2018 an IT company approached the Council. The NSDC mistakenly put the company on the sanctions list.

In early May, the National Security authority imposed special economic sanctions on the company for three years. However, instead of specifying the violator's unique state registration number (EDRPOU code) the Complainant's code was provided. Accordingly, his bank accounts had been blocked. For the company, it meant interruption of current economic activity, paying salaries to employees and settlements with counterparties. In turn, the company continued normal operations and financial transactions, particularly those that the National Security and Defence Council planned to block.

It should be pointed out that neither the names, nor the addresses, nor the spheres of activity of the two mentioned companies matched. Even EDRPOU codes were completely different. Nobody knew how this error could occur.

The Complainant reported on the incident to the State Security Service of Ukraine (SSU) and simultaneously appealed to the Council.

Actions taken:

In accordance with the law, sanctions can be dropped only by an authority that imposed them. Therefore, the SSU redirected the company's request to the NSDC. The Council's investigator, in his turn, asked the NSDC in writing to drop sanctions against the Complainant based on SSU request.

Result achieved:

On July 5, sanctions against the IT company were lifted. The case was closed.

ACTIONS OF STATE COMPANIES

SUBJECT: STATE COMPANIES OTHER

#20

**Zaporizhzhyaoblenergo
customers defend their
right to tax credit**

Subject of complaint:
Zaporizhzhyaoblenergo
State Enterprise PJSC
(Zaporizhzhiaoblenergo)

Complaint in brief:

On February 14, 2018, a union of entrepreneurs from Zaporizhzhia Oblast appealed to the BOC. The Complainants could not register tax invoices on operations with the power distribution company and, accordingly, form a tax credit.

Zaporizhzhiaoblenergo is a monopoly supplier of electricity in Zaporizhzhia Oblast. In late 2017, the company faced financial problems, it actually was on the verge of bankruptcy due to lack of working capital. As a result, the oblenergo's amount on the account in electronic administration system (EAS) was insufficient for registration of invoices. Thus, because of the negative amount of the limit oblenergos' customers could not register tax invoices in EAS. According to Zaporizhzhia Regional Council, customers of the state enterprise generally accumulated tax invoices worth over UAH700 mn.

The Tax Code stipulates that entrepreneurs may attribute VAT paid amounts to the tax credit without registering tax invoices based on invoices issued by oblenergos. However, due to a regulatory gap in the EAS, there was no such an option for them.

Actions taken:

Having determined existing systemic discrepancies between legislation and EAS service functions, the Council's representatives repeatedly discussed the Complainants' issue at the SFS Expert Group meetings. Particularly, the Council's investigator monitored the EAS finalizing process of the tax amount calculation on which a taxpayer has the right to register invoices. Finally, the Ministry of Finance changed EAS functioning procedure. Adjustments were introduced in the test mode in July after submission of tax reporting by companies along with new version annexes to declarations filled out.

Result achieved:

In late July, the Union confirmed that with the help of a new application in the EAS companies received a tax credit. It is worthy to note that as the issues affected interest of the whole regional business, many state authorities contributed to sorting out different aspects of the problem. Notably, that according to the Complainant, "The Business Ombudsman Council rendered a great support in resolving this issue, particularly regarding changes made both to reporting and tax invoices registration program."

A systemic gap, which Zaporizhzhia Oblast entrepreneurs suffered from, was finally filled.

3. COOPERATION WITH STAKEHOLDERS

The Business Ombudsman Council's goal, on the one hand, is to maintain transparency among state, regional and local authorities, as well as state-owned or state-controlled companies. On the other hand, we are a moderator facilitating a system-wide ongoing dialog between business and the Government.

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, National Anti-corruption Bureau, Kyiv City State Administration, National Police and the National Agency on Corruption Prevention.

In particular, these memos stipulate creation of expert groups comprising specialists from the BOC and a respective institution. 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.



EXPERT GROUP MEETINGS HELD IN QUARTER III, 2018:

	Number of expert group meetings	Number of cases discussed
State Fiscal Service	8	36
Prosecutor's Office*	2	13
State Security Service	2	6
National Police	1	14
Kyiv City Administration	1	3
Ministry of Finance*	1	0
Total	15	72

* Expert groups work on informal basis



EXAMPLE OF THE CASE DISCUSSED AND SOLVED INVOLVING THE EXPERT GROUP WITH STATE BODIES

PROBLEM:

A leading Ukrainian sugar producer complained about unlawful actions on the part of an officer of the Investigative Unit for Financial Investigations at the SFS Large Taxpayers' Office (Tax Police).

The SFS conducted an inspection at the company and treated its operations with multiple counterparties as fictitious. Accordingly, the company was ordered to pay additionally more than UAH 16mn in corporate profit tax.

The Complainant did not agree with the conclusions of the tax audit and appealed them in Lviv Circuit Administrative Court. However, the Complainant reported, the Tax Police investigator tried to seize the company's bank accounts several times. In addition, the officer spread false information about the supposedly fictitious nature of the company's business operations, among its counterparties, which hurt the Complainant's business reputation. Feeling pressure on its business, the company turned to the BOC.

ACTIONS TAKEN:

The BOC investigator sent a letter to the Central Investigative Unit (CIU) with a request to examine the circumstances of the case and ensure a pre-trial investigation without unjustified interference in the company's commercial activities. This didn't bring any sufficient results, though.

That is why, the Council turned to another effective tool it possesses. On the basis of the Memorandum on Cooperation with the SFS the BOC initiated a meeting with experts from the Tax Police. The abovementioned issue was considered. The Council supported the Complainants position. The BOC's investigator emphasized that offences accused worth UAH 16 mn doesn't correspond to methods exploited – blocking the company's bank accounts. The Tax Police representatives agreed with that and promised to conduct an internal investigation of the officer's actions.

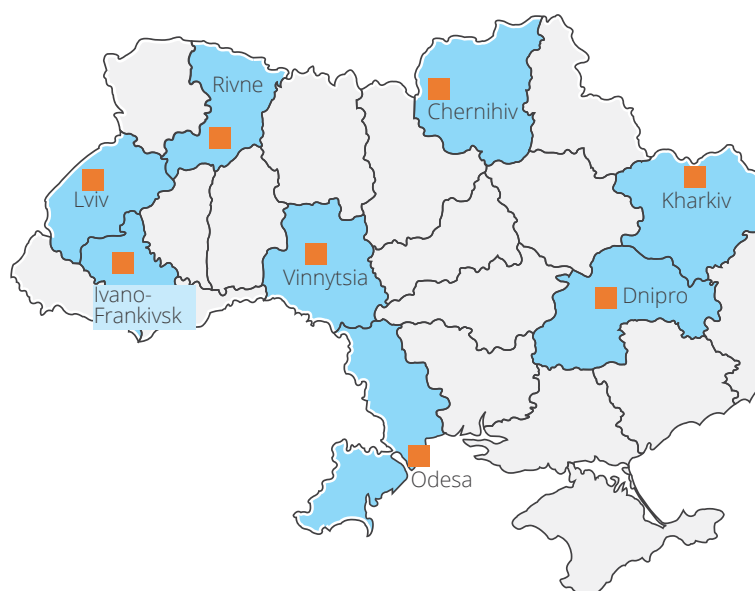
RESULT ACHIEVED:

Audit results confirmed the misconduct and the officer was reprimanded. In addition, the Tax Police assured the Complainant that his case would be considered impartially, without improper interference in commercial activity. The Complainant, on its part, reported that Tax Police officers were no longer acting improperly.



3.2. Regional compliance events: "Business Integrity: Join, Implement and Win"

In July-September 2018, the Business Ombudsman Council supported regional seminars for state and private enterprises "Business Integrity: Join, Implement and Win." The series of events was organized by the UNDP in Ukraine and the Ukrainian Network for Integrity and Compliance with the support of the National Agency for Prevention of Corruption.



8 cities of Ukraine

350 guests

representatives of private, state- and municipality-owned companies, local state authorities, civil society organizations and media.

Seminars
focused on

discussion of corruption combating issues and doing business transparently in regions.



The participants not only had a chance to learn theories on how transparent business can help fight corruption, but also participated in the training aimed at improving business integrity and compliance implementation skills.



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

3.3. Public outreach and communication

Effective communication with the public is an integral part of the Council's work. As a matter of fact, it is a major driving force to be in key with time and responsive to challenges the BOC faces in its daily activities. The Council uses media not only to inform its stakeholders about operational results, but also to ensure public appearances of the Ombudsman and his team to reach the wide audience.

OUTREACH



10.07

CEO Breakfast "Ukraine on the Road to Prosperity", organized by the Kyiv Post



18.07

The Committee on Protection of Property Rights of the Business organized by the Federation of Employers of Ukraine with the involvement of the Ministry of Justice



20.07

A Seminar on "Certification How and Why?" organized by the Ukrainian Network of Integrity and Compliance and Arzinger law firm

27-29.08

IV Tax Forum, organized by the Federation of Employers of Ukraine, Council of Entrepreneurs under the Cabinet of Ministers of Ukraine, Ukrainian Society of Economic Freedoms



22.08

Press conference regarding searches at concern Galnaftogaz, organized by the Ukrainian News press center

04.09

Entrepreneur's Day, organized by the State Regulatory Service and Chamber of Commerce and Industry of Ukraine





13.09

Conference UKRAINIAN PETROLEUM MARKET 2018, organized by Consulting company UPECO and NefteRynok



14.09

Presentation of the Business Ombudsman Council to students of the Educational and Research Institute of Law named after. I. Malinovsky



19.09

III Global Compliance Forum, organized by Yuridicheskaya Praktika

25.09

Seminar "Reforms in Ukraine: A View of Governmental Bodies, Business and Civil Society" organized by the College of Europe jointly with the Center for Adaptation of the Civil Service to the Standards of the European Union



20.09

The meeting of Coordination Council for the protection of economic rights

24.09

Discussion "Practical Aspects of Business Protection", organized by European Business Association



26.09

II International Legal Forum, organized by the National Academy of Legal Sciences of Ukraine and the National Legal University Named After Iaroslav Mudryi

THE MEDIA

Since launch of operations in May 2015, the BOC were cited in the media

21 000+

times

99%

mentions being positive and constructive.

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

This quarter interviews with the BOC employees were published in the leading Ukrainian and international media:

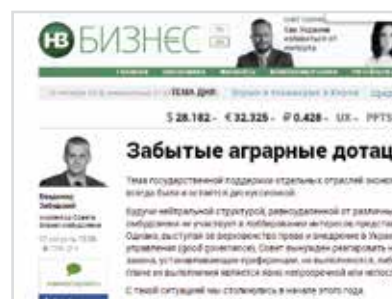
- Deutsche Welle
- Interfax
- Business
- Novoye Vremya Business
- Yuridicheskaya Praktika

The BOC also made a number of TV:

- 1+1
- Channel 24
- Espresso TV
- ZIK
- UA|TV

and radio appearances :

- Radio Novoye Vremya
- Radio Hayat





Facebook

(@BusinessOmbudsmanUkraine)

4000+ followers so far – no paid ads, organic reach only. We use Facebook to share information about the Office, its work, and news of interest in the oversight field.



Instagram

@business_ombudsman_council

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



Twitter

@Bus_Ombudsman

This channel is used to quickly get the message out for the English-speaking audience.



YouTube

@Рада бізнес-омбудсмена

This channel includes useful and emotional videos on submitting complaints, cast success stories of complainants, provides legislative lifehacks. YouTube channel enables the Council to build trust and authority with the audience.



LinkedIn

@Business
Ombudsman Council

The Council constantly keeps the business community updated about its recent developments.

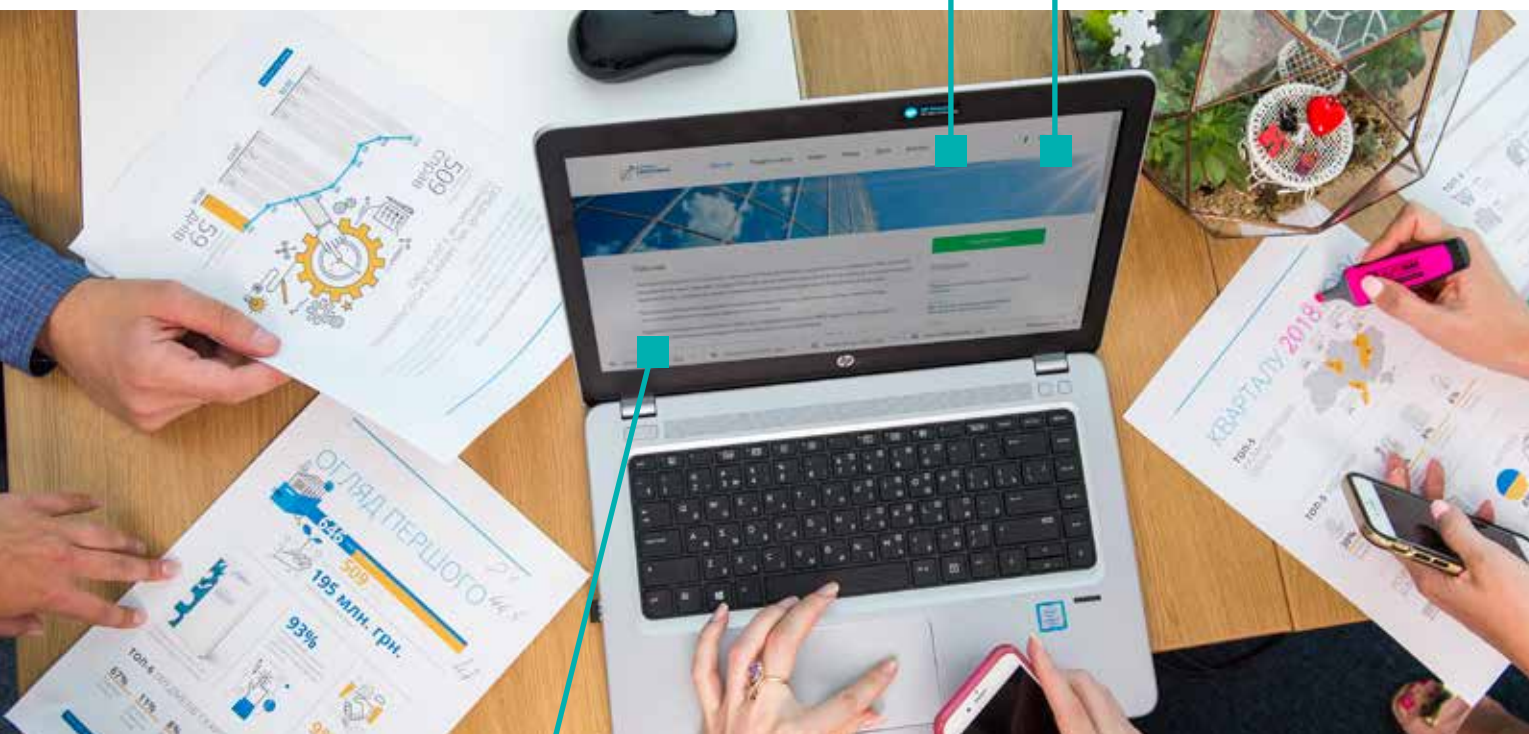
UPDATED WEBSITE OF THE BUSINESS OMBUDSMAN COUNCIL:

IMPLEMENTATION STATUS OF ISSUED SYSTEMIC RECOMMENDATIONS

The BOC added a new section with the implementation status of issued systemic recommendations. Users can see how a certain state body follows the Council's recommendations, at which stage of review and implementation they currently are.

MEDIA SECTION

Was updated section Media section was updated to share new interesting content, in particular, video on closed cases.



STATISTICS

An interactive section with statistics of received complaints was created. The new tool allows users to independently and promptly find out key indicators of the Council's operations:

Who are the complainants and complainees?

What is the portrait of complainants by the size of business, the origin of capital, the industries in which they operate?

What are the Council's financial and non-financial results?

THE BOC IS FUNDED



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