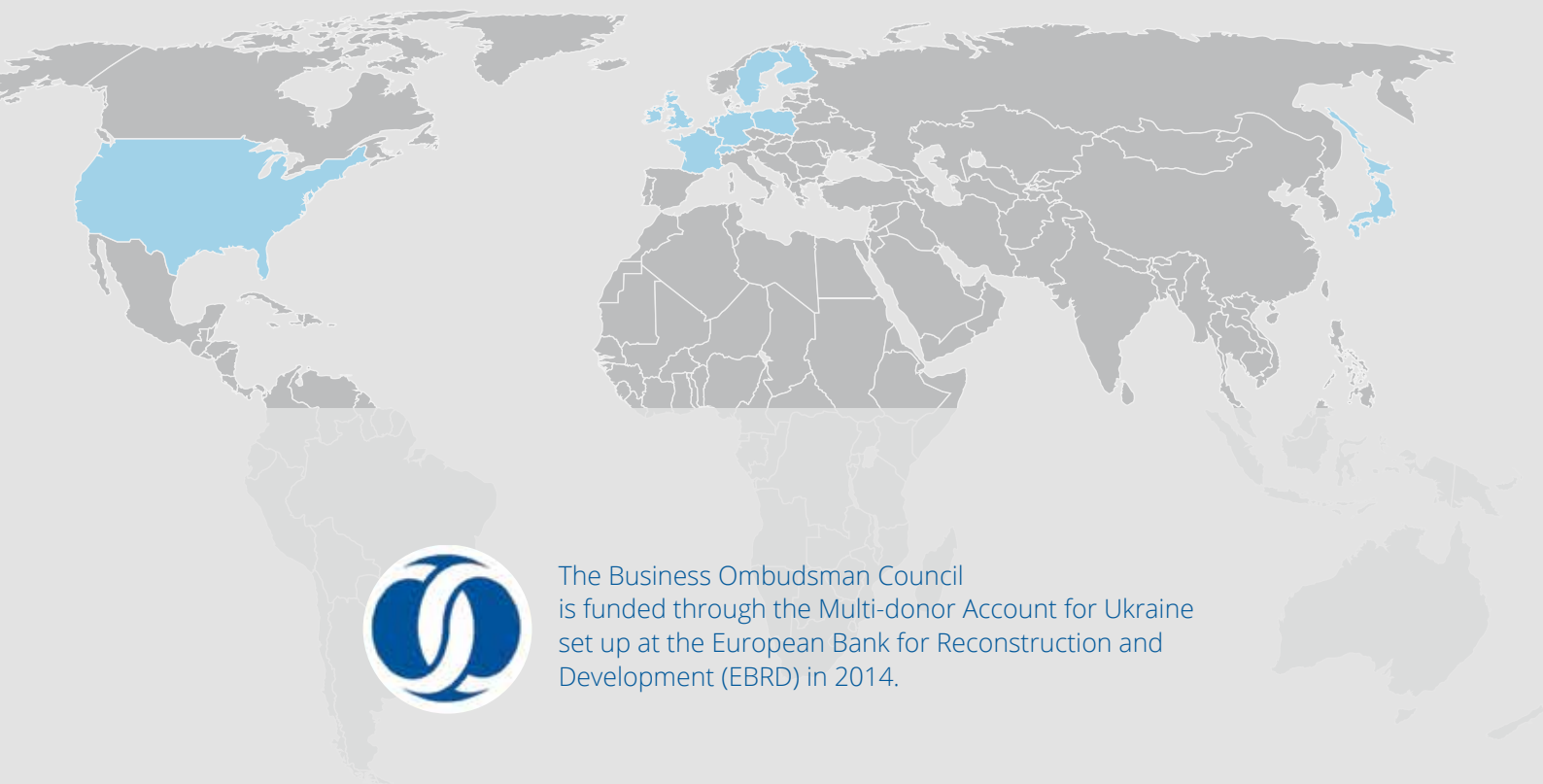




Quarter III, 2016
01 July – 30 September

QUARTERLY REPORT



The Business Ombudsman Council is funded through the Multi-donor Account for Ukraine set up at the European Bank for Reconstruction and Development (EBRD) in 2014.

The donors of the Multi-donor Account for Ukraine include



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Content

Foreword of the Business Ombudsman	4
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1	Complaint trends	6
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1.1.	Volume and nature of complaints received	7
1.2.	Timeliness of the preliminary review of complaints	11
1.3.	Number of investigations conducted and grounds for declining complaints	11
1.4.	Timeliness of conducting investigations	16
1.5.	Government agencies subject to the most complaints	18
1.6.	Geographical distribution of complaints received	19
1.7.	Complainants' portrait	20
1.8.	Feedback	23

2	Summary of key matters and follow-up of recommendations	26
----------	--	-----------

2.1.	Systemic issues identified	26
2.2.	Information on closed cases and recommendations provided	27
2.3.	Summary of important investigations	40
2.4.	New systemic recommendations issued to the Government of Ukraine	55

3	Cooperation with stakeholders	56
----------	--------------------------------------	-----------

3.1.	Working visits	56
3.2.	Cooperation with government agencies	57
3.3.	Public outreach and communication	60

	Landmarks after the end of reporting period	65
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The BOC and the Council are used interchangeably throughout the text to refer to the Business Ombudsman Council.



Dear Friends, Colleagues, and Partners,

It is my pleasure to present the Business Ombudsman Council's report for Q3 2016.

In the reporting quarter, we have seen some remarkable results – a testament to having found our voice in Ukraine's business environment.

The Council received 242 complaints, the largest quarterly amount since the beginning of operations 16 months ago. We undertook the second largest number of investigations in the Council's history – 145. We closed over a half of cases with positive – either financial or non-financial – result for complainants. The direct financial impact of our operations this quarter was UAH 1.46 billion, and the overall economic effect since launch of our operations has almost reached UAH 5 billion.

In the reporting quarter the Council also prepared report discussing systemic problems and challenges in the sphere of competition protection and oversight.

Our dialogue with government agencies also improved dramatically, with the rate

of implemented recommendations reaching 75%. So far, we have 9 memoranda with government agencies – three of them (with the Kyiv Municipal State Administration, the National Police, and the National Agency on Corruption Prevention) signed in this reporting quarter.

Since mid-July, 7 new employees – highly-qualified experts with experience in commercial, corporate, tax, criminal and antimonopoly legislation – have joined our team. As a result of appointments our team has grown to 23 employees. We will now be able to investigate even a bigger number of claims from Ukrainian entrepreneurs.

With upward complaint dynamics, more investigations launched and closed successfully, and recommendations further implemented by government agencies, the Council has truly become the voice Ukrainian business did not have before. Going forward, I see our task in strengthening this voice and ensuring business indeed has a say in how Ukraine's economy works and how it can be improved.

Algirdas Šemeta
Business Ombudsman

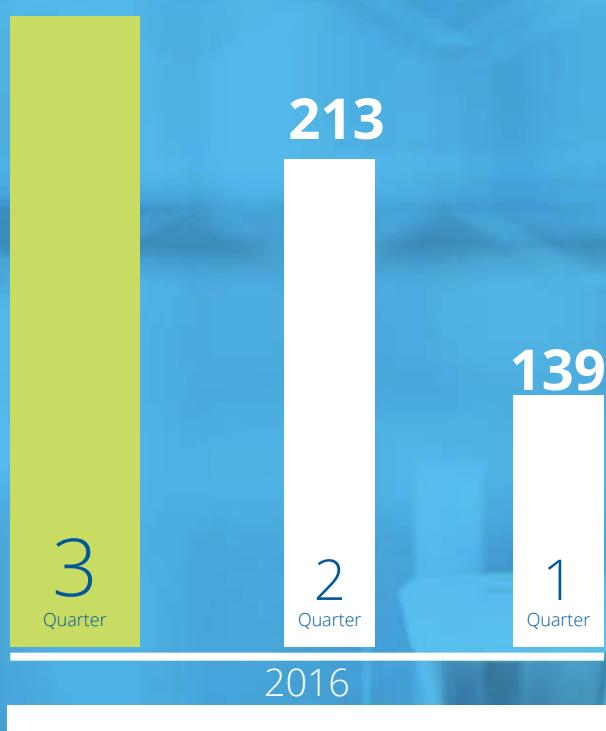
1 Complaint trends

1.1. Volume and nature of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

In the third
quarter of 2016,
the Business
Ombudsman received

242
complaints



In this quarter, the BOC received **the record number of complaints** since launch of operations 16 months ago. The increasing number of incoming complaints testifies that the institution has found its voice in Ukraine's business environment.

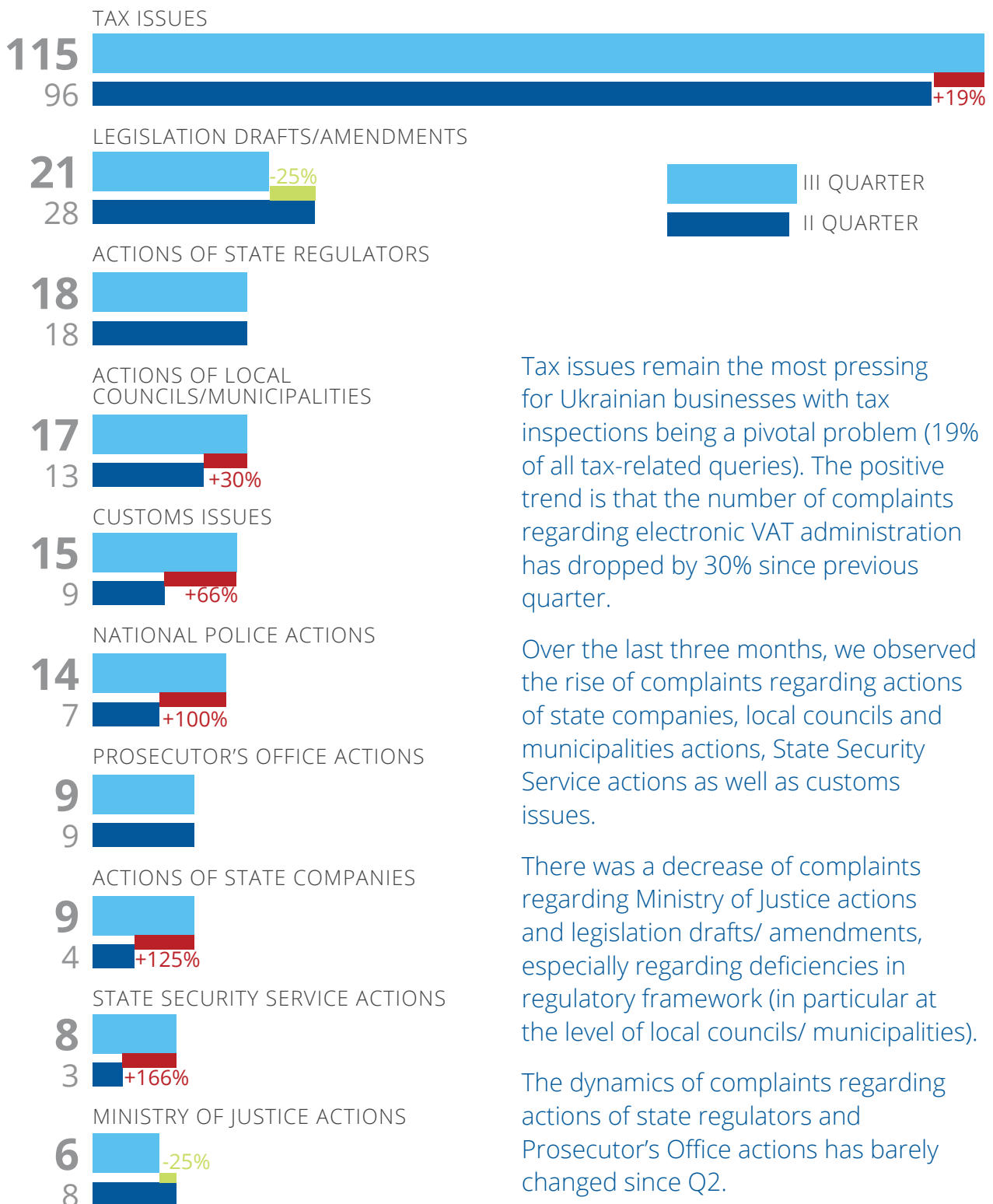


Total number
of complaints
received since
launch of operations
in May 2015

1179

TOP-10

SUBJECTS OF COMPLAINTS RECEIVED IN QUARTER III 2016



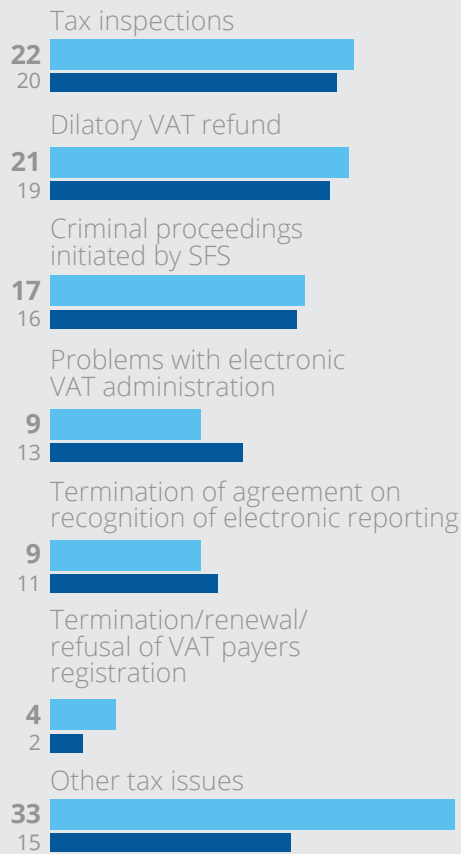
Tax issues remain the most pressing for Ukrainian businesses with tax inspections being a pivotal problem (19% of all tax-related queries). The positive trend is that the number of complaints regarding electronic VAT administration has dropped by 30% since previous quarter.

Over the last three months, we observed the rise of complaints regarding actions of state companies, local councils and municipalities actions, State Security Service actions as well as customs issues.

There was a decrease of complaints regarding Ministry of Justice actions and legislation drafts/ amendments, especially regarding deficiencies in regulatory framework (in particular at the level of local councils/ municipalities).

The dynamics of complaints regarding actions of state regulators and Prosecutor's Office actions has barely changed since Q2.

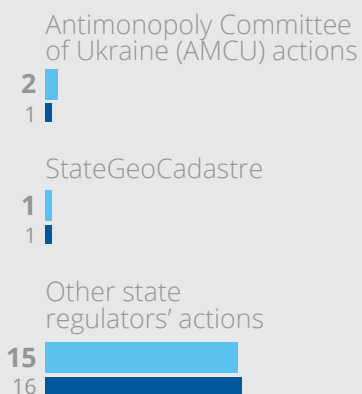
115 **96** TAX ISSUES



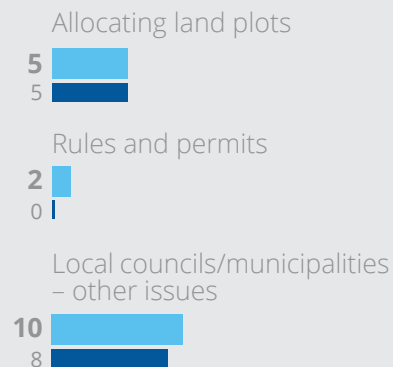
21 **28** LEGISLATION DRAFTS/
AMENDMENTS



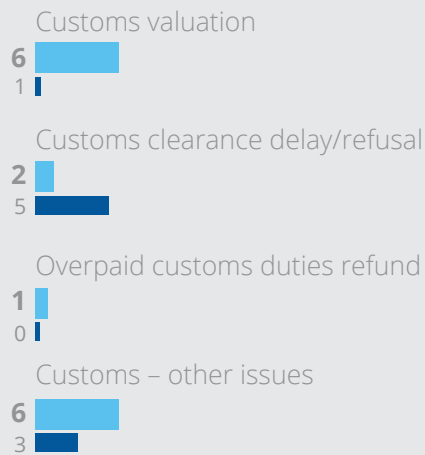
18 **18** ACTIONS OF STATE
REGULATORS



17 **13** ACTIONS OF LOCAL COUNCILS/
MUNICIPALITIES



15 **9** CUSTOMS ISSUES



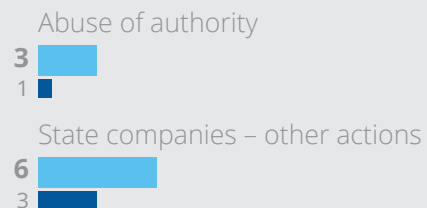
14 **7** NATIONAL POLICE ACTIONS



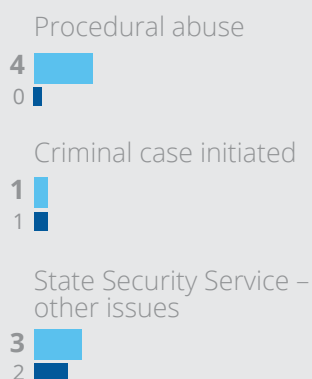
9 **9** PROSECUTOR'S OFFICE ACTIONS



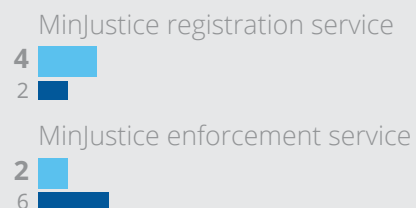
9 **4** ACTIONS OF STATE COMPANIES



8 **3** STATE SECURITY SERVICE ACTIONS



6 **8** MINISTRY OF JUSTICE ACTIONS



1.2. Timeliness of the preliminary review of complaints

(Clause 5.3.1 (b) of Rules of Procedure)

The average time
for preliminary
review of complaint:

10
working
days

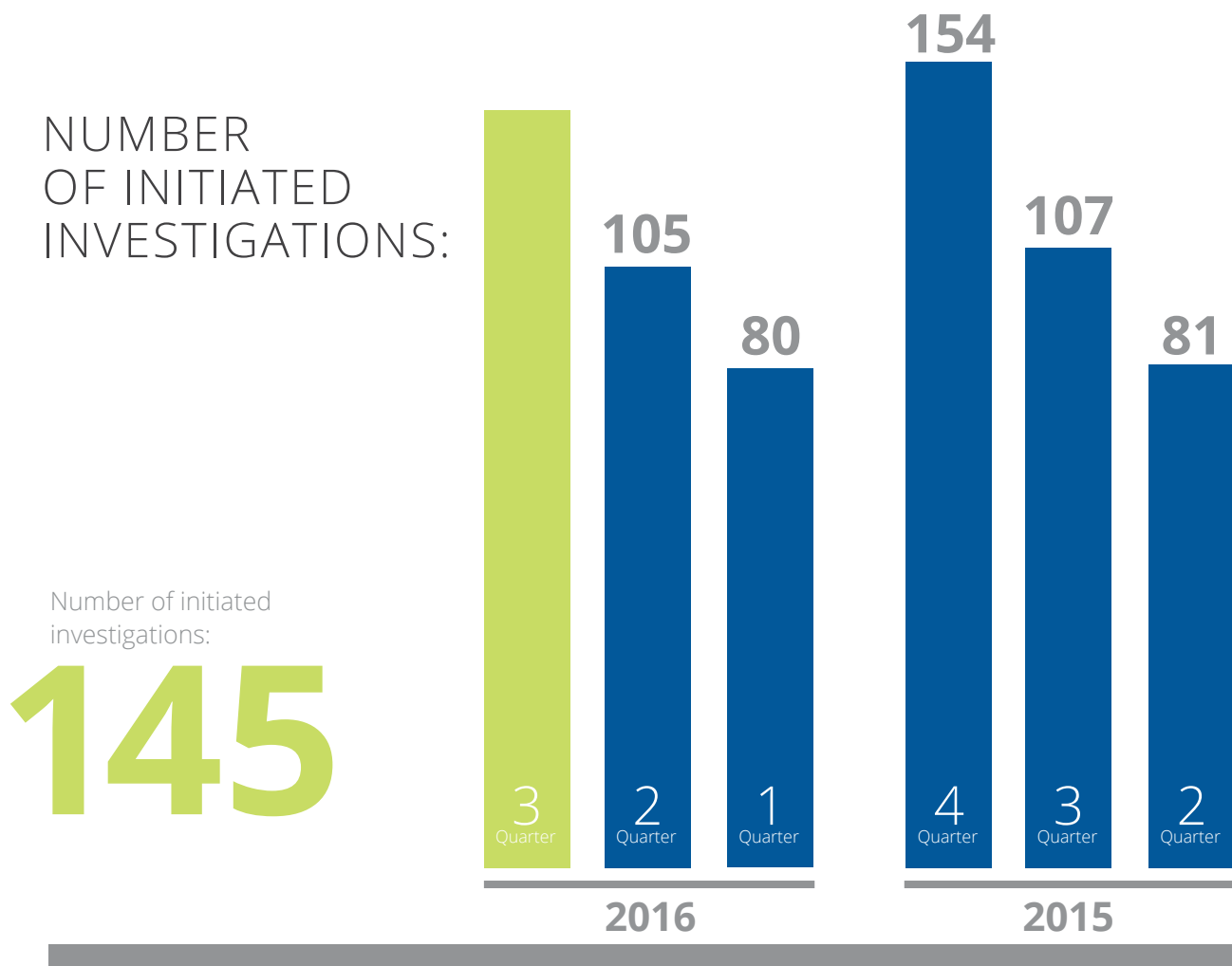
The BOC's team adheres to deadlines
for preliminary assessment of inquiries
indicated in the Rules of Procedure.



1.3. Number of investigations conducted and grounds for declining complaints

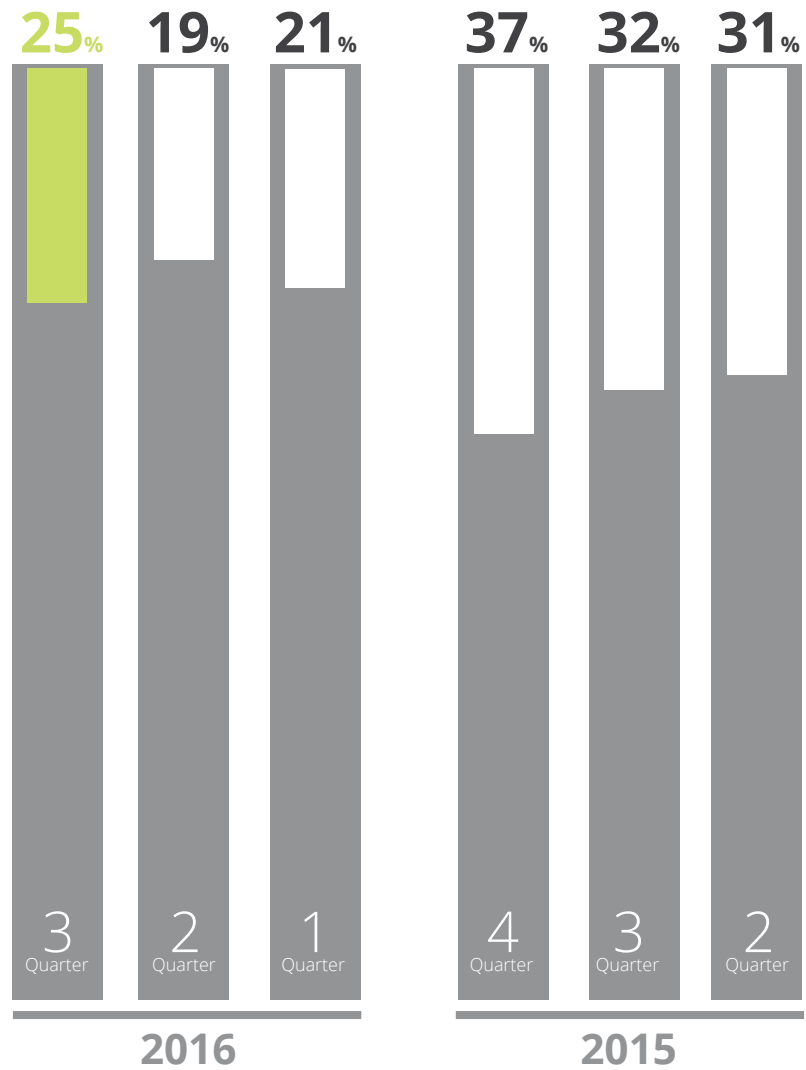
(Clause 5.3.1 (c) of Rules of Procedure)





In this reporting quarter, the BOC initiated the second largest number of investigations in the whole history of its operations.

RATIO OF
DISMISSED
COMPLAINTS:



MAIN REASONS FOR COMPLAINTS' DISMISSAL IN QUARTER III 2016



In this quarter, the 6% rise in the ratio of dismissed complaint was mostly caused by complaints outside of the Business Ombudsman's competence. Some inquiries contained request for explanation without indicating business malpractice while others were filed repeatedly after the negative decision to proceed with investigation was made.

CHECK IF YOUR COMPLAINT MEETS THE COUNCIL'S CRITERIA:



1.4. Timeliness of conducting investigations

(Clause 5.3.1 (d) of Rules of Procedure)

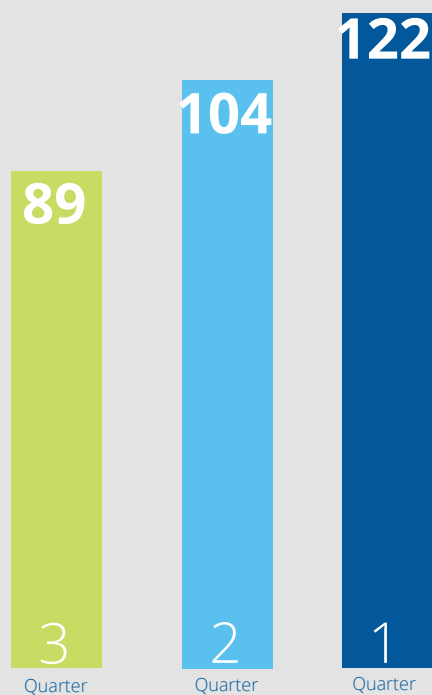
In the reporting quarter,
the BOC closed

119
cases

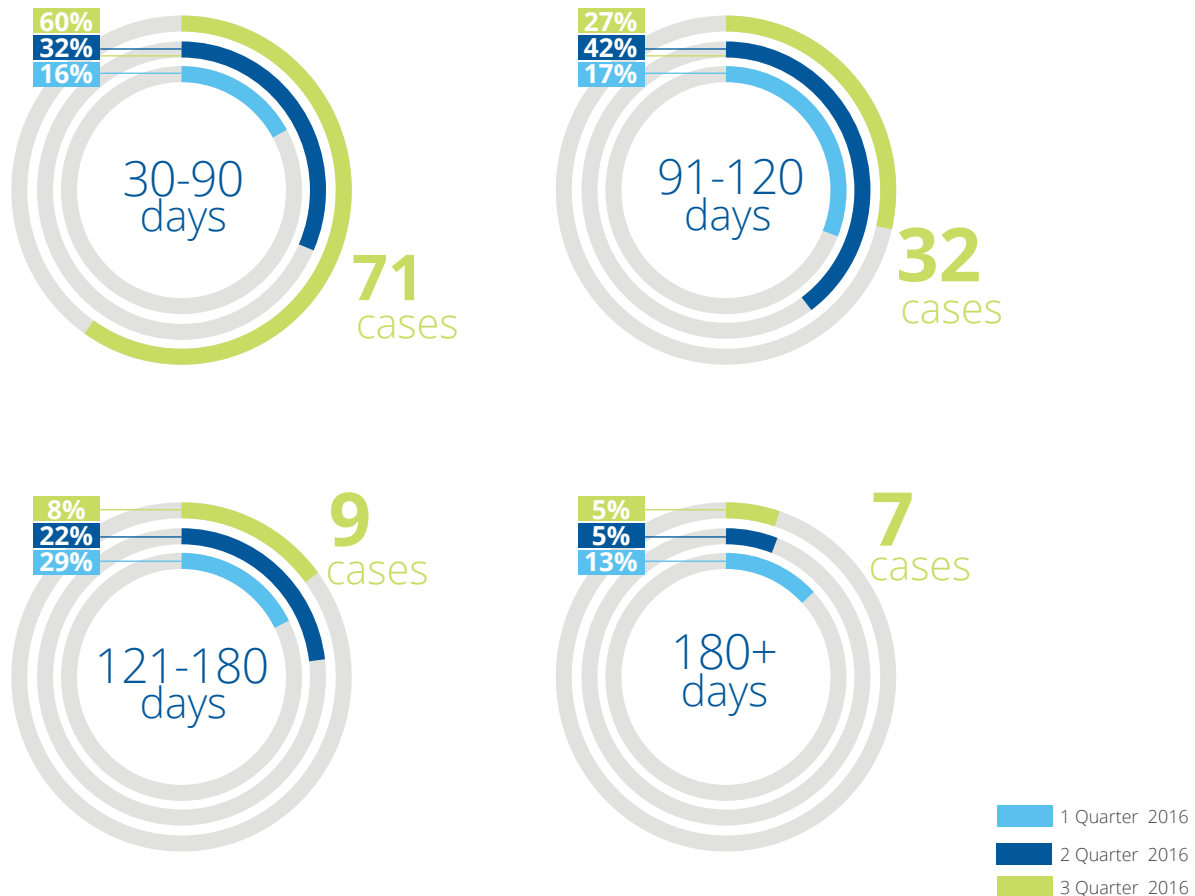
Average time for conducting
these 119 investigations:

89
days

AVERAGE
TIME FOR
CONDUCTING
INVESTIGATIONS
IN 2016:



RATIO OF CLOSED CASES BY DAYS:



The BOC's team reduced the timeliness of conducting investigations by 33 days since Q1 2016. In this reporting quarter, 60% of all cases were closed within 30-90 days, which means that we have almost doubled the ratio of investigations closed within the standard 3-month deadline in comparison to Q2.

1.5. Government agencies subject to the most complaints

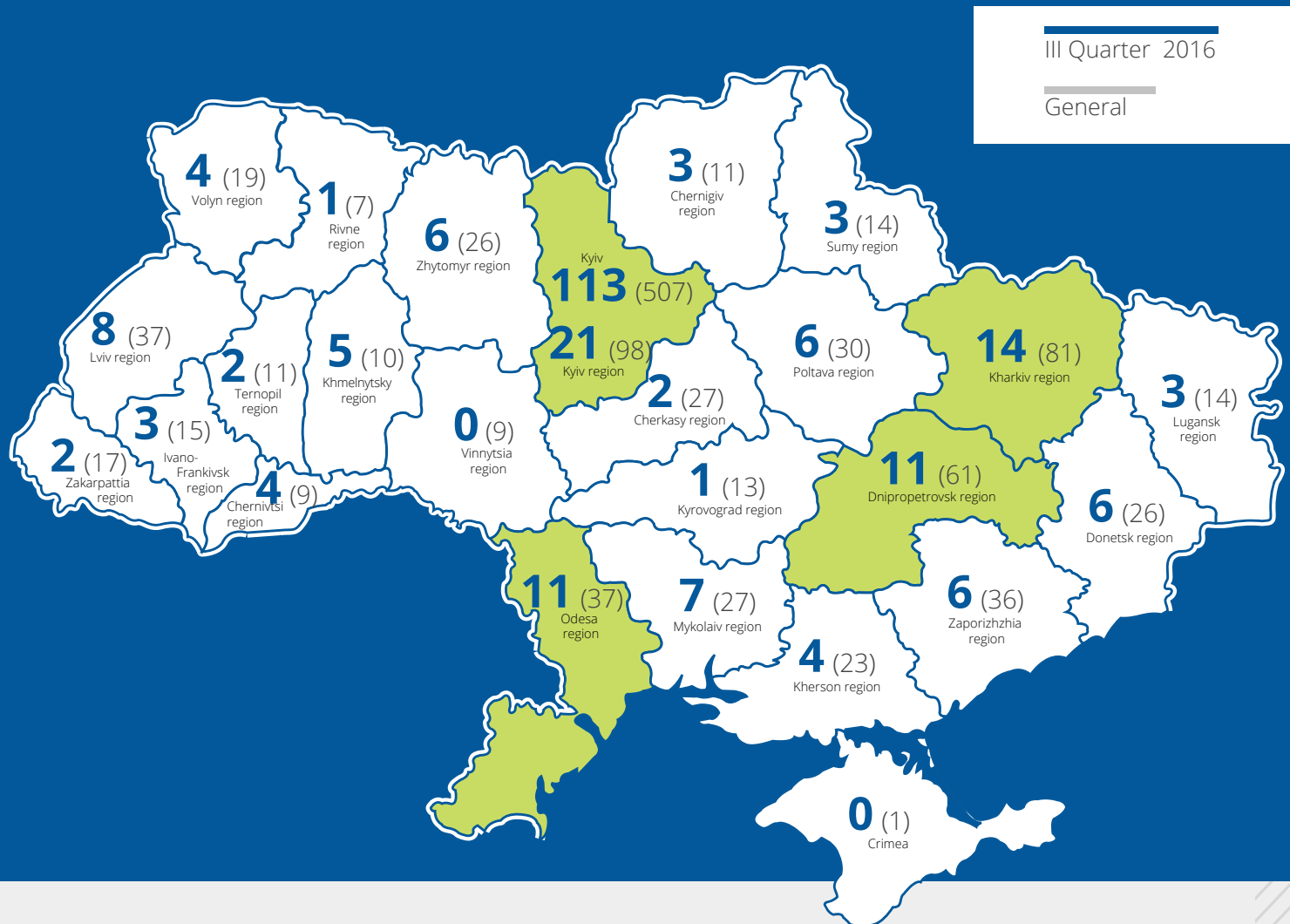
TOP-12

GOVERNMENT AGENCIES



The State Fiscal Service (including the State Tax Inspection, and Customs Service) as well as enforcement agencies (including Prosecutor's Office, National Police and State Security Service of Ukraine) traditionally top the chart – 56% and 12% respectively out of all complaints received. New agencies appeared on the list in this quarter, such as top state bodies (the Parliament, the Cabinet of Ministers, President of Ukraine), Ministry of Finance, Antimonopoly Committee of Ukraine as well as state enterprises. On the other hand, the Ministry of Social Policy and Labour of Ukraine and Ministry of Ecology and Natural Resources dropped off the list.

1.6. Geographical distribution of complaints received



THE DYNAMICS OF COMPLAINTS REMAINS STABLE:

the majority of complaints keep coming from Kyiv city (113), the Kyiv (21), Kharkiv (14), Odesa (11) and Dnipro (11) oblasts.

WE HAVE NOT RECEIVED

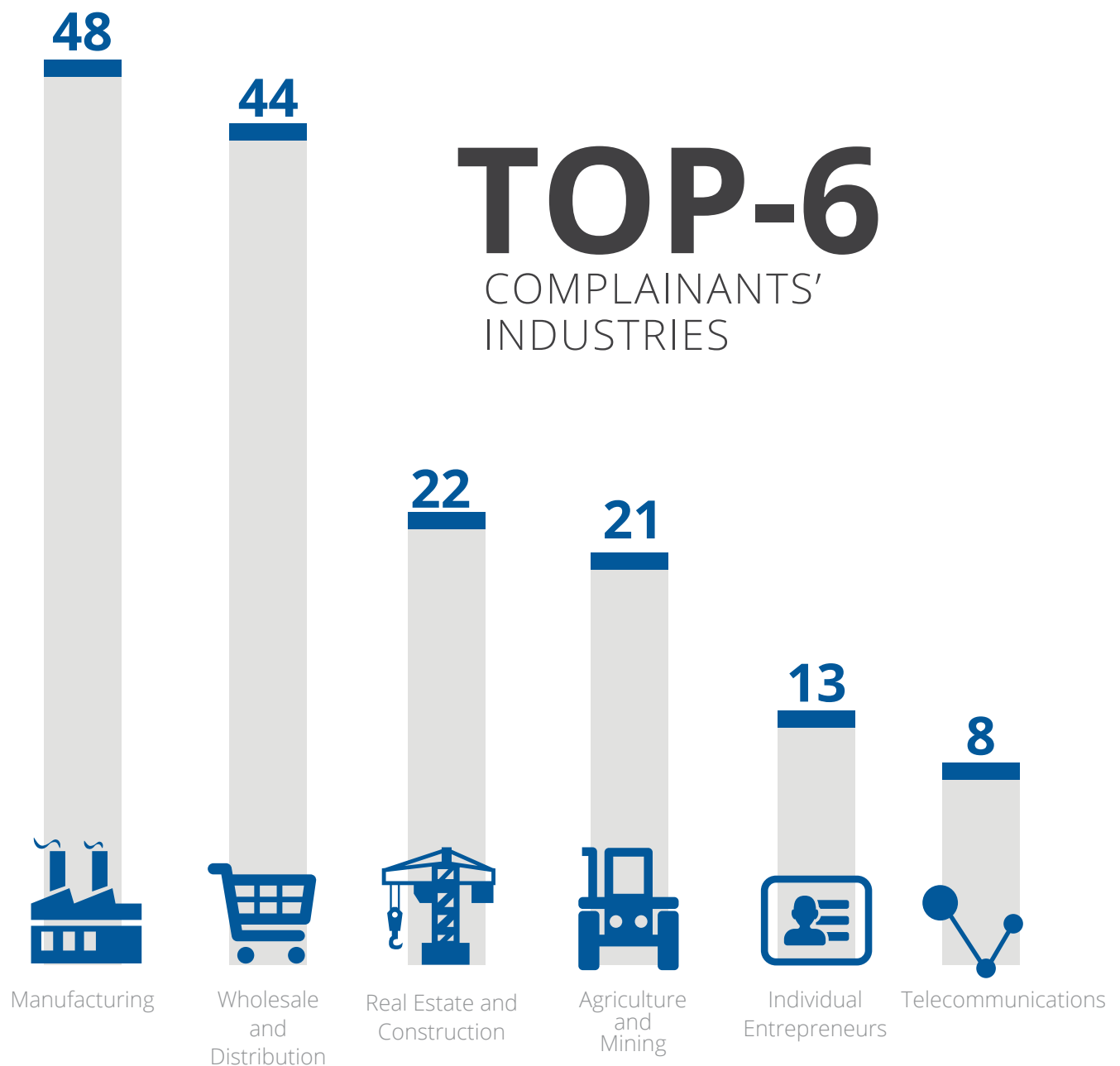
any complaints from Vinnytsia and Crimea in this quarter.

WE OBSERVE THE RISE OF COMPLAINTS

from particular regions following the Business Ombudsman's working visits to particular oblasts.

1.7. Complainants' portrait

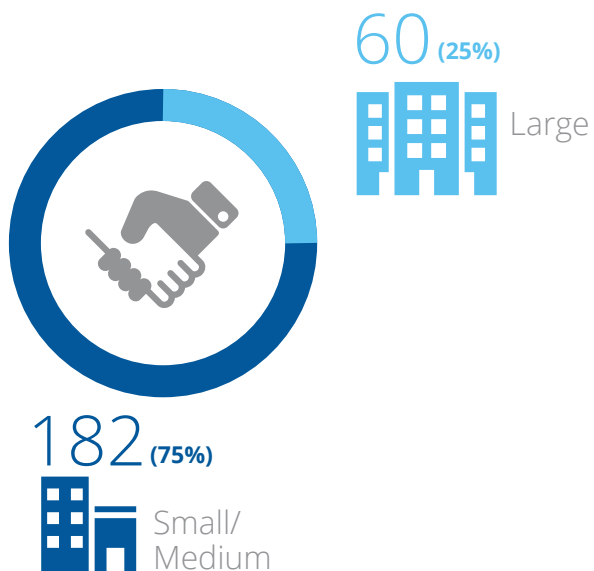
The complainants' portrait has barely changed since previous quarter. Complaints were coming predominantly from manufacturers, wholesalers, distributors, agribusiness, real estate and telecommunications market players, as well as from individual entrepreneurs.



OTHER INDUSTRIES:

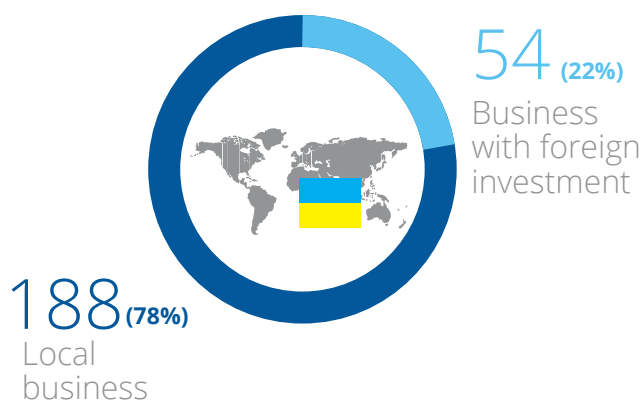
Processing Industry	7	Business Services	2
Public Organizations	7	Delivery services	2
Retail	7	Restaurant business	2
Financial Services	5	Engineering, geology and geodesy areas activity	2
Oil and Gaz	4	Metallurgical production	2
Energy and Utilities	3	Non-profit	2
Health, Pharmaceuticals, and Biotech	3	Repair and Maintenance Services	1
Wastes collection and disposal	3	Travel Recreation and Leisure	1
Warehousing	3	Farming	1
Computer and Electronics	3	Electric installation works	1
Advertising	3	Media and Entertainment	1
Investment companies	2	Technical testing and research	1
Automotive transport	2	Wastewater treatment, sewerage	1
Software and Internet	2	Publishing and printing services	1
		Conferences and trade exhibitions organizing	1
		Transportation and Storage	1

SIZE OF BUSINESSES



Small and medium business remains our main source of complaints although we do not make any preferences based on the size or nature of business that submits their complaints to our office.

LOCAL VS FOREIGN COMPLAINANTS



The majority of BOC's complainants are local companies. The rest are enterprises with foreign investment.

1.8. Feedback

95%
OF COMPLAINANTS

said they were very satisfied/
satisfied with working with us

In the reporting
quarter we received

81
feedback forms
from our
complainants.



COMPLAINANTS ASSESS OUR WORK BASED ON SEVERAL CRITERIA:



client care and attention to the matter

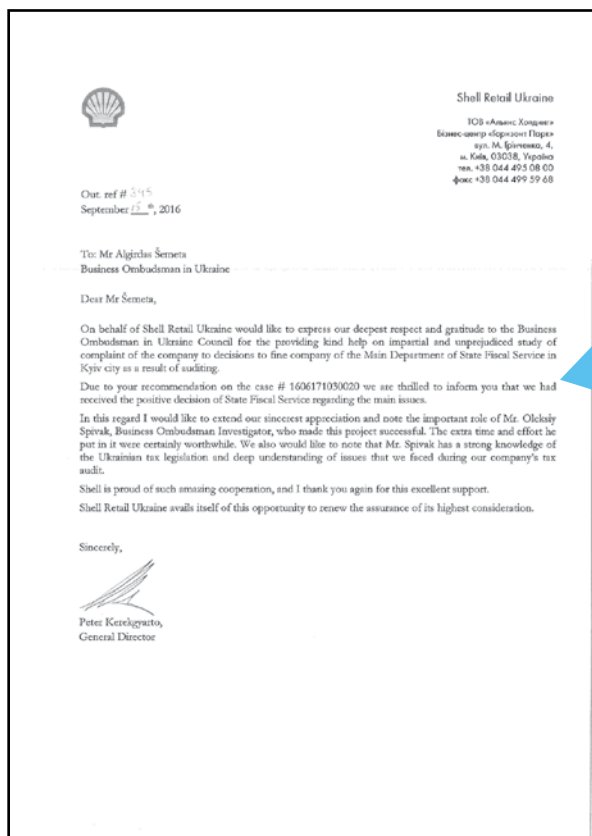
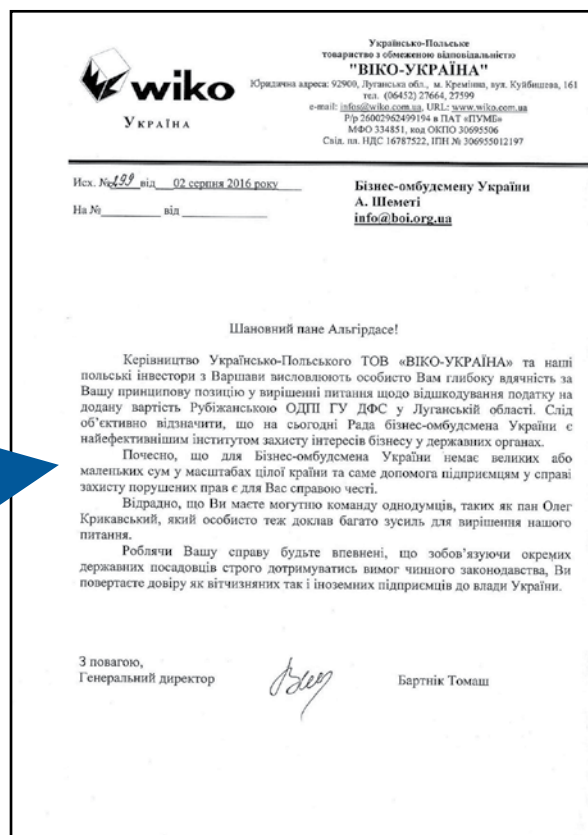
understanding the nature of the complaint

quality of work product

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

EXAMPLES OF THANK YOU LETTERS

Business Ombudsman Council is truly the most efficient institution advocating for business before government agencies.



Shell is very proud of such amazing cooperation, and thank you again for this excellent support.

We are very grateful...to the Business Ombudsman's highly qualified team for efficient and prompt solution of our problem related to VAT refund.

Рада бізнес-омбудсмена України
04070, м. Київ, вул. Спаська, 30

від:

Марчук Роман Петрович
09600, Київська область, Рокитнянський р-н, смт. Рокитне,
вул. Лісна, 12, кв. 6

Марчук Богдана Петрівна
09600, Київська область, Рокитнянський р-н, смт. Рокитне,
проект. Березиний, 9

Поліщук Оксана Петрівна
09600, Київська область, Рокитнянський р-н, смт. Рокитне,
вул. Вені, 120

2 серпня 2016 року

Шановні панове!

Користуючись цією нагодою, завідуємо Вам свою повагу і хотіла би звернутися до колективу Ради бізнес-омбудсмена України з цим листом подяки у зв'язку з активним сприянням у закритті кримінального провадження № 3201210000000001 від 21 листопада 2012 року, ініційованого органами податкової міліції за фактом нібито ухилення нами від сплати податків в особливо великих розмірах.

З самого початку діяльності Ради бізнес-омбудсмена України і наших перших звернень, які з ним співпали, ми відчували не лише моральну підтримку від Вас і зацікавленість у відновленні справедливості, а й мали змогу переконатися у професіоналізмі, компетентності і добросовісності Ваших експертів та весь цей час наших взаємин.

Ретельно вивчаючи і досліджуючи всі без виключення факти незаконності і бездіяльності даного кримінального провадження і неврахованості дій органів досудового слідства, висвітлені в наших численних зверненнях до Вас, своєчасно реагуючи на кожне таке звернення, Ви відіграли визначальну роль у шкідливості органів досудового слідства закрити зазначене кримінальне провадження.

Таким чином, прийміть нашу щирю подяку і побажання успіхів і загального визнання Вашої беззаперечно власної для суспільства діяльності!

З повагою,

Р.П. Марчук

Б. П. Марчук

О.П. Поліщук

It's exactly the Business Ombudsman's role that was decisive in tipping the scale in favour of business.

Молочна Свобода
Рада бізнес-омбудсмена
БЦ «Поліс ляска», вул. Спаська 30А,
9 поверх, м. Київ, 04070, Україна

№ 274 від 07.07.2016
на № _____ від _____ 20__

Шановний пане Аляграсе та Ваша команда!

Із словами найщирішої вдячності до Вас звертається товариство з обмеженою відповідальністю «Торговий дім «Молочна свобода», що є одним із найбільших експортерів молочної продукції в Україні. Весною поточного року ТОВ «ТД «Молочна свобода» звернулося до Ради бізнес-омбудсмена, у зв'язку з тривалою (понад рік) затримкою бюджетної заборгованості з податку на додану вартість. На момент цього звернення сума бюджетної заборгованості з невідшкодованого ПДВ складала 19 161 512 (дев'янадцять мільйонів сто шістдесят одна тисяча п'ятсот двамадцять) гривень, хоча всі необхідні перевірки органами ДФС з відповідного питання вже були проведені, належні до відшкодування суми ПДВ підтверджені відповідними актами та доказами.

Не дивлячись на численні звернення Підприємства до органів виконавчої влади різного рівня аж до центральних та вищих державних органів, питання з погашення бюджетної заборгованості з ПДВ залишалося невирішеним, що завдавало серйозної шкоди фінансовим інтересам Товариства, дуже негативно впливало на загальні результати фінансово-господарської діяльності та могло призвести до фатальних наслідків для економічного суб'єкта господарювання-експортера, географія поставок молочної продукції якого є дуже змістовною та включає в себе країни СНД, Ізраїль, Японію, Китай, США, країни Північної Африки, Південної Кореї та інші держави, що забезпечує Україну так необхідною валютною виручкою.

Лише після звернення ТОВ «ТД «Молочна свобода» в Раду бізнес-омбудсмена та розгляду цього питання у зазначеній установі вся сума бюджетної заборгованості з відшкодування ПДВ була зарахована на розрахунковий рахунок Підприємства.

Безпосереднє супроводження розгляду скарги ТОВ «ТД «Молочна свобода» про відшкодування ПДВ здійснював інспектор Ради бізнес-омбудсмена Олег Криківський, який дуже плідно співпрацював з відповідальними фахівцями та керівниками не лише Товариства, а й державних податкових органів всіх рівнів, намагаючись найбільш оперативно та ефективно для Підприємства-експортера розв'язати скаргу.

Завдяки зверненню в Раду бізнес-омбудсмена Товариство отримало можливість направити уповноважену посадову особу на зустріч щодо розгляду системних проблем порушення прав суб'єктів господарювання Прем'єр-міністра України Гройсмана Володимира Борисовича з представниками бізнесу, яку підготувала служба бізнес-омбудсмена, та на якій однією із питань було саме питання з розгляду скарги ТОВ «ТД «Молочна свобода». Прем'єр-міністр України надав доручення органам ДФС провести відшкодування всієї наявної бюджетної заборгованості з ПДВ до кінця поточного тижня. Зазначене доручення було цілком виконано. Вас через три дні – 15.07.2016 року на розрахунковий рахунок Підприємства надійшли кошти бюджетної заборгованості з ПДВ, перерахування яких затримувалося державою понад рік з невідомих причин.

Ми дуже вдячні Вам особисто, шановний пане Аляграсе, та Вашій команді, в якій працюють фахівці високого професійного рівня, за дієве та оперативне вирішення питання про повернення бюджетної заборгованості з ПДВ, що було для Підприємства вкрай важливим та актуальним.

Зі свого боку хочемо зазначити про те, що створення Ради бізнес-омбудсмена, як державної інституції, є дуже своєчасним та необхідним державним рішенням, що допоможе забезпечити ефективну систему комунікації бізнесу з державними органами та сприятиме впливу на інвестиційну привабливість нашої держави на міжнародному рівні.

З повагою
Директор ТОВ «ТД «Молочна свобода»
Адреса для листування / Адреса для переписки:
вул. Ломоносова, 26, м. Київ, Київська обл., Україна, 63702
вул. Ломоносова, 26, м. Київ, Київська обл., Україна, 63702
т/ф: +38 (05742) 231165/1599 е-мэй: almagrass@ukr.net

М.І. Борнло
Директор Товариства з обмеженою відповідальністю
«Торговий дім «Молочна свобода»
«Торговий дім «Молочна свобода»

We got not just emotional support from you and commitment to restoring justice, but witnessed the professionalism, expertise and reliability of your team throughout the period of investigation.

Товариство з обмеженою відповідальністю «НОУПТЕ-ПАРТНЕР»
ІПЕНДІАТІОНАЛНА ТА КОМЕРЦІАЛНА ЗАКРИТА АКЦІОНЕРНА ТОВАРИСТВО
КІП № 32022421695
048 398 1395, 397 1425

вих. № 269
від 29 Вересня 2016 р.

Рада Бізнес-омбудсмена
вул. Спаська, буд. 30А, Київ 04070

З величезною вдячністю до Вас про те, що розгляди нашої заяви про повернення коштів та справу товариство у три роки має своє позитивне завершення.

Знаємося, що рішення про завершення до Ради бізнес-омбудсмена було прийняте після кількох безрезультатних спроб вирішення нашого спірного питання в адміністративному порядку, коли ситуація вже здавалася безнадійною.

Тим більше було поборити цю в Україні систему та її структуру, яка не лише поглинає бізнесу руку допомоги, але готова пройти разом з бізнесом всі найгірші обставини.

Аналізуючи внесок кожного, хто наважився зробити цей мир адміністративних перешкод, можна відкрито заявити: саме участь Ради бізнес-омбудсмена стала такою вирішальною обставиною, що переважна вага на сторону бізнесу.

Дякуємо Вам за участь та співробітництво.
Впевнені, що Ви продовжите свою справу!

З повагою,
Директор ТОВ «НОУПТЕ-ПАРТНЕР»
Коммерційний директор ТОВ «НОУПТЕ-ПАРТНЕР»
Юридичний представник за Діяльністю

А.О. Дудка
О.М. Єфімов
С.Р. Мокієвич

2 Summary of key matters and follow-up of recommendations

2.1. Systemic issues identified

Interactions between business entities and fiscal agencies remain the most troublesome area. The only shift is an increasing number of inquiries regarding tax inspections and customs valuation while previously complaints regarding VAT electronic administration and dilatory VAT refund prevailed.

Action or inaction of enforcement agencies, such as excess of power during investigations and initiating criminal proceedings against business, remain the laggard. There was a rise of complaints regarding procedural abuse of State Security Service and National Police of Ukraine.

The general trend testifies that businesses are now addressing more complicated issues to the BOC. All investigations require careful analysis to determine the truth.

It should be noted that the BOC's dialogue with government agencies has become even far more productive: the rate of implementing BOC's recommendations grew to 75% (compared to 64% in QI 2016 and 70% in QII 2016).

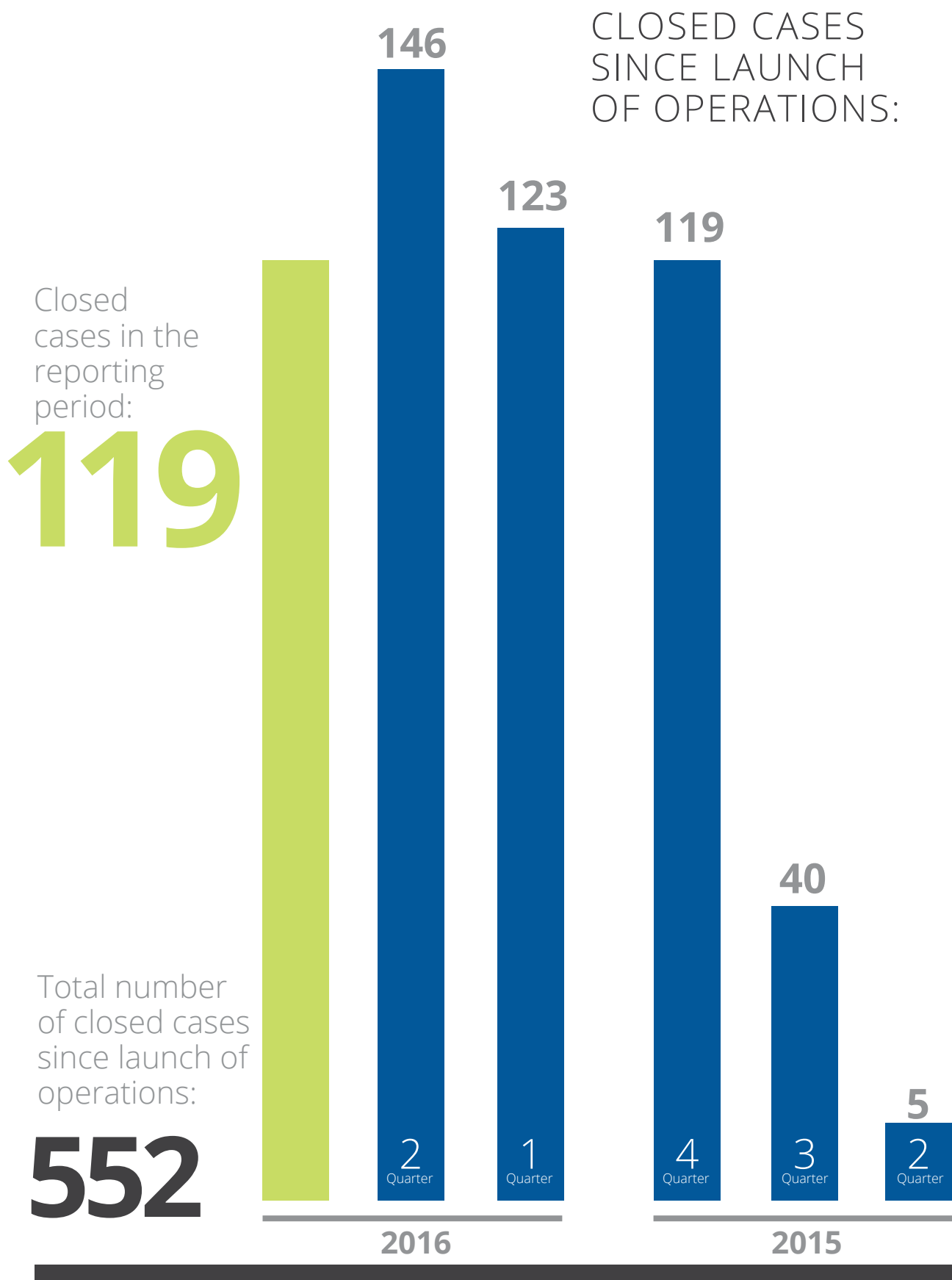
2.2. Closed cases and recommendations provided



The positive trend in this quarter is that

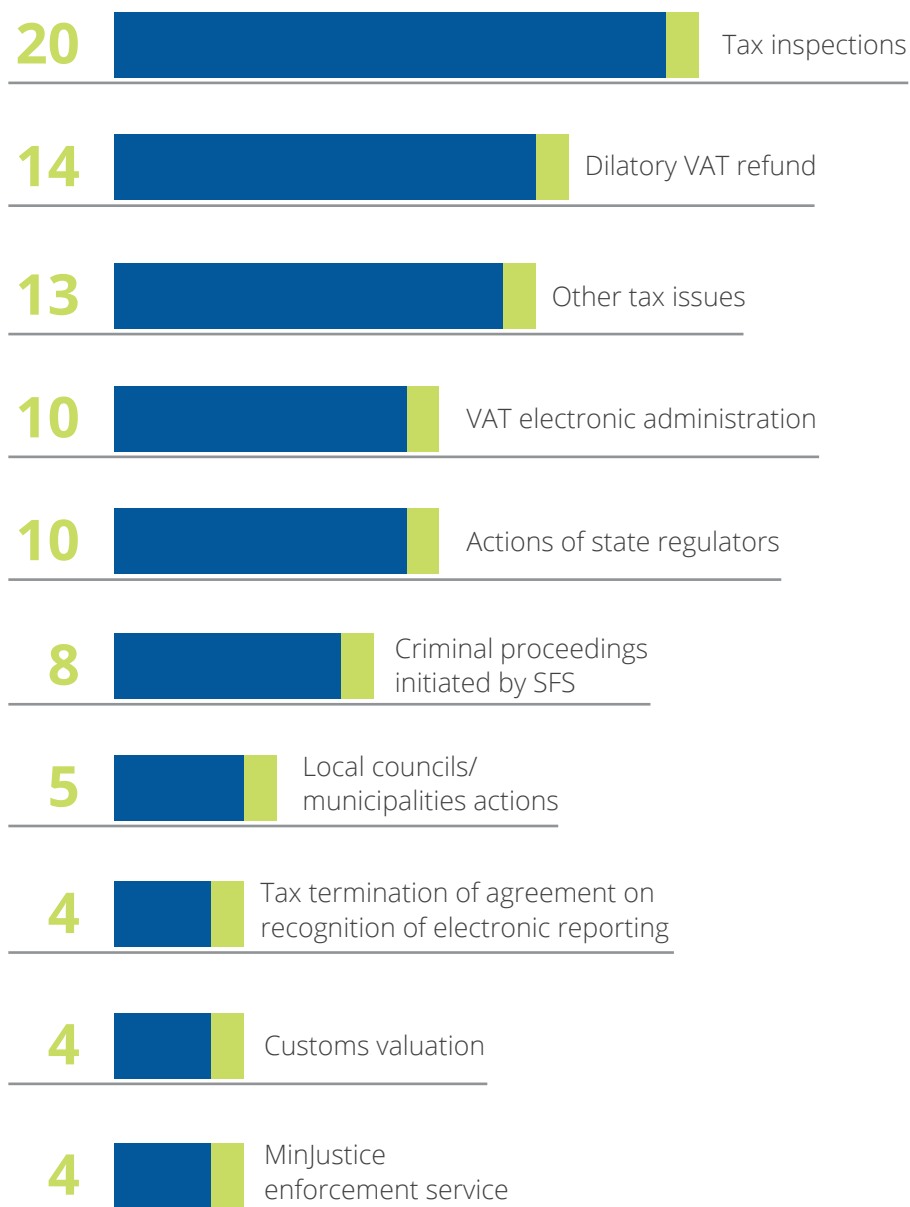


were closed with positive (either financial or non-financial) result for complainants – a 6% rise from the previous quarter.



TOP-10

SUBJECT OF CLOSED CASES IN QUARTER III 2016:



FINANCIAL IMPACT
IN QUARTER III 2016:

1 458 396 108

UAH

Dilatory VAT refund	742 533 132	51%
State companies	403 713 536	27%
Tax inspections	268 044 235	18%
VAT electronic administration	22 869 970	2%
Actions of state regulators	18 566 868	2%
Other tax issues	2 264 647	
MinJustice enforcement service	191 545	
Customs issues	116 619	
Customs valuation	95 556	



DIRECT FINANCIAL IMPACT
OF BOC'S OPERATIONS
20 MAY 2015 - 30 SEPTEMBER 2016:

4 919 412 889

UAH

NON-FINANCIAL IMPACT OF BOC'S
OPERATIONS IN QUARTER III 2016:



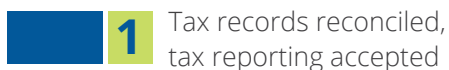
Permit/license/conclusion/registration obtained



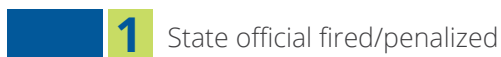
Malpractice ceased by complainee



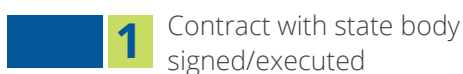
Criminal case against the Complainant closed;
property/accounts released from under arrest



Tax records reconciled,
tax reporting accepted



State official fired/penalized



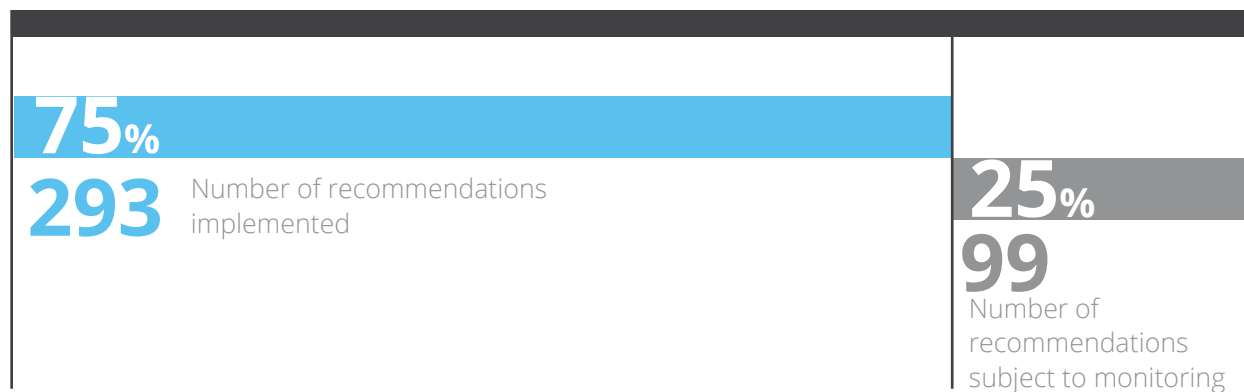
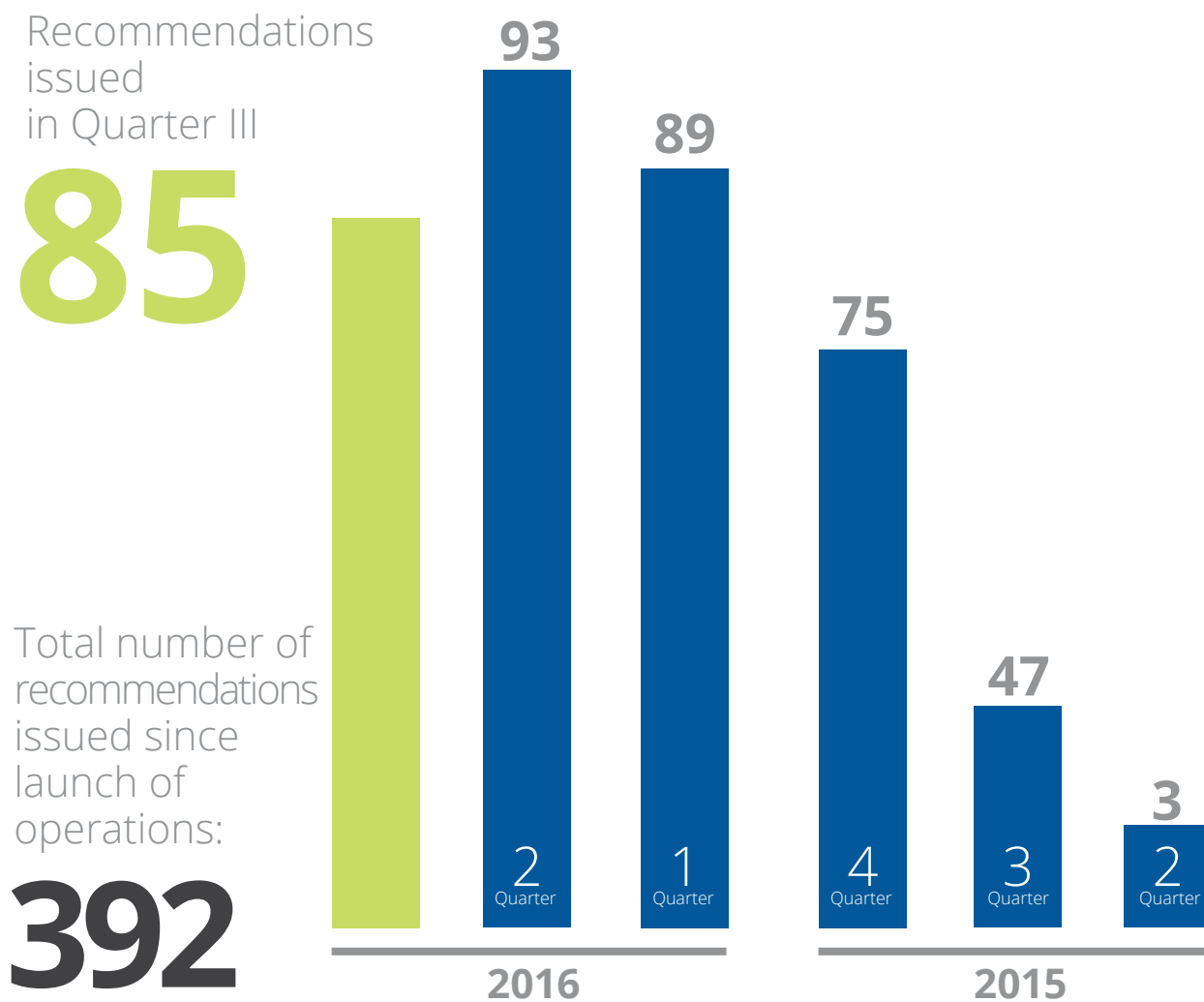
Contract with state body
signed/executed



Legislation amended/enacted;
procedure improved

In this quarter, we helped entrepreneurs to obtain more permits and licenses than in previous quarters.

RECOMMENDATIONS PROVIDED



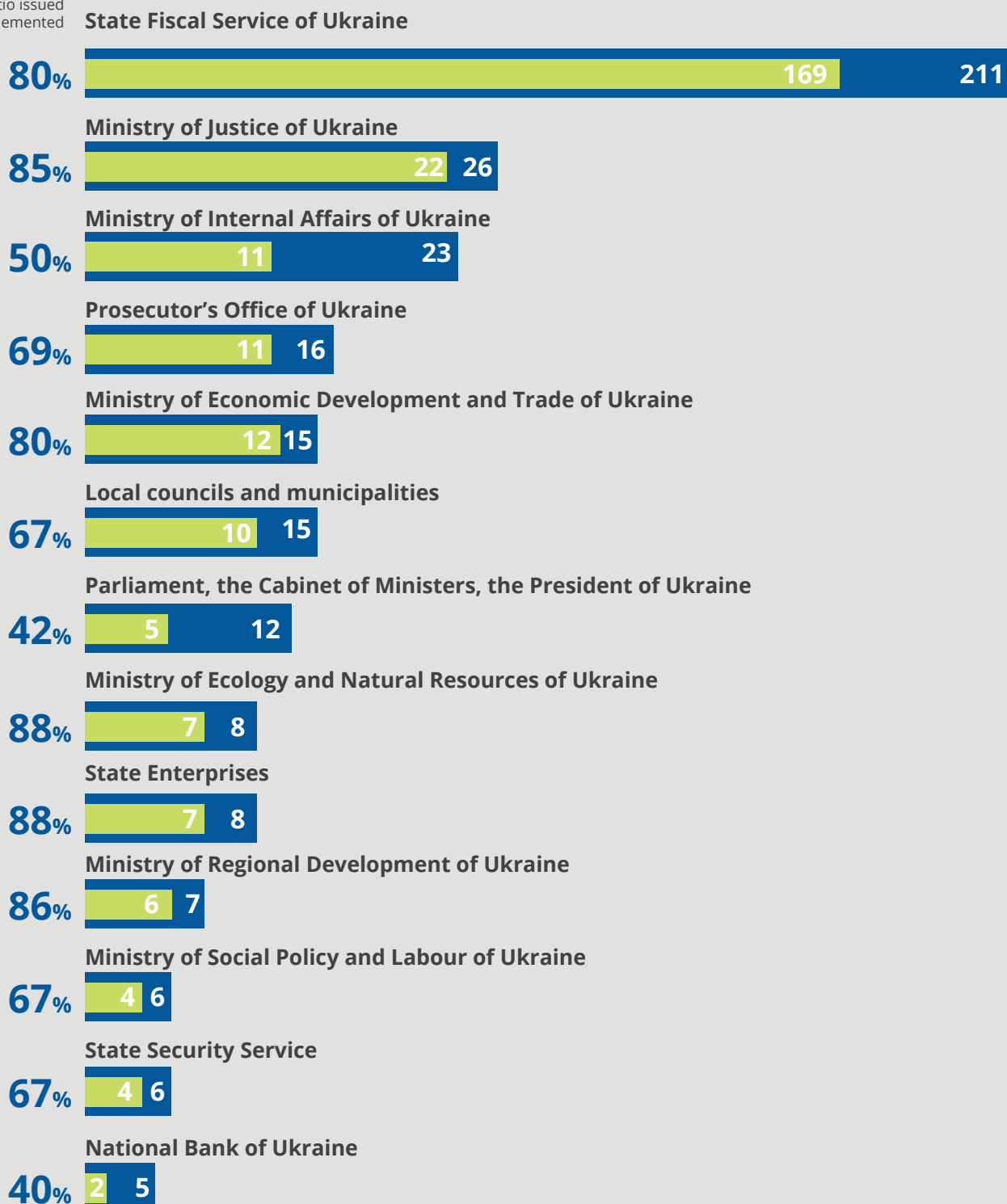
It should be noted that the BOC's dialogue with government agencies has become even far more productive: the rate of implementing BOC's recommendations grew to 75% (compared to 64% in QI 2016 and 70% in QII 2016).

Our experience has shown that the number of recommendations that are implemented by an agency rises considerably once a memorandum has been signed. This enables us to more quickly and effectively collaborate to resolve disputes and difficult situations in relations between business and government agencies.

We would like to note efficient cooperation with SFS and MinJustice within expert groups established after signing Memoranda on cooperation. Among TOP-6 agencies whom the BOC issued most recommendations, State Fiscal Service of Ukraine, Ministry of Justice of Ukraine and Ministry of Economic Development and Trade of Ukraine have implemented 80% or more recommendations. Prosecutor's Office and Ministry of Internal Affairs of Ukraine improved responsiveness compared to previous quarters, but still have a long way to go to meet our expectations.

GOVERNMENT AGENCIES WHOM THE BOC ISSUED RECOMMENDATIONS IN 2015-2016 AND RATIO OF IMPLEMENTATION

Ratio issued
vs implemented





Ratio issued
vs implemented



SYSTEMIC RECOMMENDATIONS IMPLEMENTED

In this quarterly report, we present the description of systemic (i.e. affecting the legislation and business environment in general) recommendations provided and already implemented by the government agencies.

Ministry of Internal Affairs of Ukraine

1

To ensure the proper functioning of institutions that provide training and retraining for drivers of vehicles, the accreditation of such institutions and the certification of their specialists, and the issuing of drivers' licenses. 1) Adopt a new version of MIA Order #515 dated December 7, 2009, and joint Ministry of Transport, Ministry of Education and Ministry of Social Policy Order #385/934/828/337 dated September 7, 2009.

New version of MIA Order #515 dated December 7, 2009, adopted and registered by MoJ №750/28880 on May 19, 2016.

New version of joint Ministry of Transport, Ministry of Education and Ministry of Social Policy Order adopted and registered by MoJ #255/369/132/344 on April 5, 2016.

State Fiscal Service

1

Verify the compliance of the e-VAT administration system of the State Fiscal Service and the formulation in Point 2001.3 of Art. 2001 with the provisions of Point 187.10 of Art. 187 of the Tax Code of Ukraine.

Should it be confirmed that they are not in compliance, take all the necessary steps to eliminate any discrepancies, including making appropriate changes to the e-VAT administration system and the formulation of Point 2001.3 of Art. 2001 of the Tax Code of Ukraine.

Changes made to Art. 341 Subsection 2 "Particulars of levying the value added tax," Sec. XX of the Transitional Provisions of the Tax Code of Ukraine.

2

Remove the response to Question №40 Generalized tax consultations on specific inquiries regarding the application of tax rules on transfer pricing, approved by Ministry of Revenues and Fees Order #699 dated November 22, 2013, and bring the latter in line with the requirements of the Tax Code of Ukraine.

On June 1, 2016, the State Fiscal Service responded to a query by the Council by issuing Memorandum #11975/6/99-99-15-02-02-15 confirming that the response to Question №40 Generalized tax consultations on specific inquiries regarding the application of tax rules on transfer pricing applied only to legislation on transfer pricing that was in force prior to January 1, 2015.

3

Notify all Customs Offices of Ukraine of the requirement to enforce Decision #57 of the session of the Committee on the World Customs Organization's Harmonized System of Describing and Coding Goods regarding the classification of groups of goods (components of semi-finished adhesive alkylid filler, CR-030W semi-finished composite varnish, and so on).

Ensure that all Customs Offices of Ukraine follow a single, consistent approach to the classification of the above-named groups of goods.

Incoming letter from SFS #963 received on April 14, 2016.

SFS letter issued on April 4, 2016, to all customs heads and all directors of SFS Specialized Laboratories for testing and research.

4

Recommend that Ministry of Finance of Ukraine and SFS jointly draft amendments to the Provision "On the production, storage and sale of excise stamps and the labeling of alcoholic beverages and tobacco products," which was approved by Cabinet Resolution #1251 dated December 27, 2010, with the aim of making it possible for companies selling goods subject to excise tax to readily exchange excise stamps in the event of legislative changes after orders for excise stamps of the previously approved type have been placed.

BOC Recommendation #271 dated January 11, 2016

Cabinet Resolution of March 23, 2016, "On amending the Provision 'On the production, storage and sale of excise stamps and the labeling of alcoholic beverages and tobacco products.'"

The Cabinet issued an instruction to approve a Concept for setting up and launching an automated control system for the circulation of goods subject to excise (alcoholic beverages and tobacco products) called 'e-Excise Stamp' dated July 6, 2016.

National Bank of Ukraine

1

Make amendments to NBU Resolution #124 dated February 23, 2015 with the aim of allowing resident borrowers who are directly engaged in external commercial contracts for the provision (execution) of goods (works and services) to non-residents and for the settlement of such contracts involving debt financing from international financial institutions to carry out such payment without the restrictions imposed by NBU Resolution #124.

A penultimate paragraph was added to Point 4 of NBU Resolution #124 dated February 23, 2015, in wording agreed by the BOC and the NBU on March 4, 2016.

Ministry of Justice of Ukraine

1

Introduce a mechanism for protecting against unauthorized interference in the State Register of Immovable Property Rights and related encumbrances by establishing several levels of authorization during the registration process of real estate worth more than a minimum established amount.

Recommendation fulfilled, as confirmed by Memoranda received from the Ministry of Justice, #908 dated April 8, 2016, and the National Information System, #701 dated March 14, 2016.

2.3. Summary of important investigations

In this chapter, you may read the TOP-20 illustrations of recommendations the BOC issued to various government agencies and the results of their implementation.

#1

United State Tax Inspection of Kharkiv City confirms VAT payer registration

Complainee:

United State Tax Inspection
in Kharkiv of Main
Department of State Fiscal
Service in Kharkiv Oblast
(USTI of Kharkiv City)

Complaint in brief:

On June 22, 2016, Complainant, a newly registered local Internet-provider, addressed to the BOC to help challenge refusals by the USTI of Kharkiv City to register Complainant as a VAT taxpayer. The two refusals of USTI were substantiated on the ground that the information about Complainant's location mentioned in the registration application was allegedly incorrect.

Action taken:

After investigating the matter, the BOC investigator contacted the employees of USTI of Kharkiv City and provided phone consultation on the matter, including recommendation to verify the reasons of refusals in registration of Complainant as VAT payer.

Result achieved:

Due to the BOC involvement the Complainant was registered as a VAT payer. The case was closed successfully.

#2

Farm firms "Dary Laniv" and "Hermes" receive approvals for land allocation after numerous refusals

Complainee:

State Geodesy, Cartography
and Cadastre Service of
Ukraine (GeoCadastre) in
Kyiv Oblast

Complaint in brief:

On June 1, 2016, two Complainants, small farming enterprises "Dary Laniv" and "Hermes", registered in Kyiv Oblast, asked the BOC to help challenge numerous groundless refusals by GeoCadastre in Kyiv Oblast to grant approval to draw up documentation to allocate a land parcel for private ownership for agricultural use. These refusals took place between August 2015 and April 2016.

Action taken:

On June 10, the Council turned to the Main Office of GeoCadastre with a request to settle the issue of granting approval. The BOC also requested that GeoCadastre conduct an official investigation of the case.

Complainant has kindly agreed to disclose
his name for communication purposes

#3

Volyn berry-processing companies are no longer subject to inventorying

Complainee:

Volyn Oblast State
Administration (Volyn OSA),
Volyn Oblast Administration
of State Fiscal Service (SFS)

Result achieved:

On July 19, the Council was informed by GeoCadastré's Main Office that the problem with granting approval was successfully resolved without an official investigation. The Complainants' problems were completely resolved and the case was successfully closed.

Complaint in brief:

The Complainants, two companies specializing in wholesale berry-processing, addressed the BOC regarding the Decree issued by the Volyn Governor that had led to systematic inventory inspections of the companies' refrigeration equipment and premises since 2010.

Action taken:

On June 15, 2016, the BOC sent a query to the Volyn OSA with a request to provide the documents related to the complaint. In July, the BOC also sent queries to the Lviv, Rivne and Ivano-Frankivsk Oblast SFS offices in order to do a comparative analysis of control measures related to berry production in these oblasts. Our analysis showed that businesses in Volyn Oblast faced excessive pressure and suffered from inventory audits. No other oblast has such a strict approach to overseeing berry-processing enterprises.

On August 5, the BOC investigator met with the First Deputy Governor of Volyn and other local officials, during the course of which he recommended that the oblast stop its inventorying of company premises because such actions required a court order.

Result achieved:

On August 25, the Volyn OSA informed the BOC that the Council's recommendations were implemented and such inspections were stopped. In addition to this, the Volyn OSA adopted the necessary amendments to its local regulations to bring them in line with the law, as the BOC had advised. The case was successfully closed.

#4

MEDT lifted sanctions against Ukrainian subsidiary of Italian manufacturer

Complainee:

Ministry of Economic
Development and Trade of
Ukraine (MEDT)

Complainant has kindly agreed
to disclose his name for
communication purposes

Complaint in brief:

On 14 March 2016 the BOC received complaint from TOV "Tecnocap UA", registered in Lviv Oblast, a part of Italian Group of Companies producing and servicing metal closures and capping machines, regarding sanctions imposed on him by the MEDT.

The sanctions were imposed starting from 2013 due to the Complainant's inability to collect outstanding payments from its Russian counterparty. In the years 2013 and 2014 Lviv Oblast Commercial Court and Arbitration Court in Moscow ruled in favour of the Complainant in its lawsuits lodged against one of its customers - Russian counterparty, which fell behind with the payments for the purchased goods. However, the enforcement of the court rulings were largely ineffective.

Action taken:

In May 2016 the BOC requested a meeting with the Director of the Department for Regulation for the Foreign Economic Activities of the MEDT on the merits of the complaint, which was held on 7 June 2016 with the BOC's Deputy Business Ombudsman and BOC's investigator participating.

During that meeting the representatives of the MEDT reported their readiness to approve lifting of the sanctions after provision of documents evidencing that all measures undertaken to collect outstanding indebtedness were exhausted.

Result achieved:

On 14 July 2016 the Complainant has informed the BOC that enforcement procedure against its counterparty in the Russian Federation has been terminated and the sanctions have been suspended until 01 October 2016.

On 18 August 2016 the BOC has been informed that the aforementioned sanction was lifted by the MEDT whereby the BOC's recommendation has been fulfilled. Thus the problem has been successfully resolved.

#5

Silent consent explained, TOV "ETC "IKAR" can continue to audit hazardous sites

Complainee:

State Service of Ukraine on Labor Issues (SSULI), Labor Department of SSULI in Kharkiv Oblast

Complainant has kindly agreed to disclose his name for communication purposes

Complaint in brief:

In May 2016, the Complainant, Kharkiv company TOV "ETC "IKAR", specializing in technical audits of hazardous facilities, lodged a complaint with the BOC. The Complainant reportedly was being obstructed in its commercial activity by the Labor Department in Kharkiv Oblast, and been unable to obtain approval to conduct the engineering works in Kharkiv Oblast based on the principle of silent consent established the Labor Department itself, after the company relocated from Crimea

Action taken:

On May 23, the BOC filed a request with SSULI to officially investigate the evidence presented that officials at the labor department in Kharkiv Oblast were obstructing the Complainant's normal commercial activity. The BOC also requested SSULI to explain the principle of silent consent for the BOC, the labor department in Kharkiv Oblast and the Complainant regarding the option of conducting an expert audit of hazardous facilities on that basis.

On July 7, the Council received a letter from SSULI, claiming that an official investigation of the Complainant's claims had revealed no evidence of unnecessary obstruction of normal commercial activity on the part of officials at Labor Department in Kharkiv Oblast.

On July 11, the Council received a second letter from SSULI, clarifying the applicability of the silent consent principle to the BOC, to the labor department in Kharkiv Oblast, and to the Complainant during expert audits of hazardous facilities.

Result achieved:

The BOC closed the case as having been partly resolved in favor of the Complainant: the BOC had helped obtain the confirmation of its right to continue its regular activity.

Given that the BOC had received the same complaint repeatedly from the Complainant, the Council decided to further monitor potential abuse of office towards TOV "ETC "IKAR" on the part of officials, in order to undertake more serious measures should such circumstances arise in future.

#6

SFS cancels an audit-based tax notification-decision worth UAH 11.2mn

Complainee:

Interregional Main
Department of the State
Fiscal Service of Ukraine
(IMD of SFS), Central Office
for Large Taxpayers, State
Fiscal Service of Ukraine
(SFS)

Complaint in brief:

The Complainant addressed the BOC regarding results of tax audit carried out by the IMD of SFS's Central Office for Large Taxpayers. Based on the conclusions of the tax audit, tax authorities issued a tax notification-decision including fines worth UAH 11.2 mn. The Complainant challenged the tax audit results with the Central Office for Large Taxpayers and the SFS, and also asked the BOC to participate in the SFS's review of the complaint.

Action taken:

On July 15, 2016, the BOC provided the SFS with a letter of recommendations to ensure an objective, unbiased review of the Complainant's appeal. On July 19, the BOC investigator participated in the hearing of the Complainant's appeal by the SFS. As a result SFS decided to withdraw the tax notification-decision in its entirety.

Result achieved:

On August 10, the Complainant informed the BOC that SFS had withdrawn the tax notification and the case was successfully closed.

#7

Paper product firm gets court decision on VAT enforced

Complainee:

State Fiscal Service of
Ukraine (SFS)

Complaint in brief:

On July 6, 2016, the BOC received a complaint from a company that supplies cardboard and paper products regarding continued failure to act on the part of the SFS. The SFS had failed to increase the amount of VAT of over UAH 22 mln as a negative value for June 2015 in the Electronic VAT Administration System or and to display a corresponding increase in the extract from the Electronic VAT Administration System.

Before addressing the BOC, the Complainant had referred this matter to the Kyiv District Administrative Court and received a court decision in its favor. Although the tax authorities appealed the ruling, the decision was upheld by Kyiv Administrative Court of Appeals on June 22, 2016. Still, the SFS took no action to amend the amount of VAT registered in the Electronic VAT Administration System.

#8

SFS cancels UAH 12mn tax assessment and drops related fines

Complainee:

Main Department of State Fiscal Service of Ukraine (SFS) in the City of Kyiv

Complainant has kindly agreed to disclose his name for communication purposes

Action taken:

On July 13, 2016, the BOC sent a request to the SFS. Since the SFS did not respond within the requested timeframe, the BOC has sent a reminder on August 2, 2016, and requested that the SFS immediately resolve the issue by carrying out the court decision.

Result achieved:

On August 17, 2016, the SFS informed the BOC that the issue had been successfully settled. This case was successfully resolved in about one month, 1.5 times sooner than the timeframe provided for in the BOC Rules.

Complaint in brief:

A Ukrainian wholesaler of meat products called TOV Trade Systems of Ukraine (TSU) and registered in Kyiv, addressed the BOC in July 2016 with regard to illegal actions by the Main Department of SFS in Kyiv. The Kyiv SFS office had issued tax assessment notices to the Complainant that added up to UAH 12,608,904. The sticking point was the basis for assessing of the VAT on TSU. The SFS position was that VAT on the sales of goods should be paid based on the declared customs value of imported goods sold on the territory of Ukraine, while the Complainant insisted that the contractual value of the goods be used as the basis for assessing the tax.

Action taken:

The BOC inspector decided to participate in the administrative case at the SFS of Ukraine on July 19, 2016. The inspector also requested explanations from the Kyiv SFS office regarding the complaint.

Result achieved:

On August 8, the Complainant informed the BOC that the SFS fines had been dropped. This case was successfully resolved in a month, three times sooner than the term provided for in the BOC Rules.

#9

**Foreign investor's
corporate rights
(NOVUS) are restored in
Baryshiv****Complainee:**

Registration Service of
Baryshiv Village Council,
Kyiv Oblast

Complainant has kindly agreed
to disclose his name for
communication purposes

Complaint in brief:

On July 4, 2016, the BOC received a complaint from a foreign investor who owned the Novus chain of supermarkets. The Baryshiv Council's registrar had cancelled the Complainant's corporate rights to one of the companies in which he had invested, an action that was apparently based on forged documents.

Action taken:

On the day the complaint came in, the BOC inspector contacted representatives of the Ministry of Justice to discuss the situation. The inspector also spoke with officials at the Registration Department of the Ministry of Justice about the procedure for challenging illegal registration activities.

Result achieved:

On July 6, the Complainant informed the BOC that the illegal registration entry had been withdrawn. The authorized registrar also lost the right to further engage in registration activity.

#10

**SFS Investigations
Department in Cherkasy
oblast closes criminal
case one day before
meeting with PM****Complainee:**

Investigations Department
of Financial Investigations
of Main Administration of
State Fiscal Service (SFS) in
Cherkasy Oblast

Complaint in brief:

The Complainant, a company specializing in domestic transport and forwarding services and rail cargo shipments, requested the BOC's assistance in what it claimed was an unsubstantiated criminal case involving alleged tax evasion. On July 09, 2015, the SFS Department of Financial Investigations in Cherkasy had launched a pre-trial investigation, despite the fact that there were no outstanding tax liabilities.

Action taken:

The BOC requested the SFS of Ukraine to verify the legality of the actions of the investigators handling this case at the Department of Financial Investigations in Cherkasy. In addition, the BOC prepared information about the Complainant's case for the Cabinet of Ministers to review. The BOC inspector presented this case during a meeting with the PM on July 12, 2016, as an example of systemic problems with the baseless initiation or continuation of criminal cases against the Complainant despite court rulings in its favor.

#11

State Architectural and Construction Inspection removes delays in registering declaration of start of construction works

Complainee:

State Architectural and Construction Inspection, Kyiv Oblast (SACI)

Result achieved:

The SFS Department of Financial Investigations in Cherkasy Oblast dropped its criminal investigation the day before the BOC met with the PM. The Complainant expressed gratitude to the BOC as the only institution that had helped to resolve problems affecting its business.

Complaint in brief:

The Complainant, a company specialized in producing of cardboard and packing materials, turned to the BOC with regard to delay in registering its declaration of the start of construction works necessary to reconstruct the Complainant's production facility. On January 20, 2016, the Complainant had submitted this declaration to SACI in Kyiv Oblast to be registered. Within 10 days, however, SACI rejected the declaration, due to the alleged non-compliance of the type of construction to the exhaustive list of works provided by effective legislation. Over January-May 2016, SACI refused to register the Complainant's declaration five times, each time making new demands to the Complainant's declaration. The last rejection from SACI was because of alleged non-compliance of the declared category of complexity of construction that obliged Complainant to apply for the building permit.

Action taken:

In the beginning of June 2016, the BOC applied to SACI with request to explain reasons for delay in registration of declaration. On June 16, the BOC experts initiated a meeting with the director of SACI of Ukraine, in the course of which they discussed the issue of systematic delays in issuing permitting documents for construction. The specific case of this Complainant was brought up as an example of delays in registering declarations. Shortly after this meeting, SACI in Kyiv Oblast informed about readiness to have constructive dialogue with Complainant and to solve his issue substantially.

Result achieved:

As a result of established cooperation with SACI in Kyiv Oblast, on June 20, the Complainant submitted his declaration again, and SACI registered it within three days. The category of the complexity of construction wasn't changed.

The BOC included the mentioned case in the Systemic Report "Reducing the risk of corruption and attracting investment to the construction industry" presented on July 28, 2016.

#12

Candy importer gets excess customs duty returned

Complainee:

Kyiv Customs office under
the State Fiscal Service

Complainant has kindly agreed
to disclose his name for
communication purposes

Complaint in brief:

The Complainant, a Ukrainian importer of confectionery Company New Line LTD, registered in Odesa, in March 2016 requested the BOC's assistance in returning customs clearance amounts paid in excess. Previously the Complainant had successfully challenged with the court the customs clearance adjustment by the Kyiv Customs. Yet, despite that customs clearance adjustment has been revoked by the court ruling, the amounts paid in excess were not returned to the Complainant.

Action taken:

The BOC met with the Kyiv Customs representative to discuss the merits of the complaint. Following the meeting, Kyiv Customs reported to the BOC that they had prepared the necessary report to return the overpaid customs clearance amounts.

Result achieved:

On 15 June 2016 the BOC was informed by the Complainant on receipt of the overpaid amounts and the case was closed. The Complainant thanked the BOC for its assistance.

#13

KPO dismisses criminal case against pharmaceutical firm

Complainee:

Main Department of
Security Service of Ukraine,
Kyiv Prosecutor's Office

Complaint in brief:

In June 2015, the BOC received a complaint from Ukrainian Division of an international pharmaceutical company represented in more than 70 countries of the world, against actions by the Security Service of Ukraine (SSU)'s Main Department and the Kyiv Prosecutor's office (KPO). The two agencies had filed a criminal suit against the Complainant's local officials for allegedly illegal registering the company's bioactive supplement as a drug in order to reduce their taxes.

In addition, state investigators searched the premises of a subcontractor with whom the Complainant had a packaging agreement and seized certain documents and samples.

Prior to turning to the BOC, the Complainant sent public appeals to several state agencies, requesting a review of the questionable actions of the investigators.

#14

**City Council partly
satisfies construction
permit request**

Complainee:

Truskavets Mayor and City
Council in Lviv Oblast

Action taken:

During a detailed examination of the case materials, the BOC inspector determined that the supplement was already registered in then Ukrainian Soviet Socialist Republic as a prescription drug in the late 1980s, and that this registration had regularly been extended since the late 1990s. The supplement is also a registered drug in its country of origin.

This indicated that investigative bodies probably exceeded their authority by incorrectly evaluating the substance as a “bioactive supplement” instead of a drug.

On September 2, 2015, the BOC sent a letter to the Investigation Department of the Main Department of Ministry of Internal Affairs in Kyiv, requesting that the facts of the case provided by the Complainant be reviewed.

The BOC inspector kept track of the case and during a November 2015 hearing on the case, the KPO designated a comprehensive expert panel chemical review of the substance. This was postponed several times for lack of an appropriate expert.

Finally, in April 2016, the BOC was forced to request that the KPO adhere to the proper timeframe for an expert evaluation.

Result achieved:

Finally, on June 17, 2016 the Kyiv Prosecutor's office closed the criminal case due to absence of criminal offence.

Complaint in brief:

The Complainant, a small construction company in Truskavets, addressed the BOC after the City Council and Mayor of Truskavets refused to approve plans for the construction of a 6-floor building. Although the company had submitted the necessary packet of documents, the Council would only approve construction of a 4-floor building. The Complainant decided to turn to the BOC for help resolving the problem.

#15

Criminal proceedings under tax evasion closed as groundless

Complainee:

Financial Investigations
Division of Main
Department of SFS in
Kherson Oblast

Action taken:

The BOC discussed the issue with the Chief Architect of Truskavets. The BOC investigator also sent a letter to the Mayor, asking to resolve the Complainant's issue. The Council approved the construction documents at a second vote on June 16, but it did not specify the exact number of floors.

Result achieved:

A few weeks later, the Complainant informed the BOC that Truskavets City Council had partly satisfied his request and approved 5 floors to be constructed. Since Complainant did not respond affirmatively to a BOC enquiry as to whether he intended to challenge this decision in court, the BOC closed the case as resolved with a partial success.

Complaint in brief:

The Complainant, a company specializing in full-range maintenance of gas supply systems, turned to the BOC because of what it claimed was an unsubstantiated criminal proceeding regarding tax evasion.

On March 28, 2016, The Complainee commenced pre-trial investigation of criminal proceeding and started to carry out investigatory actions in spite of the fact that the acknowledged tax obligations were absent.

BOC's investigator found out that State Tax Inspection already inspected the stated period (2012-2013) and found no violations of the legislation in regard to the mentioned business operations. However, tax police commenced criminal investigation under Article 212 of the CCU based solely on the official note of the operative officer that allegedly informed about the essence of the crime.

#16

**Industrial enterprise
gets permit extended
after a year of trying**

Complainee:

State Geology and Mineral
Resources Service

Action taken:

First, the criminal case was reclassified from Art. 212 of the CCU (tax evasion) to Art. 366 (forgery of documents) and was transferred for investigation to the Prosecutor's Office of Kherson Oblast.

Result achieved:

Due to BOC's input, on June 24, the Kherson Oblast Prosecutor's Office decided to close the case as groundless.

Complaint in brief:

The Complainant, a subsidiary of a French group of companies specialized in kaolin-based fire-resistant construction materials, turned to the BOC because it was having problems getting a special subsoil usage permit #557 for extracting kaolin. The initial application to the State Geology and Mineral Resources Service was considered for 5 months, although the internal provisions for issuing special permits for subsoil exploitation state that such decisions were to be made within 60 days. When a response finally came from the Service, it stated that the package of documents submitted did not meet the requirements of the procedure, without providing any details. The Complainant resubmitted the application, facing the risk of idling the production.

Action taken:

The BOC addressed the State Geology Service with a request to provide reasons for the dilatory handling of the application. The Service responded that the review of the second submission of the packet of documents was being postponed until the Ministry of Environment Decree on the Service's issuing of special subsoil use permits.

The BOC then urged the involved state bodies – Ministry of Ecology, the Geology Service, Ministry of Justice, and the State Regulatory Service, to speed up the approval of Decree and stressed that such procedural issues are no excuse for violating established deadlines for issuing permits.

Result achieved:

On July 12, 2016, the Complainant informed the BOC that special permit #557 had been extended and the case was closed.

#17

**SFS refunds UAH 18mn
in VAT to dairy-maker****Complainee:**

State Fiscal Service of
Ukraine

Complainant has kindly agreed
to disclose his name for
communication purposes

Complaint in brief:

The Complainant, a dairy-product maker and exporter located in Kharkiv Oblast ("Molochna Sloboda"), claimed that the Kharkiv Oblast had failed to refund VAT since March 2015, more than 18 months. Previous attempts by the Complainant to resolve this issue through the SFS hierarchy were unsuccessful.

Action taken:

The BOC determined that this claim was substantiated and took the case on. During its investigation, the Complainant confirmed that a partial VAT refund had been issued, but a further UAH 18,122,246, the balance that had already broken all deadlines, remained outstanding.

The BOC first wrote letters to the SFS Ukraine, without results. The BOC then decided to raise this issue at an SFS expert meeting in July 2016. This case was selected for discussion with the Prime Minister and this took place on July 12. The Prime Minister Groyzman immediately ordered SFS officials to pay back the VAT refund to the Complainant within a week.

Result achieved:

The director of the Kharkiv Municipal Office for Large Taxpayers then informed The Council that the money would shortly be refunded to the Complainant. On July 15, the Complainant confirmed the receipt of the VAT in full and the case was closed.

#18

**SFS of Ukraine cancels
tax notifications worth
UAH 7.4mn****Complainee:**

Main Department of the
State Fiscal Service in Kyiv

Complaint in brief:

A company organizing international trade exhibitions and conferences addressed the BOC regarding illicit actions on the part of the Main Department of the State Fiscal Service in Kyiv. The Complainant had received several tax notifications from the Main Department of SFS in Kyiv based on the tax audit of the company.

Action taken:

After examining the materials in the case, the BOC confirmed that the conclusions of tax audit were unjustified. The BOC provided the State Fiscal Service of Ukraine with recommendations to ensure an impartial and comprehensive review of the Complainant's appeal and held a series of

#19

**Bila Tserkva
agribusiness gets VAT
refund of UAH 3.5mn**

Complainee:

State Tax Inspection in Bila
Tserkva of Kyiv Oblast

Complainant has kindly agreed
to disclose his name for
communication purposes

meetings afterwards. After hearing the Complainant's appeal in April 2016 in the presence of a BOC investigator, the State Fiscal Service of Ukraine made a decision to cancel three of the four tax notifications and related fines.

Result achieved:

The BOC's mediation resulted in a positive financial impact for the Complainant with the cancellation of tax penalties potentially worth over UAH 7.4mn. The case was closed.

Complaint in brief:

A farming enterprise, Selected Pig Centre, appealed to the BOC regarding a VAT refund of UAH 3,588,406 due back in September 2015 that had not been paid out within the stated timeframe by State Tax Inspection in Bila Tserkva of Kyiv Oblast.

Action taken:

The BOC wrote to the Main Department of State Fiscal Service in Kyiv Oblast and to the national State Fiscal Service of Ukraine with recommendations regarding the proper execution of the VAT refund procedure. In addition, the BOC addressed an expert group established by the BOC and SFS based on a Memorandum on Partnership and Cooperation.

Result achieved:

Because of BOC actions, the Complainant received a VAT refund of UAH 3,588,406 on its bank account in the end of May 2016. With the successful closure of this investigation, the company sent a thank-you letter to the Council.

#20

**DerzhGeokadastr's lease
amendments prove non-
binding****Complainee:**

DerzhGeokadastr, Kharkiv
Oblast

Complaint in brief:

A mid-sized farming enterprise lodged a complaint with the BOC claiming that its rights under leasing agreements for land use were being violated. The lease had been drawn up by the Kharkiv Oblast Main Administration of DerzhGeokadastr in October 2014 for 49 years and did not allow for unilateral amendments. In February 2016, however, the Complainant received two letters from DerzhGeokadastr about to negatively affect the company's business.

Action taken:

After examining copies of the leasing agreements, BOC investigators concluded that the Complainant was not obliged to accept any of the changes proposed by Kharkiv Oblast DerzhGeokadastr. To facilitate the issue, in April 2016, the BOC addressed the Ministry of Regional Development, Construction, Housing and Communal Property and DerzhGeokadastr with a request to review the actions of the Kharkiv Oblast agency. The issue was discussed with first Vice Premier Zubko as well. An official reply from these agencies confirmed that the acceptance of changes by the Complainant was not mandatory.

Result achieved:

The Complainant has not received any more letters from Kharkiv Oblast DerzhGeokadastr and the investigation has been closed. The three land use agreements continue to be in force on the same terms as they were originally concluded.

2.4. NEW SYSTEMIC RECOMMENDATIONS: CHALLENGES AND PROBLEMS IN THE SPHERE OF COMPETITION PROTECTION AND OVERSIGHT

Strong competition policy is one of the cornerstones of an effective economy. Thus, in order to foster inflow of investment needed for sustainable growth, Ukraine needs to ensure existence of the strong competition environment. The importance of this issue is acknowledged, among others, in the DCFTA and through adoption of the National Competition Program for 2014–2024.

The foregoing factors represent favorable context for implementing reforms aimed at making Ukrainian economy to be more competitive and market-oriented, where enhancing (and, where necessary, unleashing) institutional capacity of the Anti-Monopoly Committee of Ukraine constitutes its' key cross-cutting element.

Hence, in the reporting quarter the Council prepared report discussing systemic problems and challenges in the sphere of competition protection and oversight.

The Report commences by focusing at the **current state of the AMCU's institutional capacity**, where we recommend to (i) ensure that its' annual plans clearly specifies the main priority areas for the forthcoming year, including, if applicable, markets to be studied; and (ii) adopt legislative changes aimed at unleashing the AMCU's existing capacity by improving its' organizational structure and equipping it with sufficient operational resources; and (iii) intensify the AMCU's advocacy activities.

While discussing **lack of sufficient cooperation between the AMCU and other state authorities**, it focuses on the need to (i) develop a roadmap aimed at implementing the NCP Concept for 2014-2024 by the ministries and other state bodies; (ii) accelerate working relationships between the AMCU and the state authorities (with the emphasis on sectoral regulators) by expanding the practice of executing memorandum on partnership; and (iii) ensure that not only the AMCU itself but also other relevant authorities play active role in eliminating factors impeding ability of the national competition authority to effectively exercise its' role during ongoing privatization process in Ukraine.

The document continues with **comprehensive analysis of the AMCU's core operational functions comprising investigation, decision-making and enforcement**.

As for the *AMCU's authority to grant consents on concentration*, it is proposed that (i) consideration of a non-competition agreement (lodged while seeking such a consent) is

conducted on the basis of a so-called “simplified procedure”; and that (ii) the legislation is amended to clearly identify the parties liable for failure to notify about concentration.

As for the *AMCU's function to investigate cases on abuse of monopolistic (dominant) position*, it is recommended to (i) set clear deadlines for consideration (investigation) of such cases; and (ii) expressly provide that if an applicant were to withdraw its' application, it shall not constitute the ground for automatic termination of case consideration.

The *AMCU's internal decision-making procedure* is proposed to be adjusted to ensure that all decisions are jointly taken by all members of the AMCU's Board of Commissioners, save for the Commissioner who investigated the case and who, nonetheless, remains to be entitled to present results of investigation at the respective procedural hearing, albeit without the right to vote.

As for the *AMCU's enforcement function*, our main recommendation is to adopt Methodology for Calculating Amount of Fine as a binding legislative act.

As far as **access to information** is concerned, the Council proposes (i) introducing electronic database that would enable applicants to retrieve general information about the current status of consideration of requests/applications lodged with the AMCU, which is not confidential in nature; and (ii) improving existing procedure of granting parties to the AMCU's hearings access to the materials of the case.

In order to make the existing **leniency regime** more inclusive, the Council recommends reducing fines for parties other than the first one to file.

As for the area of *non-judicial challenging result of public procurements*, the Council proposes to further specify the rights of the parties to the procedure of non-judicial challenging of the results of public procurements with the AMCU.

Last but not least, the Report concentrates on the *forthcoming legal framework on the state aid*, set to become effective in the middle of 2017. Having acknowledged the importance of effective dialogue between public officials and business to discuss the existing policy choices in this field, the Council recommends (i) continuing improving awareness amongst state authorities and business; and (ii) ensuring availability and quality of pending secondary legislation.

3 Cooperation with Stakeholders

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

3.1. Working visits

In the reporting period, Business Ombudsman made working visits to Nova Kakhovka (Kherson oblast), Uzhgorod and Chernivtsi regions where he met with the leaders of the Regional State Administrations and the representatives of public and business community.



Visits to the regions is part of the Business Ombudsman's regional working visit series, designed for Mr. Šemeta to meet with business and government representatives and discuss current problems and opportunities to expand the investment potential of the regions. In the previous reporting period Mr. Šemeta visited Chernigiv, Kharkiv, Lviv, Odesa, Dnipropetrovsk, Donetsk, Rivne, Volyn, Cherkasy, Zhytomyr, Sumy, Ternopil and Khmelnytsky regions.

3.2. Cooperation with government agencies

Kyiv Municipal State Administration (KMDA)

On July 14, Algirdas Šemeta and Vitaliy Klitschko signed a Memorandum of cooperation.



KMDA is one of the first local administrations to sign a Memorandum of Cooperation and Partnership with the Business Ombudsman Council. The purpose of the Memorandum is to improve collaboration between the Kyiv Municipal State Administration (KMDA) and companies operating in the capital.

“As a municipal government, we understand that working effectively with business is, first of all, the conditions that are provided for business to operate under. Clear rules for everyone, no red tape, and no corruption. The signing of this Memorandum with the Business Ombudsman Council should be the first step toward activating effective cooperation between the capital’s administration and city businesses” – **Kyiv Mayor Vitaliy Klitschko.**

An expert group was established within a Memorandum that reviews complaints from businesses regarding the actions or inactions of municipal agencies. This group includes officials from the KMDA and, on the Council’s side, the Business

Ombudsman’s deputy and one inspector. KMDA and the BOC review specific complaints against the work of the KMDA and its subordinate units, and cooperate to improve legislation governing business activities and remove barriers that inhibit doing business in Kyiv.



National Police of Ukraine

On September 7, Algirdas Šemeta and Khatia Dekanoidze signed a Memorandum of cooperation.



The two sides also agreed to form a working group for the purpose of reviewing complaints from businesses, drawing

up recommendations to improve legislation in those areas where the National Police is responsible for carrying out state policy.

“For Ukraine’s economy to flourish, and for business—small, medium and large—there needs to be far more investment to feel freer. And most importantly, the same rules have to apply to everybody. The police will tightly cooperate with the Business Ombudsman Council and will do everything we can to foster business development” –
Police Chief Khatia Dekanoidze.

National Agency on Corruption Prevention

On September 22, Business Ombudsman Council and National Agency on Corruption Prevention (NACP) signed Memorandum on Partnership and Cooperation.



The Memorandum is the basis for cooperation between institutions to identify and eliminate corruption risks. Upon the BOC's recommendation, NACP could perform

inspections of local councils, state companies and their management. NACP could provide legal protection to the BOC's complainants in case of pressure by state officials.

"The Memo should ensure transparency of government agencies, facilitate in reducing corruption and fighting malpractice of state officials. We will facilitate cooperation between business and government in every way" – **NACP's Chief Natalya Korchak.**

Prior to this, the Business Ombudsman Council signed Memoranda of Cooperation with the State Fiscal Service, the State Regulatory Service, the Ministry of Justice, the National Anti-Corruption Bureau and Ministry of Ecology and Natural Resources of Ukraine.

3.3. Public outreach and communication

Communication with the public is essential to the Business Ombudsman's role. Our Office uses media and technology wherever possible to engage and inform Ukrainians – and to ensure public appearances by the Ombudsman and his team reach a wide audience.

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



01-07

Round table: "Abuse of powers by the law enforcement authorities in their relations with business" together with OECD

04-07

Meeting of the National Reforms Council headed by the President of Ukraine to discuss the issue of deregulation reform

05-07

Anti-raider press conference the Ministry of Justice

13-07

ACC meeting with focus on Recommendations of the Business Ombudsman Council regarding decreasing corruption risks and establishing proper condition for attracting investments in construction industry

14-07

Second "Trade Related Infrastructure in Ukraine Dialogue" hosted by the U.S. Commercial Service of the U.S.

Embassy in cooperation with the Ministry of Infrastructure of Ukraine

8-09

FORMAL CEREMONY OF Sida's PRIVATE SECTOR DEVELOPMENT PROGRAMMES IN UKRAINE

6-09

EU Launch of FORBIZ, the principal project for improved business environment in Ukraine, hosted by Delegation to Ukraine in partnership with Ministry of Economic Development and Trade of Ukraine

09-09

International Reception SUP

14-16.09

Roundtable "Anti-Corruption Reform and Strengthening Integrity in Ukraine" in the framework of the ACN Plenary Meeting at the OECD in Paris

20-09

Round table of the Ministry of Ecology "European integration in the sphere of ecological assessment"

21-09

UA-BE Joint Economic Commission and Business Forum at Diplomatic Academy

21-09

Kyiv Conference for Entrepreneurs "Algorithms of success"

27-09

Launch of the OECD Investment Policy Review: Ukraine 2016 devoted to assessment of Ukraine's investment climate and a series of policy recommendations to improve the country's business environment

29-09

Corporate Governance Conference organized by PwC for top-managers of Ukrainian SOEs.

On 14-16 September

Business Ombudsman Algirdas Šemeta was invited to speak at the well-known 2016 Athens Democracy Forum. Hosted and moderated by New York Times editors, and presented under the auspices of H.E. The President of the Hellenic Republic Mr. Prokopios Pavlopoulos, the fourth annual Athens Democracy Forum brought together politicians, policy makers, journalists, scholars and experts from the fields of business, finance and technology to explore the challenges to liberal democracy and ways to face them.



Our Office held a number of meetings with Ukrainian and foreign officials, namely:

Group of experts from the USA to discuss the programme of technical assistance aimed at fighting corruption to be launched in Ukraine soon

Delegation from Afghanistan to share experience about launching a Business Ombudsman's office



During this quarter, The Business Ombudsman Council team twice (on 12 July and 13 September) met with the Prime Minister of Ukraine Volodymyr Groysman.

We agreed to hold regular meetings to review complaints from entrepreneurs and track the status of the BOC's recommendations issued to the government agencies. After such meetings, we manage to solve a number of cases of our complainants and address wider systemic issues.





In this quarter, the first official meeting of the Business Ombudsman with the General Prosecutor Yuriy Lutsenko took place.

We aligned the vectors of cooperation and agreed to jointly tackle the complaints the Business Ombudsman Council received regarding actions of enforcement agencies.



The media



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

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

10 000+
times

99%
mentions

being positive and constructive

(based on media monitoring by Context Media).



Our interviews were published in the leading Ukrainian media:

UNIAN, a news agency; Ukrainski Novyny (Ukrainian News), a news agency; KyivPost, a weekly newspaper; Novoye Vremya (New Time), a weekly magazine; Delo.ua portal; Biznes, a business weekly, the Platforma portal; the LigaBusinessInform portal; the HUBs portal; the Ekonomichna Pravda portal; RBC Ukraine, a news agency; Ukrinform, a news agency to mention a few.



We also made a number of TV (Espresso TV, Hromadske TV) and radio appearances (Hromadske Radio).

A SPECIAL PROJECT

Together with FOCUS magazine, we launched a "Business against the system" special project. We feature stories of our complainants – Ukrainian entrepreneurs who faced corruption in Ukrainian government agencies – but solved their problems with the help of the Business Ombudsman Council. These are stories of businessmen who were not afraid to challenge the system and stand upon their rights.

A couple of landmarks worth mentioning happened right after the end of the reporting period.

The Draft Law "On the Business Ombudsman Institution" was voted by the Verkhovna Rada Committee in the second reading. This is a vital signal that we can expect the final adoption of the Law soon that will finalize the institutional development of the Business Ombudsman Council.

The Cabinet of Ministers cancelled the Decree № 724 dated September 16, 2015, according to which the customs bodies used approximate indicators of customs value of goods. This decree obstructed the development of cross-border trading. We are happy that the recommendation we provided in our systemic report "Problems with Cross-Border Trading in Ukraine" was implemented.

On October 05, 2016, the amendments to the Resolution № 1388, which improves registration of vehicles, were passed in the CMU. This should alleviate the conditions of doing business and eradicate criminal schemes that existed previously. The BOC's team has persistently negotiated its recommendations to pass the amendments in the course of the year. We are happy about the outcome of our effort that will positively impact auto industry in Ukraine.





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