

Quarterly Report

Quarter IV, 2015
(01 October – 31 December)



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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,



Algirdas Šemeta
Business Ombudsman



It is my pleasure to present the report of the Business Ombudsman Council of Ukraine for the fourth quarter of 2015. As the report goes on to show, we experienced the exponential growth in terms of received complaints, closed cases, and the overall financial impact of our investigations.

In the fourth quarter, the Council received 216 complaints: 10% increase from the 197 complaints submitted in the previous reporting quarter. In the current quarter, we also successfully closed 119 cases: more than twice the number of cases closed in the previous reporting period. The direct financial impact of all cases closed in 2015 is over UAH 2.3 billion.

Our experts issued 98 recommendations to governmental agencies in the fourth quarter: 75% of all recommendations issued in the course of 2015. Of all 131 recommendations issued in 2015, 81% has already been implemented (106). As for resolving Ukraine's systemic problems, we observed that our recommendations helped achieve tangible results – to businesses in specific industries and to Ukraine as a whole.

In the reporting quarter, conclusions and recommendations we provided to the World Bank on improving access to electric grids helped Ukraine's positions in the reputable Doing Business rating rise from 184th to 138th place. We recommended to reduce the number of the required procedures for a business to gain access to electric grids in half, as well as contributed to drafting relevant legislation that is currently being reviewed by the Cabinet of Ministers.

The Council also worked jointly with respective government bodies to amend legislation regulating the following areas: compensations to employees drafted for military service; cargo transportation to and from the ATO zone; return of train cars unloaded in the annexed territories prior to the moratorium was imposed; import and export operations-related execution, licensing, control, and sanctions. I am happy to say that following our efforts Ukrainian businesses received over UAH 2 billion as compensation for employees mobilized for a specified term. Other recommendations in the report are almost fully implemented.

In the reporting quarter, we continued to expand our cooperation with the key government agencies that have the strongest impact on Ukraine's business climate – and the ones against whom the most complaints have been lodged. For instance, following signing of the Memoranda of Partnership and Cooperation with the State Fiscal Service, the Ministry of Justice, and the State Regulatory Service, the Council held a series of meetings aimed at stepping up the efforts to further cooperation.

Specifically, following signing a Memorandum with the State Fiscal Service, a series of meetings took place with the SFS management and experts. I was happy to see that SFS officials were open and ready to cooperate. We worked with the SFS on complaints and agreed to implement the recommendations contained in our systemic reports of the previous quarters. We will definitely continue to expand our joint work at the regional level across Ukraine, to interact more closely with regional customs offices and to stimulate the SFS departments to undertake internal transformations and reforms.

Respectively, in the reporting quarter, we twice met

with the senior Ministry of Justice officials in the expert working group format. As a result, 10 complaints filed by commercial entities were reviewed: 7 regarding enforcement and 3 regarding registration procedures. We also agreed with the Ministry representatives to carry out in-service reviews regarding a slew of enforcement issues, as a result of which guilty officials were subject to disciplinary hearings for violating the timeframes for carrying out decisions.

We also held three working meetings with the State Regulatory Service representatives, two of which involved the management of both institutions. Jointly we prepared an appeal to the Prime Minister of Ukraine about the need to maintain consistent policy positions regarding the moratorium on business inspections and the need for the regulators to intensify efforts to revise licensing terms and conditions.

I also continued my working visit schedule, travelling to Cherkasy, Rivne, and Volyn Oblasts, where I met with business and government representatives. We discussed the most urgent issues and opportunities to improve the investment potential of these regions. Following my

working visit to Volyn Oblast, the Governor's Office offered public assurance that it would cooperate and its readiness to tackle corruption and create favorable investment climate in the region.

Following our goal to attract attention to serious issues and show the real face of Ukrainian business, in this quarter we launched a media project called "The Right to do Business" together with the Vlasnyky [Owners] program on Aristokraty [Aristocrats] Radio and the Delo.ua portal. Every Thursday, we set up discussions between businesses who have filed complaints from all over Ukraine and journalists. The topics include doing business and its ups and downs, how government agencies work with business, and the progress of reforms in Ukraine. Over 4,000 listeners tune in to our live broadcast. BOC podcasts and interviews are available for listening, reading and downloading.

I look forward to more opportunities to share feedback and ideas as to how we might help Ukrainian business develop and conquer new markets, and restore public trust in constructive dialogue with the government.

Key figures for 2015

585
complaints

received from
Ukrainian
entrepreneurs

164

cases
successfully
closed

131

recommendations

provided
to government
agencies

81% of recommendations
already implemented

3000+
media citations



99%

being positive
and constructive

Direct financial impact
of BOC's operations

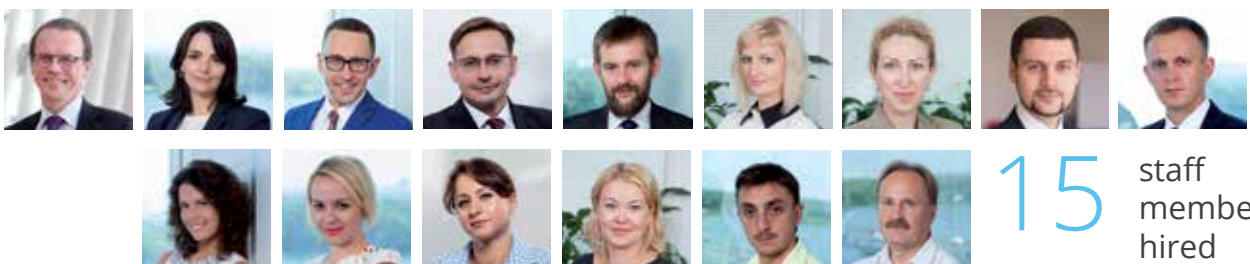
UAH
2.3
billion

4 systemic reports
publicized for The Cabinet
of Ministers' consideration



9 regions of Ukraine visited
the Business Ombudsman
with working visits

3 Memoranda on Partnership and Cooperation
signed with government agencies



15 staff
members
hired

1 Complaint trends

1.1. Number of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

In the fourth quarter,
the Business Ombudsman's
office received

216 complaints:

| 57,4% | 6% | 36,6% |
|---|--|--|
| 124 passed the preliminary review procedure and are currently being considered | 13 complaints are undergoing the preliminary review procedure | 79 complaints were declined as not fitting the eligibility criteria set by the Rules of Procedure |

1.2. The term of the preliminary review of complaints

(Clause 5.3.1 (b) of Rules of Procedure)

During the reporting quarter, the Council's decisions to consider or dismiss a complaint were made, on average, in 8 working days, two days less than the 10-day period provided in current regulations for the preliminary assessment of complaints.



2 days
less than
the 10-day
period

1.3. Grounds for declining complaints

(Clause 5.3.1 (c) of Rules of Procedure)

**During the reporting period,
a total of 79 complaints
was dismissed
for the following reasons:**

| | IV Quarter | III Quarter | II Quarter |
|---|---------------|----------------|---------------|
| The complaint did not comply with the other eligibility criteria | 24% | 11% | 2% |
| The complaint submitted was subject to court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made | 16% | 13% | 29% |
| In the opinion of the Business Ombudsman, the complainant did not provide sufficient cooperation | 16% | 9% | 7% |
| Complaints arising in the context of private-to-private business relations | 11% | 7% | 11% |
| Anonymous complaints | 11% | 3% | 2% |
| The complaint failed to comply with the requirements to the form | 7% | 12% | 9% |
| The party affected by the alleged business malpractice has not exhausted at least one instance of an administrative appeal process | 6% | 24% | 18% |
| Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings | 6% | 4% | 2% |
| In the opinion of the Business Ombudsman, the complaint had no substance | 3% | 4% | 15% |
| Complaints filed after the expiry of the limitation period | 0% | 3% | 5% |

The tendency shows decrease in the number of complaints submitted that are subject to court or arbitral proceedings and the ones where the party affected by the alleged business malpractice has not exhausted at least one instance of an administrative appeal process. On the contrary, the number of complaints not fitting other eligibility criteria and anonymous complaints rose in this quarter.

1.4. The term for complaint reviews

(Clause 5.3.1 (d) of Rules of Procedure)



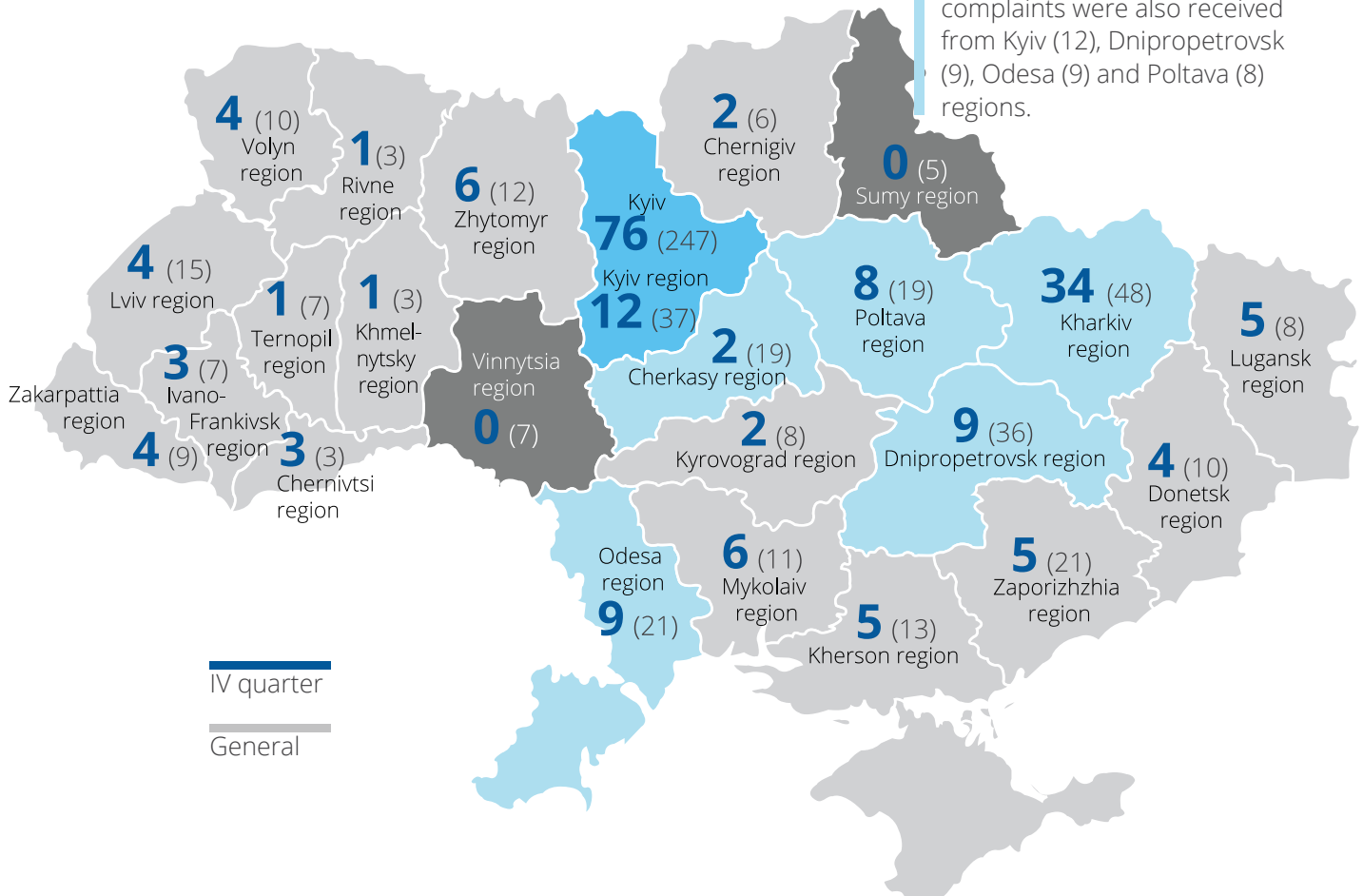
It took, on average, 3 months to review the cases that were closed during the reporting period, which corresponds the requirements of the current regulations.

1.5. Geographical distribution of complaints received

As in the previous reporting quarters, the biggest part of complaints came from Kyiv (76).

There has been no complaints from Vinnytsia and Sumy Oblasts in this quarter.

There was a significant rise in the number of complaints from Kharkiv (34) and Cherkasy (12) entrepreneurs. In descending order, complaints were also received from Kyiv (12), Dnipropetrovsk (9), Odesa (9) and Poltava (8) regions.



1.6. Government agencies subject to the most complaints

51% of complaints were lodged against the State Fiscal Service of Ukraine, including the State Tax Inspection, and the Customs Service.

6% of complainants complained about the actions of the Ministry of Justice.

4% of complaints was lodged against Ministry of Internal Affairs, **3%** each of: Municipal administrations (councils) and the Prosecutor's Office.

Overall, based on statistics of three consecutive reporting quarters, the anti-ranking of complainees has basically remained the same, with State Fiscal Service of Ukraine being the leader of the chart.

TOP-10

COMPLAINNEES IN THE REPORTING QUARTER:

110

The State Fiscal Service of Ukraine

12

Ministry of Justice of Ukraine

8

Ministry of Internal Affairs

7

Municipal administrations (councils)

6

Prosecutor's Office

5

The Parliament, the Cabinet of Ministers, the President

5

Commercial and other courts

3

Ministry of Energy and Coal Industry of Ukraine; National Commission for State Regulation of Energy and Public Utilities; SE "Energhorynok"

3

State Security Service

2

Ministry of Economic Development and Trade

55

Other

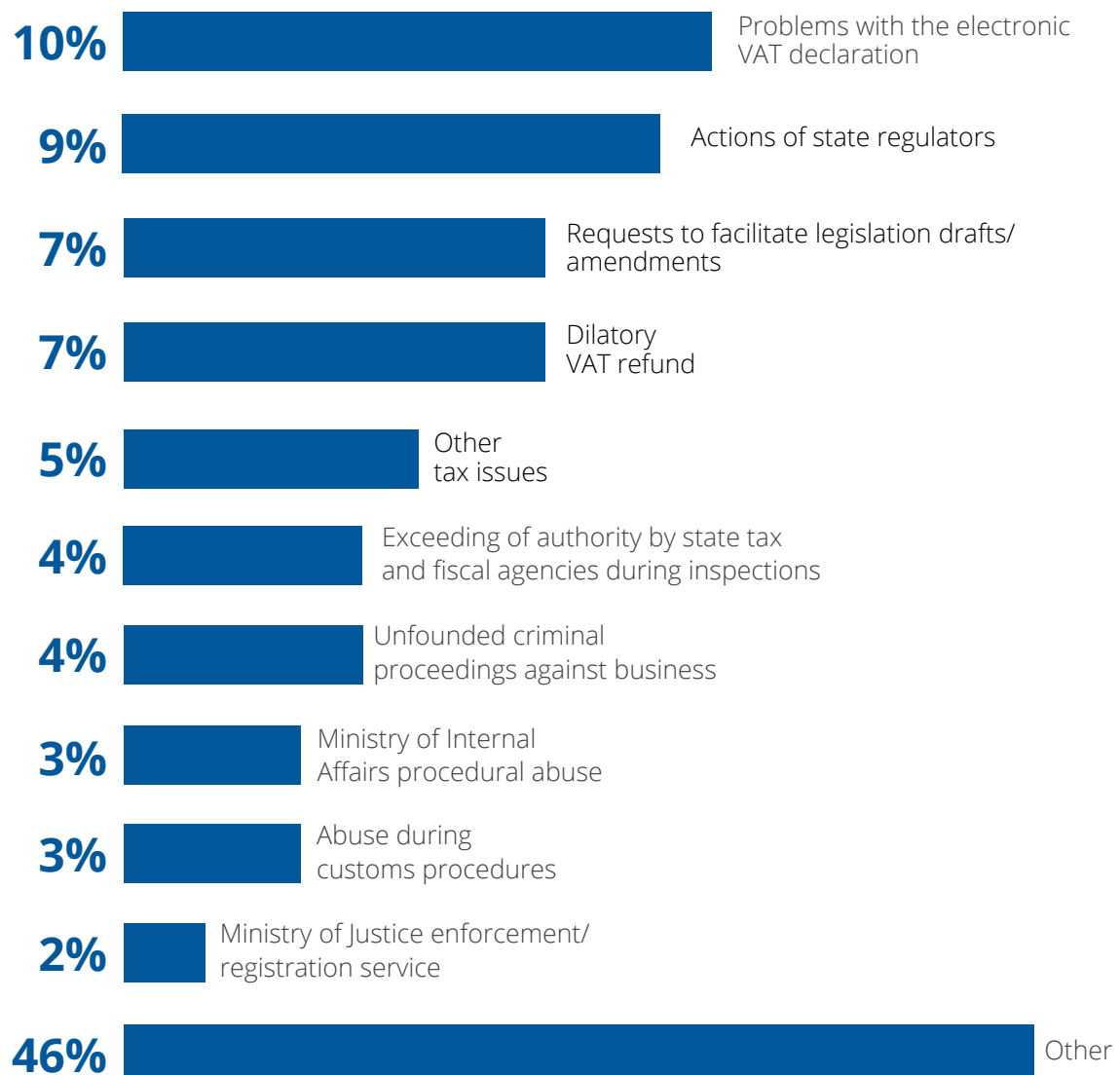
1.7. Subject of complaints received

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

Analysis of the complaints received in the fourth quarter demonstrates that Ukrainian businesses most frequently came across such key problems.

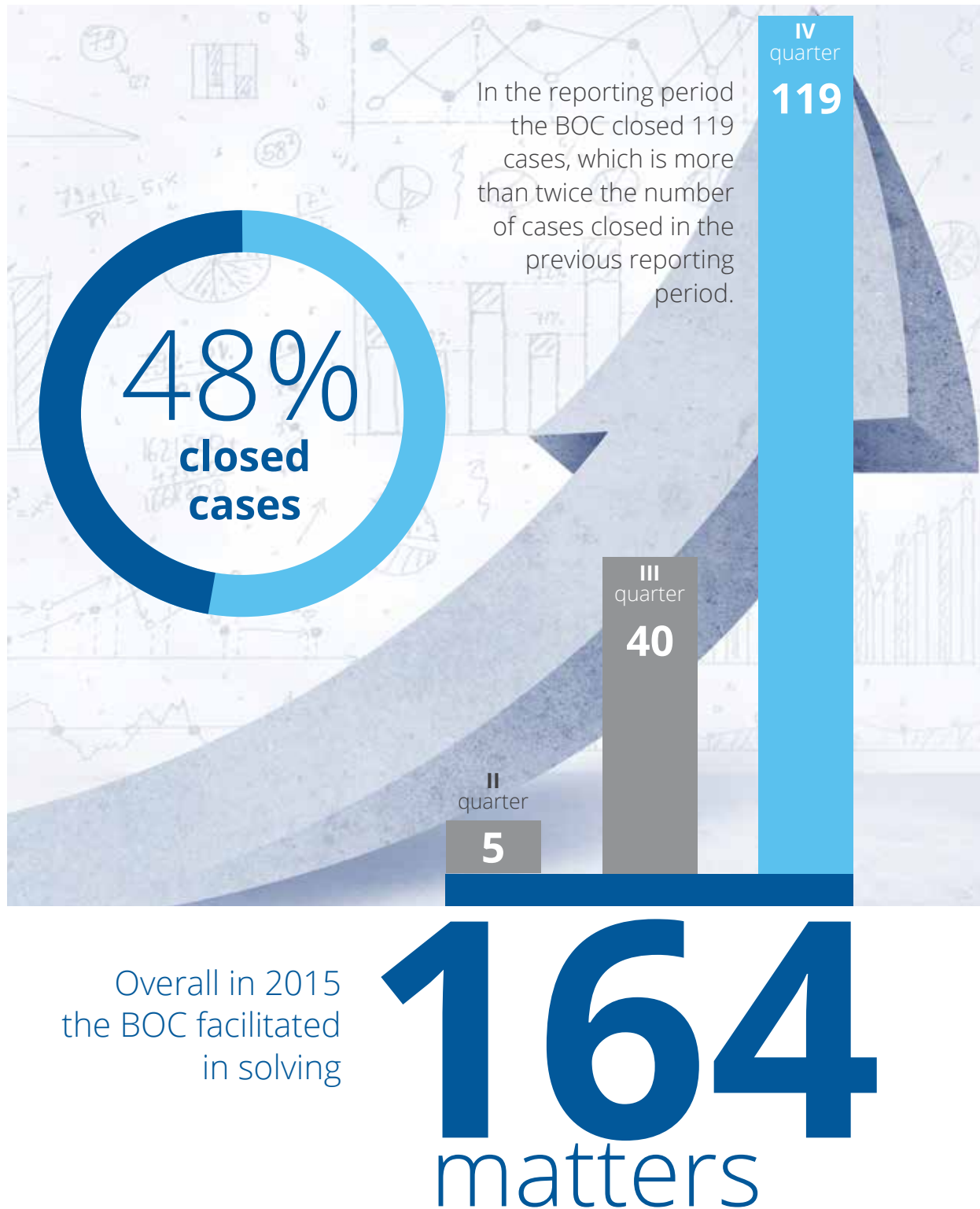
TOP-10

KEY PROBLEMS FOR
BUSINESS IN THE REPORTING
QUARTER:



2 Closed cases and recommendations to government agencies

2.1. Information on closed cases

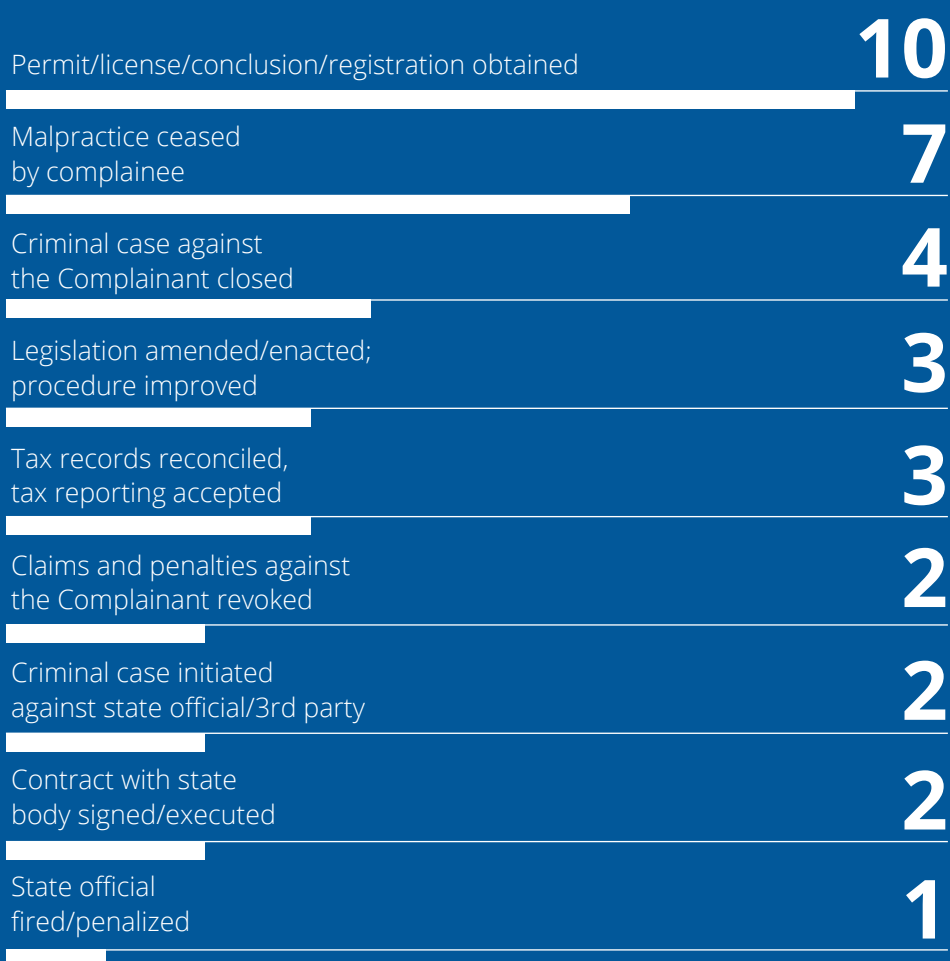


OF ALL CASES CLOSED BY BOC

Direct
financial impact
amounted
to over

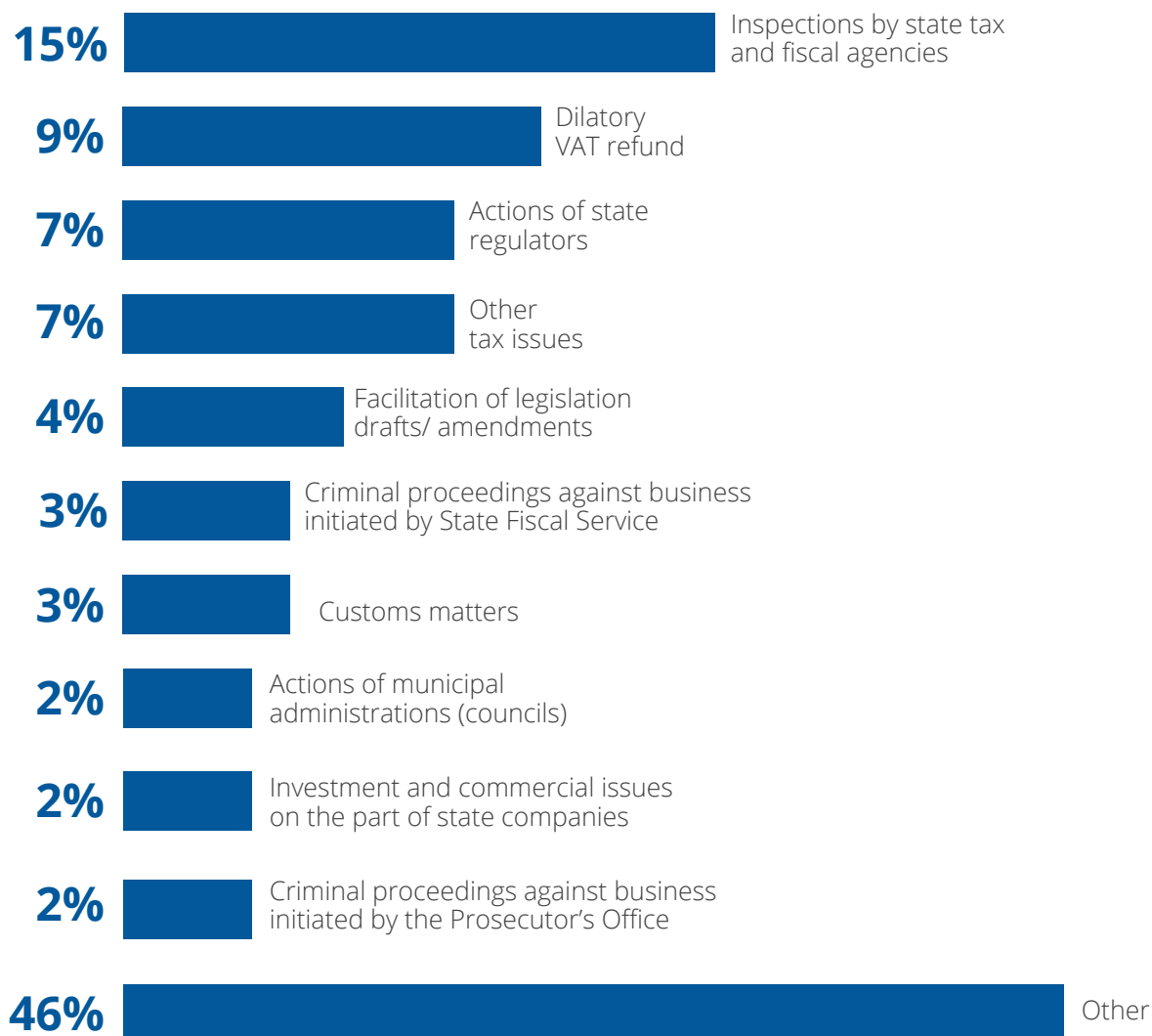
2.3 ^{UAH}
billion

Non-financial
impact of our
operations
includes:



TOP-10

SUBJECT OF CLOSED
CASES IN THE REPORTING
QUARTER:



2.2. Recommendations issued

In the fourth quarter the BOC experts issued 98 recommendations to governmental authorities. Overall, in the course of 2015 we issued 131 recommendations, 106 of which are already implemented and 25 are subject to monitoring.



81%

recommendations
implemented

* With introduction of automatized Case Management System, statistics of recommendations has been reviewed to correctly reflect the situation.

Let us illustrate
the implemented
recommendations
with cases.

#1

Ukrzaliznytsia returns over UAH 2.6 million owed for spare parts delivered

Subject of Complaint:

Southwestern Railways, a regional railway operator; Ukrzaliznytsia, the national state railway operator; Ministry of Infrastructure

Complaint in brief:

On May 26, 2015, the BOC received a complaint from a company about problems with the Southwestern Railways, a regional operator under Ukrzaliznytsia. The Complainant supplied spare parts to Southwestern, but the railway had not paid it in full. As a result, UAH 2,633,571 in debt had accrued that Southwestern continued to refuse to pay.

Action taken:

The BOC reviewed the case and determined that Southwestern did have an outstanding debt with the Complainant. The BOC then arranged a meeting with representatives of the railway operator. At the meeting, the investigator was informed that simultaneously with the BOC investigation, Southwestern had reached an agreement with the Complainant to repay a smaller debt in the near future. However, the operator again failed to repay the agreed smaller debt and left the BOC's multiple requests unanswered. The BOC then turned to the parent company, Ukrzaliznytsia.

Result achieved:

As a result of negotiations and BOC's intervention, Ukrzaliznytsia returned UAH 2,083,903 of the outstanding debt to the Complainant.

#2

Issues around the export of "dual use" goods include unfair treatment

Subject of Complaint:

State Export Control Service

Complaint in brief:

On May 21, 2015, the BOC received a complaint from a company about allegedly unfair treatment by the State Export Control Service (SECS). In 2013, SECS had blocked the export of equipment the Complainant had repaired in accordance with a service agreement, initiated criminal proceedings against the company, and expropriated the equipment. The essence of the case was the possible "dual use" status of the equipment, meaning that it could be used for both civilian and military purposes. The Complainant had to obtain an expert decision from the Service every time it exported such equipment.

The criminal proceedings were later suspended due to the absence of evidence of any crime, but the actions by law enforcement officials and the expropriation of the repaired equipment disrupted the Complainant's business. In order to avoid such problems in future, the Complainant asked the Service for a ruling as to whether the equipment in question was subject to export control or not. The Service failed to provide a clear conclusion, so the Complainant contacted the BOC

#3

**Kyiv Employment Center
refuses to issue work
permit despite court
rulings**

Subject of Complaint:

Kyiv Municipal
Employment Center

Action taken:

BOC experts studied the relevant regulations and sent an inquiry to the SECS. This led to a meeting with the BOC, the Complainant, the Service, and the Ministry of Economic Development and Trade. After this meeting, the BOC concluded that the SECS was both illegally delaying a decision and unable to provide a clear answer about the export rules governing the equipment the Complainant was repairing for its clients. Based on this, the BOC prepared a number of recommendations for the Service.

Result achieved:

The BOC's actions led to the company finally obtaining an expert ruling and renewing its commercial activity with foreign clients.

Complaint in brief:

On August 30, 2015, the BOC received a complaint from a private enterprise about the municipal employment center denying a work permit to a foreign citizen. The Complainant had provided the KMEC with all the necessary documents for a work permit in October 2014, but the request was rejected because the background check document was considered invalid. When the Complainant brought the case to the District Administrative Court of Kyiv in April 2015, the Court ruled in his favor. The KMEC appealed to the Kyiv Administrative Court of Appeal, which also ruled in the Complainant's favor. The KMEC still refused to issue the work permit, preventing the Complainant's company from operating normally.

Action taken:

After reviewing work permit regulations, the BOC determined that the reason given for denying the permit was not valid. Because of the decision of the Kyiv Administrative Court of Appeal, the Complainant also had an enforceable court ruling in his favor. With these facts, the BOC held two meetings with the director of the State Employment Center, who agreed that the KMEC had acted inappropriately. In October 2015, the investigator brought all of this information to KMEC.

Result achieved:

Due to BOC's intervention, the Complainant received a work permit for one year less than in 2 months since submitting a complaint to the Council.

#4

**Oblast SFS office
launches groundless
criminal suit****Subject of Complaint:**

Kherson Oblast State Fiscal
Service

Complaint in Brief:

A manufacturer based in Kherson Oblast turned to the BOC because oblast tax officials were pressuring them. The local tax office had carried out a number of unjustified inspections and launched a criminal case against the Complainant company's management based on fictive circumstances. The Complainant also said they had been unable to get any information from the Oblast SFS to find out the details of the lawsuit.

Action taken:

After a detailed review of the case, BOC experts concluded that officials at the Kherson Oblast SFS Investigation Unit had launched the case in order to get around a moratorium on tax inspections of commercial entities. The BOC also determined that the criminal case had been submitted to the Kherson Oblast Prosecutor's Office for investigation through the office of a county prosecutor. The BOC recommended that law enforcement agencies and SFS offices run a proper internal review of the situation.

Result achieved:

BOC specialists brought the unjustified criminal suit to the attention of the Prosecutor's office and it was closed within two days. Thanks to the BOC's intervention, the SFS's internal security unit undertook a service review and the guilty individuals faced disciplinary action.

#5

**Oblast SFS ignores court
ruling to return property****Subject of Complaint:**

Poltava Oblast SFS
Investigative Department

Complaint in Brief:

A manufacturing company complained to the BOC that the Investigative Department of Financial Investigations at the Poltava Oblast State Fiscal Service had failed to enforce the ruling of an investigative judge in the Zhovtneviy District Court in the City of Poltava that an SFS investigator was to return property that he had temporarily seized from the Complainant.

Action taken:

In response to its appeal, the BOC received a letter from the Poltava Oblast SFS stating that the Complainant's temporarily seized property could not be returned to the established owner despite the fact that the Ruling clearly stated that the Complainant was the owner. After analyzing the circumstances of the case, the BOC recommended that the Poltava Oblast SFS and the SFS's Investigative Department of Financial Investigations in Poltava Oblast take immediate steps to return the Complainant's

property. The Council drew the attention of the supervisor of the Main Investigative Administration of SFS Financial Investigations in Ukraine to the fact that its officials at the oblast level were not fulfilling their duties as required and recommended a service review of similar instances when court rulings were not carried out

Result achieved:

As a result of the BOC intervention, the Complainant received back property that had been confiscated earlier. Moreover, a criminal investigation was launched against the Poltava Oblast SFS Investigative Administration of Financial Investigations for failing to comply with a court ruling.

#6

MIA's Kharkiv Oblast Investigation Office fails to register criminal suit

Subject of Complaint:

Kharkiv Oblast Investigation
Office of the Ministry
of Internal Affairs' Main
Department

Complaint in brief:

On June 25, 2015, the BOC received a complaint from a shareholder of a Kharkiv company about a problem it was having with the Interior Ministry in the Oblast. The Complainant claimed that another shareholder, who was under the protection a member of the Verkhovna Rada, was attacking her. The Complainant stated that she had filed a criminal suit against the other shareholder, but the Ministry had failed to register it properly.

Action taken:

BOC experts found out that, according to the Criminal Procedural Code, the Investigation Office had to register the Complainant's inquiry in the Unified Register of Pre-Trial Investigations and launch investigation within 24 hours of receiving an inquiry about the malfeasance.

The investigator then formally requested that the Ministry provide proof that the criminal complaint had been registered and a proper investigation was being launched. Another inquiry was sent to the Kharkiv Oblast Prosecutor asking him to look into and monitor the case.

Result achieved:

The BOC sent its recommendations to both the Ministry and the Kharkiv Oblast Prosecutor. The recommendations have been followed and a criminal investigation is currently underway.

#7

**Zhytomyr Oblast State
Fiscal Service releases
UAH 30 million VAT
refund****Subject of Complaint:**

Zhytomyr Oblast Main
Department of State Fiscal
Service

Complaint in brief:

On July 1, 2015, the BOC received a complaint about alleged malfeasance on the part of the regional office of the State Fiscal Service (SFS). The Complainant had applied for a VAT tax refund of UAH 30,300,403 in accordance with procedures, but the Zhytomyr Oblast SFS was delaying the refund.

Action taken:

BOC experts studied current VAT refund regulations and the procedures for interactions between the regional SFS, the State Treasury, and the central SFS, then formally inquired about the reasons for delaying the refund. The regional SFS office responded that they had not received the necessary consolidated information on the VAT refund from the central office. This information was received after the BOC addressed the SFS.

Result achieved:

The Complainant received a partial VAT refund of UAH 15,939,666 within four days. The rest is being refunded.

#8

**Problem with the scrap
metal exporting****Subject of Complaint:**

Ministry of Economic
Development and Trade of
Ukraine (MoEDT), Ministry
of Ecology and Natural
Resources (MoENR)

Complaint in Brief:

On 25 May 2015, Association of exporters of scrap metal addressed the BOC. The Complainant stated that the existing scheme of quotas allocation for the scrap metal export was not transparent, lead to numerous violations of active law and abuse of power by state officials. Still, this approach to quotas allocation was introduced by the MoEDT several years ago and has caused numerous complaints on behalf of market players since then. Additional obstacle is requirement to receive the Certificate from the MoENR that exporting scrap metal complies with so-called "Green List" of wastes. Such Certificate must be received each time. The term of issuance of such certificate is 30 days, while the permission for export of the scrap metal issued by the MoEDT is also limited to 30 days.

Actions taken:

BOC investigated the matter thoroughly, studied the relevant legislative base, held a number of meetings with state officials, international experts and market players and found out the following:

- Simultaneous licensing and quotas for the scrap metal export contradict the national legislation on foreign trade;

- The quotas volume should be reduced in any case due to affiliating with WTO and undertaken commitments;
- The timeframe of inclusion into “Green list” is too long and creates conditions for corruption on the part of state officials.

Result achieved:

On 27 August 2015, BOC submitted an official letter to the Ministry of Economic Development and Trade with recommendations on improving existing procedures and regulations. Based on these recommendations, the Ministry of Environment and Natural Resources reduced the term from 30 to 10 days. Recommendations are subject to further monitoring and follow up.

#9

The right to lease the land

Subject of Complaint:

Kyiv City State
Administration (KCSA), Kyiv
Municipal Council (KMC)

Complaint in Brief:

On 16 June 2015, a big private enterprise with foreign investment turned to the BOC. Allegedly, since 2007 the Complainant has been making numerous attempts to reenter into the land lease agreement with the KMC, but these attempts failed due to the bureaucracy and inactivity of the Kyiv municipal officials. Besides, BOC had grounds to consider that the officials from the KCSA intended to “speed up” the resolving of the case by means of “extra remuneration”.

Actions taken:

After examining the regulatory base and all the supporting documents the BOC investigators determined that the Complainant had all legal rights to prolong the land lease of the land plot. The BOC representatives conducted negotiations with the Land Department of the KCSA. On 10 July 2015, BOC submitted recommendations to the head of KCSA asking to include the issue on granting the land plot into the lease into the agenda of the nearest session of the KMC and support it.

Result achieved:

On 26 May 2015, the Land Department of the KCSA approved the draft decision of the KMC on granting the land plot into the lease. Later on, during the session of the KMC on 10 September 2015, deputies supported the decision on granting the land plot into the lease to the Complainant.

2.3. Follow-up of systemic reports of the previous quarters



Systemic Report “Getting Access to Electricity”

Ukraine’s ranking in Doing Business for “Getting Electricity” index.

On October 27, 2015 the World Bank updated its Doing Business ranking. Although Ukraine’s ranking for “Getting Electricity” index in the 2016 study has improved for one point only (137th place now), it was appealing to see that the country’s ranking for 2015 has been retroactively revised from 184th to 138th place

We understand that while contemplating such a revision

the World Bank should have taken into account various findings the BOC experts were insisting on while liaising with Doing Business team in Washington DC during preparation of the report. In particular, as suggested in the Report, the number of procedures required to be followed by a customer to hook-up its power unit has indeed been decreased from 10 to 5.

It is worth noting that if such progress were to be reflected straight in the 2016’s ranking (i.e., without retroactively revising 2015), Ukraine could have jumped from 184th to 137th place, resulting in 47 positions progress, which would be the country’s best improvement vis-à-vis all other Doing Business indexes in comparison with the previous year.

Amendments to the Law of Ukraine “On Electricity”.

During reporting quarter the BOC’s experts participated in the work of the Working Group tasked to prepare Draft Law of Ukraine “On Amending the Law of Ukraine On Electricity”.

The Draft Law is aimed at improving the procedure of hooking up customer’s power units to power network and constitutes part of the Coalition Agreement focused at deregulation. Our team participated in several

meetings of the Working Group, which took part at the Cabinet of Ministers of Ukraine under chairmanship of Mr. Gennadiy Zubko, Vice Prime Minister of Ukraine and the Minister of Regional Development, Construction and Communal Services, with participation of representatives from the key ministries, the National Commission for State Regulation of Energy and Public Utilities of Ukraine (the “NERCUS”), international

organizations, energy utilities and construction companies.

Following this work, we prepared amendments to the text of the Draft Law, which substantially reflect the Council’s main recommendations set forth in the systemic report.

The work on preparing the final wording of the Draft Law – which is due to be lodged for consideration by the Cabinet of Ministers of Ukraine – is ongoing.



Systemic Report on Selected Problems with Business Activity due to the Anti-Terrorist Operation and the Annexation of Crimea

Compensation to firms for employees mobilized for a specified term for the entire period starting March 27, 2014, with the adoption of Law #1169-VII.

The BOC undertook thorough work with the Government of Ukraine and international organizations to resolve this issue. As a result of these joint efforts, Cabinet Resolution #105 dated March 4, 2015, was amended to regulate the procedure for issuing such payments and to expand the categories of individuals who are eligible under this resolution. The Ministry of Social Policy and Ministry of Finance were clearly determined to resolve this issue.

According to official information regarding funding through Budget Program 2501350 "Compensation to companies, institutions and organizations in the amount of an average salary for employees called up to serve in the military during

mobilization for a specified term," **as of December 30, 2015, Ukrainian businesses had received UAH 2.09 billion, including UAH 552.27 million for 2014**

(Letter #8/0/04/16-3В from MSP dated January 2, 2016).

Other recommendations (to institute "targeted" payments to mobilized employees, including setting up a single register to track budget payments to employees mobilized for a specified term and establishing electronic exchange of information among the State Fiscal Service, the Pension Fund, the Labor Ministry and the Defense Ministry) are in the process of being carried out as part of the overall process of reforming the country's state benefits and social support system.



Transporting goods (freight) to and from uncontrolled ATO territory.

After analyzing the complaints submitted to the BOC, the Council's systemic report recommended improving the existing procedure for transporting goods to and from areas temporarily uncontrolled by Ukraine and the zone of the Anti-Terrorist Operation, which is regulated by the Temporary Procedure to control the movement of people, vehicles and goods along the line of contact within Donetsk and Luhansk Oblasts, confirmed in Order #27 dated January 22, 2015 by the commander of the ATO.

After reviewing the BOC recommendations, consulting

with business entities and applying Point 1 of the Premierial Order #33025/1/1-15 to the Law "On amending certain legislation regarding the procedure for the transport of goods to/from the ATO zone," the Security Bureau of Ukraine (SBU) drafted a Cabinet Resolution that establishes a Procedure for transporting goods to/from the ATO zone

At this time, this draft resolution has been agreed by the SFS, the Finance Ministry, the Economic Development Ministry, MIA, the Fuel and Energy Ministry, the Social Policy Ministry, the State Border

Service Administration, and the Infrastructure Ministry. The Ministry of Justice is undertaking a legal audit. Expectations are that the new Procedure will be submitted for Cabinet approval in February 2016.

The new version of the Procedure not only establishes the provisions of temporary rules for transporting goods and freight to/from the ATO zone, but also significantly improves the procedures themselves by establishing terminology and timeframes, and extending the range of commercial entities to whom the procedure applies.

Returning Ukrainian-owned train cars from annexed Crimea to mainland Ukraine as regards cars that were de facto loaded at the time the moratorium on rail movement came into effect.

The BOC undertook efforts to resolve the issue of withdrawing the moratorium on the movement of Ukrainian-owned train cars, including removing Ukrainian assets from the territory of the annexed peninsula

of Crimea. This work was seriously complicated because of security issues in this region that remain an issue to this day.

However, the BOC has been informed that the owners

of Ukrainian train cars that remained on Crimean territory have already removed them from Crimea via other transport corridors.



Systemic Report on Problems with Administering Business Taxes in Ukraine

Based on complaints processed by the BOC against the malpractice of regulatory bodies, the Council elaborated systemic recommendations for improving the tax administration system in Ukraine and, for this purpose, proposed amendment of the Tax Code of Ukraine (the "Tax Code") and supporting by-laws.

In order to arrange for implementing respective amendments to the Tax Code, the BOC held a meeting with Finance Minister Mrs. Natalie Jaresko and the Head of the State Fiscal Service (SFS) Mr. Roman Nasirov. Further to the arrangements achieved

in the course of the meeting, and based on its Systemic Report, the BOC furnished the Ministry of Finance of Ukraine with draft amendments to the Tax Code. A significant part of the proposed amendments has been agreed with the authorized representatives of the Ministry of Finance of Ukraine in the course of the work on the updated draft of the Tax Code.

With the purpose to ensure comprehensive discussion of the proposed amendments with all stakeholders, the BOC established cooperation with the Tax and Customs Policy Committee of the Ukrainian Parliament. Thus, the BOC

representatives attended sessions of the Committee in order to discuss the proposed amendments with the national deputies of Ukraine.

Given the political arrangements of the Ukrainian high-level public officials reached at the end of 2015, adoption of the new version of the Tax Code has been postponed, while selected amendments have been introduced based on the Law of Ukraine "On Amending the Tax Code of Ukraine and Certain Legislation to Ensure a Balanced Budget for 2016," dated December 24, 2015.

Thus, the following BOC recommendations have been reflected in these amendments:

SYSTEMIC ISSUE

VAT budget refund

WHAT HAS BEEN DONE

The BOC welcomes the amendment of the Tax Code with the requirement to return budget refund in chronological order (Article 200.7.2 of the Tax Code) and ensuring that the process is public. However, the BOC also believes that Disciplinary Statute for Regulatory Bodies (see below) shall be another important tool to ensure strict discipline in the timely and smooth VAT budget refund. The need to implement the Disciplinary Statute was agreed as part of negotiations with the Ministry of Finance of Ukraine and the State Fiscal Service of Ukraine.

The BOC also welcomes changes to the Tax Code that specify the date as of which any non-reconciled VAT refund shall be deemed reconciled. This shall help establish the date as of which penalties start accruing on the outstanding VAT refund. Specifically, Article 200.15 of the Tax Code states that, in case the regulatory body fails to reconcile the VAT refund amount, the obligation to perform budget refund arises on the date when the administrative or court appeal in favor of the taxpayer is over.

Meanwhile, the BOC will continue work on amendments to the Tax Code to also establish a direct rule, whereunder penalties shall be paid to the taxpayer irrespective of payment of actual budget refund.

SYSTEMIC ISSUE

“State 9”

WHAT HAS BEEN DONE

The BOC is pleased that changes have been made in Article 184.1 of the Tax Code eliminating “state 9” (absence at the taxpayer’s location) from the list of grounds for withdrawing the registration of VAT taxpayer. However, the BOC will continue working on further changes to the Tax Code of Ukraine and the Procedure for Keeping Record of Taxpayers approved by Order No. 1588 of the Ministry of Finance of Ukraine, dated December 9, 2011 in order to limit the discretionary powers of regulatory bodies in terms of checking the taxpayers’ location.

This issue was also discussed during working meetings with the representatives of the State Fiscal Service of Ukraine. The BOC and the State Fiscal Service of Ukraine established a constructive dialogue on problematic issues arising in the course of exercising respective powers by regulatory authorities.

SYSTEMIC ISSUE

VAT electronic
administration

WHAT HAS BEEN DONE

The BOC recommendation to include the figure of $\Sigma \text{Овердрафт}$ as a permanent component in the formula for calculating the registration amount for which the taxpayer has the right to register tax invoices and/or adjustments thereto in the Single Register of Tax Invoices has been implemented.

The implemented amendments also account for the BOC recommendations regarding specific aspects of applying the formula by taxpayers who are obliged to use cash method. Thus, as an exemption from the general rule, taxpayers who apply cash method by virtue of Article 187.10 of the Tax Code, shall be allowed, for purposes of calculating the figure of $\Sigma \text{Накл}$ of the formula, to account for VAT reflected in tax invoices issued before 1 July 2015, provided that the right to tax credit based thereon arouse after 1 July 2015.

The BOC recommendation to supplement the Tax Code with the rule that minor errors in primary documents should not deprive the taxpayer of the right to tax credit, budget refund or a tax discount was partly implemented. Specifically, Article 201.10 of the Tax Code was supplemented with the provision, whereunder tax invoice that contains an error in the requisites that does not hinder the identification of the operation involved, its content (goods/services provided), timeframes, the parties, and the amount of the tax liability, shall be deemed sufficient for the buyer to account VAT paid as VAT credit.

Based on the complaints processed in the last quarter of 2015, the BOC considers it worthwhile to note a reduction—albeit still not a significant one—in the number of complaints with respect to functioning of the electronic VAT administration system. We consider this a positive trend resulting from the efforts to improve the systemic flaws inherent to the system at start.

According to the arrangements made, the BOC will continue to work with the Ministry of Finance of Ukraine, the State Fiscal Service of Ukraine and the Tax and Customs Policy Committee of the Parliament of Ukraine in 2016 in order to ensure that all its systemic recommendations are reflected in the new version of the Tax Code. It is anticipated that the new version of the Tax Code will be elaborated in the first half of 2016.



Systemic Report on Problems with Cross-Border Trading in Ukraine

Drafting and adopting a new version of the Law "On Foreign Economic Activity"

On receiving the BOC recommendations, the Ministry of Economic Development engaged BOC experts under

an international technical assistance program and began to prepare a [new version of the Law "On Foreign Economic](#)

[Activity."](#) Expectations are that the new version of the law will be drafted and public hearings held to debate the bill.

II. Reviewing and reducing the number of commodities being traded across the border that are subject to licensing.

As part of its efforts in this area, the Government submitted Bill #2498a "On amending legislation to reduce the number of permit procedures in foreign economic activity" to the Verkhovna Rada, [which should cancel import and export licenses for alcoholic beverages and tobacco](#)

[products.](#) In November 2015, this bill passed first reading and was passed to committee for further revision.

According to foreign economic activity legislation, the list of goods subject to licensing and restriction via quotas is supposed to be approved

annually. On December 30, 2015, Cabinet Resolution #1176 [approved the list of goods that require import and export licenses, and established quotas for 2016 in which certain commodities have been removed](#), including non-ferrous metals and anthracite.

Improving export-import administration practices.

According to the BOC, law enforcement agencies are in the process of a large-scale anti-corruption investigation of the State Export Control

Service, which is complicating interactions with the SECS and the implementation of Council recommendations. We plan to continue to monitor

the situation and to keep working to ensure that the BOC recommendations are implemented.

IV. Applying the law and penalties.

The Ministry of Economic Development drafted **technical changes to the Law “On Foreign Economic Activity”** that affect the way that the law and penalties are applied. It is

anticipated that the bill will be submitted to the Verkhovna Rada in the spring of 2016.

At this time the MED is working at a joint decree with other

agencies to **ease penalties for violations involving foreign trade** as a temporary measure prior to adopting changes to the actual legislation.

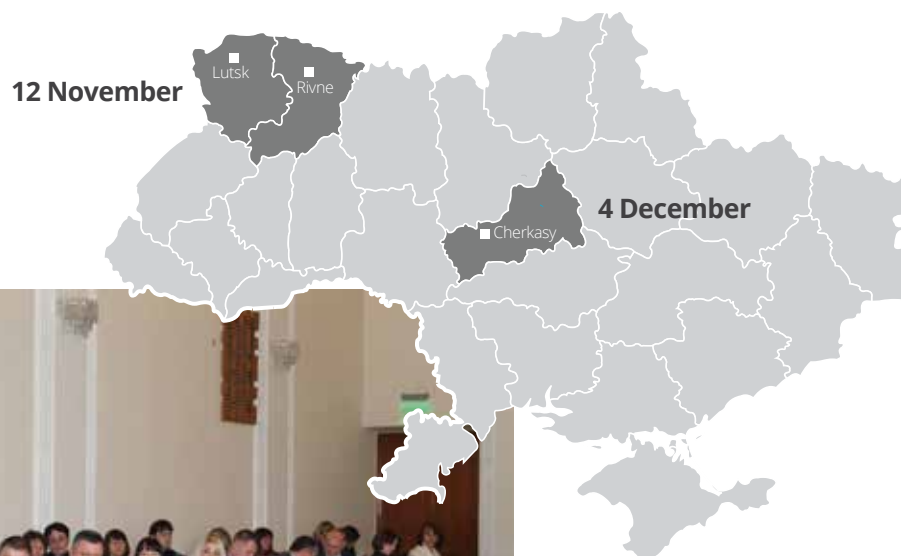
Systemic reports of the fourth quarter of 2015 on employing mechanism of criminal prosecution to inflict pressure on business and on behavior of state monopolies are presented in separate documents.

3 Public Outreach and Stakeholder Communications

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 several working visits to the regions of Ukraine where he met with the leaders of the Regional State Administrations and the representatives of public and business environment.



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 and Donetsk regions.

Our position towards cooperation with business is clear: if you cannot help, don't interfere. Of course, there is a lot to be done both in Ukraine and in Volyn region in particular to overcome the shameful phenomenon of corruption. We are happy to join our efforts with the Business Ombudsman Council to reach our common goal – to eradicate corruption and create favourable investment climate in the region", *said Volodymyr Gunchyk, Head of Volyn State Administration.*

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

- International Conference “National Dialogue in Ukraine: Review of Efforts and Prospects for Enhancing Country’s Stability and Promoting Reforms” under the auspices of OSCE
- The 10th Anniversary Adam Smith Ukrainian Investment Summit “Building on the first wave of reform as a platform for growth” in London
- International Anti-Corruption Conference in Kyiv
- Citi ThoughtClub
- Kiev International Economic Forum
- Pharmaceutical Summit 2015
- Winter school MUTE@ Corruption in Odesa
- International conference “Industrial parks and industrial development: chances and challenges”

3.2. Cooperation with government agencies



On 12 October SFS Head Roman Nasirov and Business Ombudsman Algirdas Šemeta signed a Memorandum on Partnership and Cooperation.

The Memo envisages information exchange between departments, expert help for eliminating problems that restrict business activity.

Signing the Memo is an impetus towards creating a platform to discuss the specifics of complains we receive on SFS and find a way to solve them. Cooperation should lead to improvement of the business climate that Ukrainian entrepreneurs long for so much,” says *Business Ombudsman Algirdas Šemeta*.

Collaboration with the State Fiscal Service

Collaboration with the State Regulatory Service

Collaboration with the Justice Ministry



Over the reporting quarter, two meetings took place with the specialized expert group within the framework of the Memorandum and a series of separate meetings of specialists from the Business Ombudsman Council with SFS management. The two sides worked on 49 complaints filed with the BOC and agreed to implement the recommendations contained in the systemic reports the Council presented in previous quarters.

It is worth noting that SFS is open and ready to cooperate with the BOC. We will continue to work to expand our collaboration with the State Fiscal Service at the regional level across Ukraine, to work more closely with regional customs offices, and to stimulate SFS departments to undertake internal transformations and reforms.

As part of our work with the SRS, three meetings took place: two at the management level involving both institutions. The BOC and SRS jointly prepared an appeal to the Prime Minister of Ukraine about the need to maintain consistent policy positions regarding the moratorium on business inspections and the need for the regulators to intensify efforts to revise licensing terms and conditions.

In order to carry out the provisions of the Memorandum on Partnership and Cooperation, the BOC experts met twice with senior officials at the Ministry of Justice in the format of an expert working group.

As a result of these meetings, 10 complaints filed by commercial entities were reviewed: 7 regarding enforcement and 3 regarding registration procedures. The two sides also agreed to carry out in-service reviews regarding a slew of enforcement issues, as a result of which guilty officials were subject to disciplinary hearings for violating the timeframes for carrying out decisions.

3.3. Public outreach and communication



NEW MEDIA PROJECT “THE RIGHT TO DO BUSINESS”

The BOC continued its communication with stakeholders through its website, Facebook and media.

We continued cooperation with journalists from key Ukrainian media:

the Delo.ua portal;
the LigaBiznesInform portal;
the Ekonomichna Pravda portal;
RBC Ukraine, a news agency;
Ukrinform, a news agency;
Biznes, a business weekly;
the KyivPost, a weekly newspaper;
Novoe Vremya (New Time), a weekly magazine;
LB.ua portal.



together with
the Vlasnyky [Owners] program
on Aristokraty [Aristocrats]
Radio and
the Delo.ua
portal

In this quarter we launched a media project called “The Right to do Business,” together with the Vlasnyky [Owners] program on Aristokraty [Aristocrats] Radio and the Delo.ua portal. Every Thursday, we set up discussions between businesses who have filed complaints from all over Ukraine and journalists. The topics include doing business and its ups and

downs, how government agencies work with business, and the progress of reforms in Ukraine. **Over 4,000 listeners tune in to our live broadcast.**

BOC podcasts and interviews are available for listening, reading and downloading. Our goal is to attract attention to serious issues and show the real face of business in Ukraine.

THE BOC IS FUNDED



through the Ukraine Stabilisation and Sustainable Growth Multi-donor Account set up by the European Bank for Reconstruction and Development (EBRD) in 2014.

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