

REPORT

QUARTER
IV 2018

(01 October – 31 December)

REPORT FOCUS

Industry
analysis
of complaints

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Italy



the United States



Japan

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

FOREWORD OF THE BUSINESS OMBUDSMAN



Dear Friends, Colleagues,
and Partners,

It is my pleasure to present you the report on the Business Ombudsman Council's operations in Q4 2018.

The steady decrease in the number of complaints concerning state bodies malpractice, observed during 9 months of 2018, pulled over. In Q4 2018, we received 427 appeals from companies, which is 39% more than in Q3 2018.

The majority of complaints (62%) related to tax issues. Most noticeably, we received 80 complaints from businesses against tax inspections, which was an all-time high figure since the BOC launched operations. The number of appeals over tax invoice suspensions also went up, although this subject seemed to be gradually fading away after the relaunch of the system for their automatic registration earlier in 2018.

The trend towards appeals against law enforcers varied, depending on the agency. Companies lodged more complaints against the National Police, but fewer against the Prosecutor's Office and the State Security Service.

We also received fewer complaints regarding state regulators, local councils and state owned enterprises. However, complaints against the Ministry of Justice, the Customs Service and changes in legislation went up.

A comparative analysis of complaints by industries, pointed out similarities and differences within appeals of companies operating in various spheres. Thus, wholesalers and distributors most often complained on tax (72%) and customs issues (6%). Agricompanies were more than others concerned about actions of state regulators (12%), while real estate companies – with local councils (12%). Manufacturers have recently become a subject of law enforcers' particular interest (17% in 2018). Individual entrepreneurs were marked by the highest share of complaints against law enforcers (18%) and vigorous activity in proposing legislation amendments (10%).

In Q4 2018, we set a new record: state bodies implemented 94% of our recommendations. Moreover, the satisfaction level of complainants went up to 97%. Beyond that, we stopped dozens of types of abuse of government agencies, helped complainants to close baseless criminal cases and obtain permits.

We are pleased to emphasize several important systemic wins of the quarter. On November 4, 2018, the Law (also known as "Mask-Show Stop 2") entered into force, expanding mechanisms for challenging malpractices of law enforcers and bringing them to personal liability. As recommended in our systemic report on getting access to electricity, the National Energy and Utilities

Regulatory Commission approved fixed rates for getting hooked up to electricity, with the price to be calculated based on the quantity of power capacity declared by the customer. Following our recommendation, set forth in the report on construction, the State Architectural and Construction Inspection launched online tools which contain all documented information about the construction, thereby increasing customer usability and eliminating risks of abuse of state agencies.

Given the need to solve urgent issues and introduce modern approaches to the oversight of labor issues, we have prepared a new systemic report on this topic in which we analyzed the effectiveness of labor regulation, labor law compliance and illegal employment prevention, as well as some aspects of educational services and issuing permitting documents, in particular, to foreigners. Specific cases, legislation analysis and a comprehensive dialogue with state agencies and business associations formed a basis of this report.

By addressing specific complaints and systemic problems, the BOC, inter alia, has become a platform for communication between the government and business. We value this role and continue contributing to Ukraine's sustainable development.



Sincerely,
Algirdas Šemeta
Business Ombudsman

2018 AT A GLANCE

 **1792** complaints received

 **1439** cases closed



Direct financial impact:

UAH 2 bn



97%

of complainants
are satisfied with
working with the
BOC



94%

of
recommendations
to state bodies
implemented

TOP-5 INDUSTRIES



29%

Wholesale
and Distribution



13%

Manufacturing



10%

Agriculture
and Mining



9%

Real Estate
and Construction



7%

Individual
Entrepreneurs

SIZE OF BUSINESS

27%

73%

Large

Small/Medium

ORIGIN OF INVESTMENT

85%

15%

Ukrainian
companies

Foreign
companies

TOP-5 SUBJECTS OF COMPLAINTS

61%

Tax issues

14%

Actions of law enforcement bodies

7%

Actions of state regulators

4%

Actions of local councils

3%

Ministry of Justice actions

TOP-5 MOST ACTIVE REGIONS

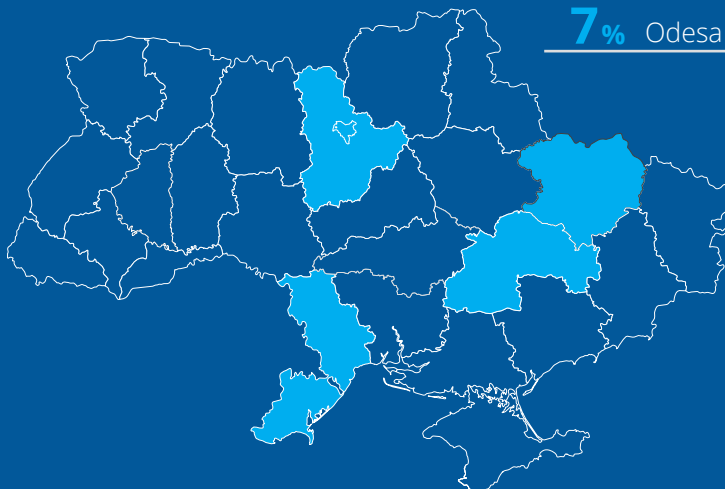
36% Kyiv

10% Dnipropetrovsk Oblast

8% Kharkiv Oblast

7% Kyiv Oblast

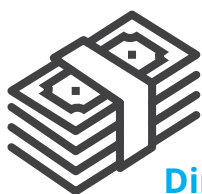
7% Odesa Oblast



Q4 2018 AT A GLANCE

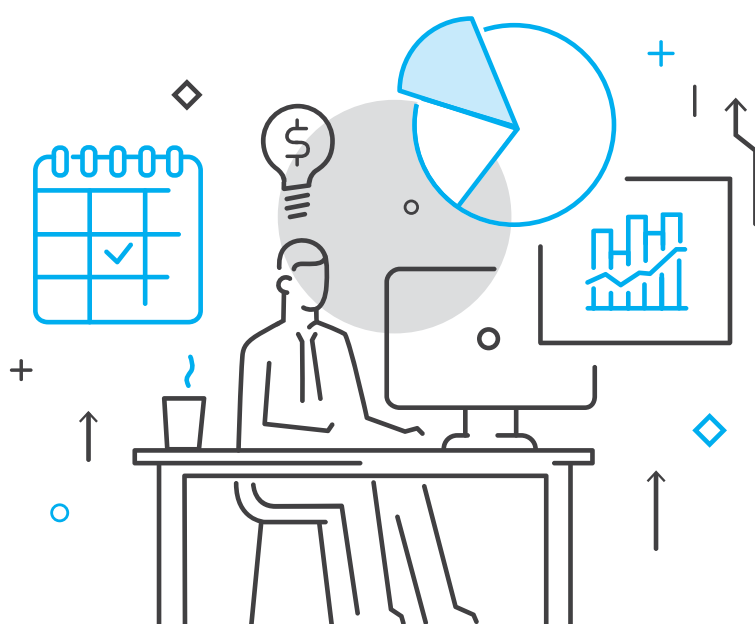
 **427** complaints received

 **236** cases closed



Direct financial impact:

UAH 275 mnn



97%

of complainants
are satisfied with
working with the BOC

94%

of recommendations
to state bodies
implemented

TOP-5 INDUSTRIES



30%

Wholesale
and Distribution



11%

Real Estate
and Construction



11%

Manufacturing



8%

Agriculture
and Mining



6%

Individual
Entrepreneurs

SIZE OF BUSINESS

30%

70%



Large



Small/Medium

ORIGIN OF INVESTMENT

85%

15%



Ukrainian
companies



Foreign
companies

TOP-5 SUBJECTS OF COMPLAINTS

62%

Tax issues

14%

Actions of law enforcement bodies

6%

Actions of State Regulators

4%

Ministry of Justice actions

3%

Actions of Local Councils/Municipalities

TOP-5 MOST ACTIVE REGIONS

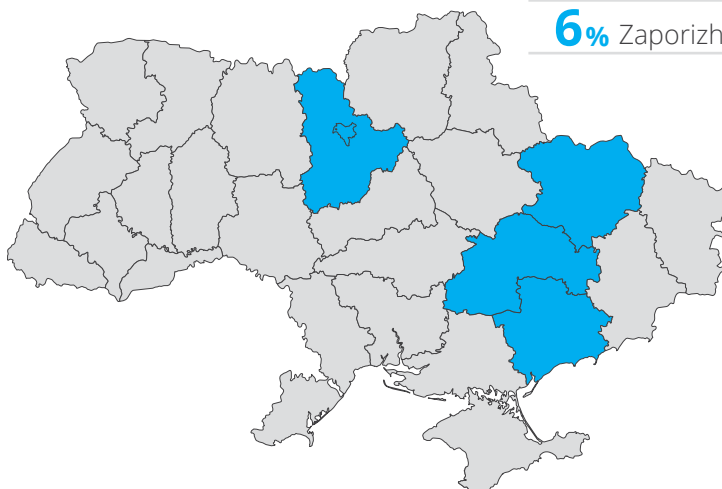
42% Kyiv

10% Kharkiv Oblast

8% Dnipropetrovsk Oblast

7% Kyiv Oblast

6% Zaporizhzhia Oblast

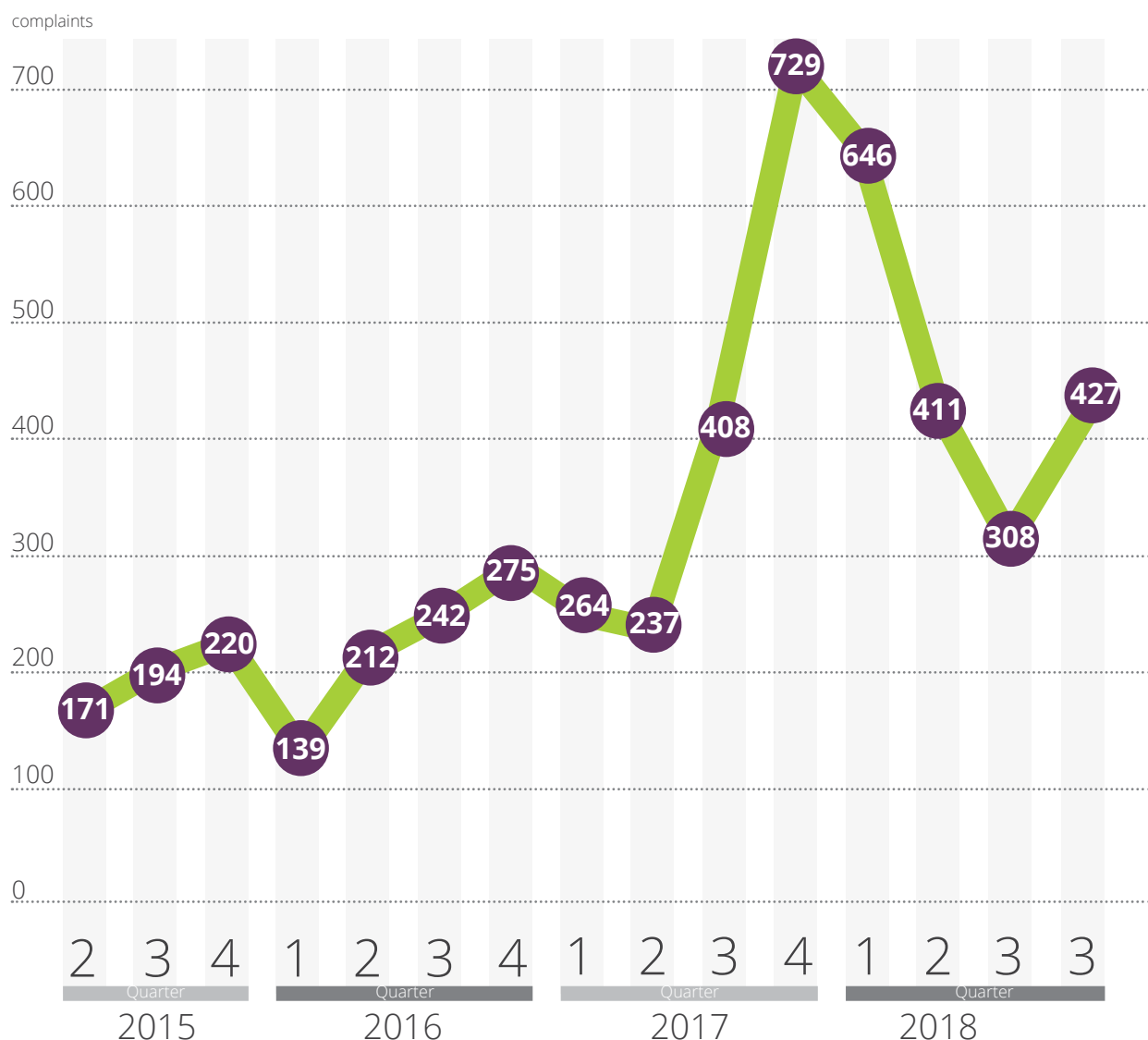


1. COMPLAINTS TRENDS

1.1. Volume and nature of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

After a lingering decline, observed during 9 months of 2018, the number of complaints on state bodies' malpractice went up at the year-end. The BOC received 427 appeals from entrepreneurs in Q4 2018, which is one third more than in the previous quarter.



Total number of complainants received since launch of operations in May 2015: **4883**

TOP-10 SUBJECTS OF COMPLAINTS IN Q4 2018

	Q4 2018	Change as compared to Q3 2018	Change as compared to Q4 2017
Tax issues	263	79%	-50%
Tax VAT refund	7	-22%	-22%
Tax VAT electronic administration	13	117%	-70%
Tax inspections	80	78%	29%
Tax criminal cases	17	21%	6%
Tax termination of agreement on recognition of electronic reporting	4	-	0%
Tax termination/renewal/refusal of VAT payers registration	3	-	50%
Tax VAT invoice suspension	104	104%	-72%
Tax other	35	59%	84%
National Police actions	30	30%	11%
National Police procedural abuse	20	122%	100%
National Police criminal case initiated	1	-67%	-83%
National Police corruption allegations	0	-	-
National Police inactivity	7	40%	75%
National Police other	2	-67%	-60%
Actions of state regulators	24	-4%	-49%
Other state regulators AMCU	1	-50%	-67%
Other state regulators StateGeoCadastre	5	150%	-55%
Other state regulators SACI	4	300%	0%
Other state regulators	14	-30%	-52%
Prosecutor's Office actions	21	-25%	-5%
Prosecutor's Office procedural abuse	18	6%	500%
Prosecutor's Office criminal case initiated	1	-88%	-91%
Prosecutor's Office corruption allegations	0	-	-100%
Prosecutor's Office inactivity	0	-	-100%
Prosecutor's Office other	2	-33%	-
Ministry of Justice actions	15	50%	36%
MinJustice Enforcement Service	4	0%	-50%
MinJustice Registration Service	11	83%	267%

	Q4 2018	Change as compared to Q3 2018	Change as compared to Q4 2017
Actions of Local Councils/Municipalities	14	-22%	-46%
Local councils/municipalities land plots	2	-	0%
Local councils/municipalities rules and permits	0	-100%	-100%
Local councils/municipalities investment disputes	0	-	-
Local councils/municipalities other	12	0%	-48%
Customs issues	13	30%	-7%
Customs valuation	4	300%	33%
Customs criminal proceedings	0	-	-
Customs clearance delay/refusal	6	200%	-25%
Customs overpaid customs duties refund	1	-50%	0%
Customs other	2	-60%	0%
Legislation drafts/amendments	11	10%	-27%
Deficiencies in regulatory framework tax	4	300%	-33%
Deficiencies in regulatory framework customs	1	-	-
Deficiencies in regulatory framework state regulators	3	-25%	-57%
Deficiencies in regulatory framework local councils/municipalities	0	-	-100%
Deficiencies in regulatory framework other	3	-40%	200%

TAX ISSUES

This major block of appeals (62%) performed the largest increase: +79% as compared to Q3 2018.

Despite tax invoice suspension issues seemed to have been solved in the previous quarter, in Q4 2018 the number of complaints on this matter again went up. However, many of appeals on blocking of tax invoices were lodged by the same companies: these 104 complaints came from 64 entities, whom the SFS, apparently, considered to be risky.

The most common subject of preceding years, the VAT refund, continued to decline. In the reporting period we received 22% less complaints on this matter than in both Q3 2018 and Q4 2017.

At the same time, the number of complaints on all other subjects from the tax block went up in comparison with Q3 2018. In Q4 2018 we received 80 complaints on tax inspections – the all-time high figure since launch of operations. We also received more appeals on tax criminal cases, termination of electronic reporting recognition and refusal of VAT payers' registration.

	Q4 2018	Change as compared to Q3 2018	Change as compared to Q4 2017
State Security Service actions	7	-13%	-46%
State Security Service procedural abuse	2	-67%	-60%
State Security Service criminal case initiated		-100%	-100%
State Security Service corruption allegations		-	-100%
State Security Service other	5	-	67%
Actions of state companies	4	-43%	-60%
State companies investment/commercial disputes	0	-	-100%
State companies other	4	-43%	-43%

ACTIONS OF LAW ENFORCEMENT BODIES.

Businesses lodged more complaints against the National Police: +30% as compared to Q3 2018 and +11% as compared to Q4 2017. This increase was driven by both the state body's procedural abuse and its inactivity.

On the contrary, the number of appeals concerning the Prosecutor's Office and the State Security Service decreased as compared to both Q3 2018 and Q4 2017.

OTHER SUBJECTS

Less complaints were lodged against actions of local councils and state companies, while the number of complaints against the Ministry of Justice, customs issues and legislation amendments increased.

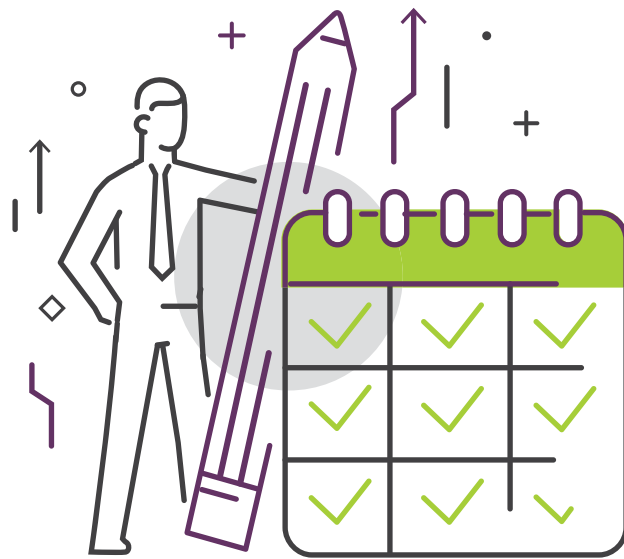
STATE REGULATORS

We received less complaints on this subject, resulting in its share drop by 2 pp relative to Q3 2018. So far this matter holds the third position in the TOP list of appeals with a 6% stake.



1.2. Timelines of the preliminary review of complaints

(Clause 5.3.1 (b) of Rules of Procedure)



The average time for preliminary review of a complaint:

8.6

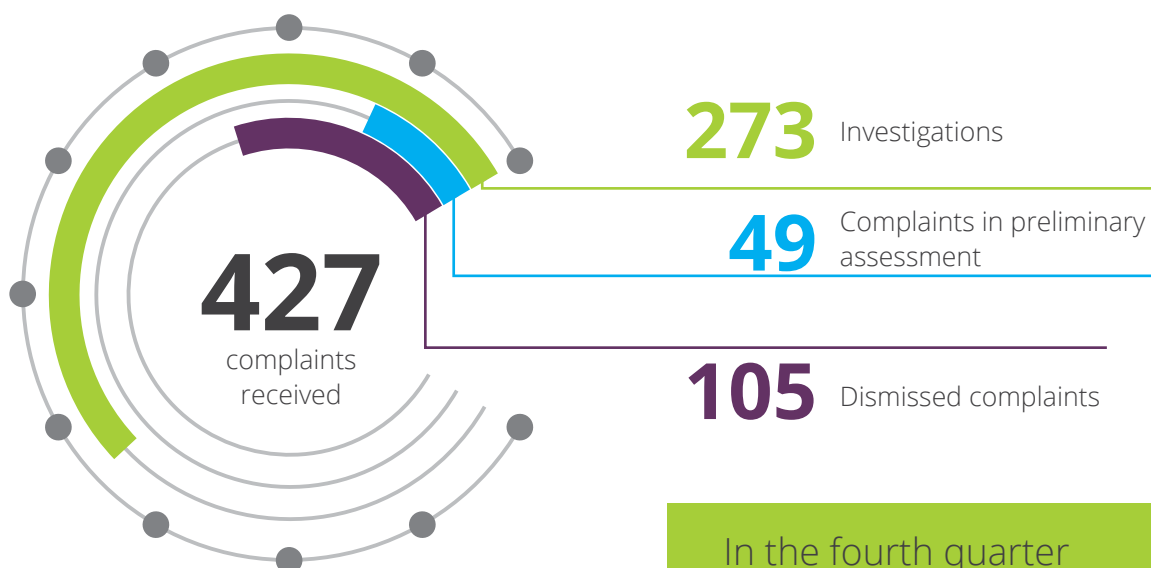
working days

For reference – according to our Rules of Procedure the average time for preliminary review should not exceed 10 working days.

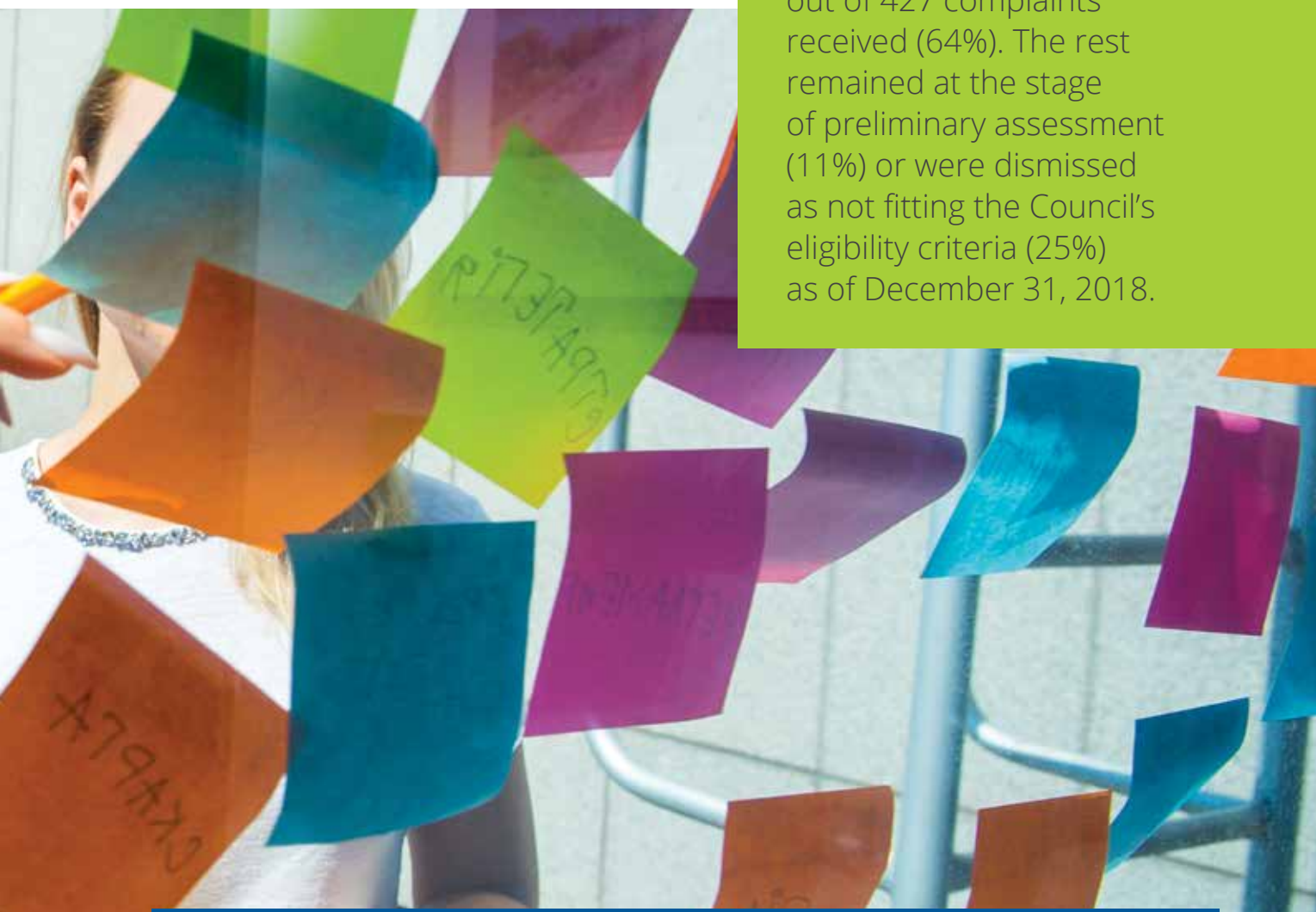


1.3. Number of investigations conducted and grounds for declining complaints

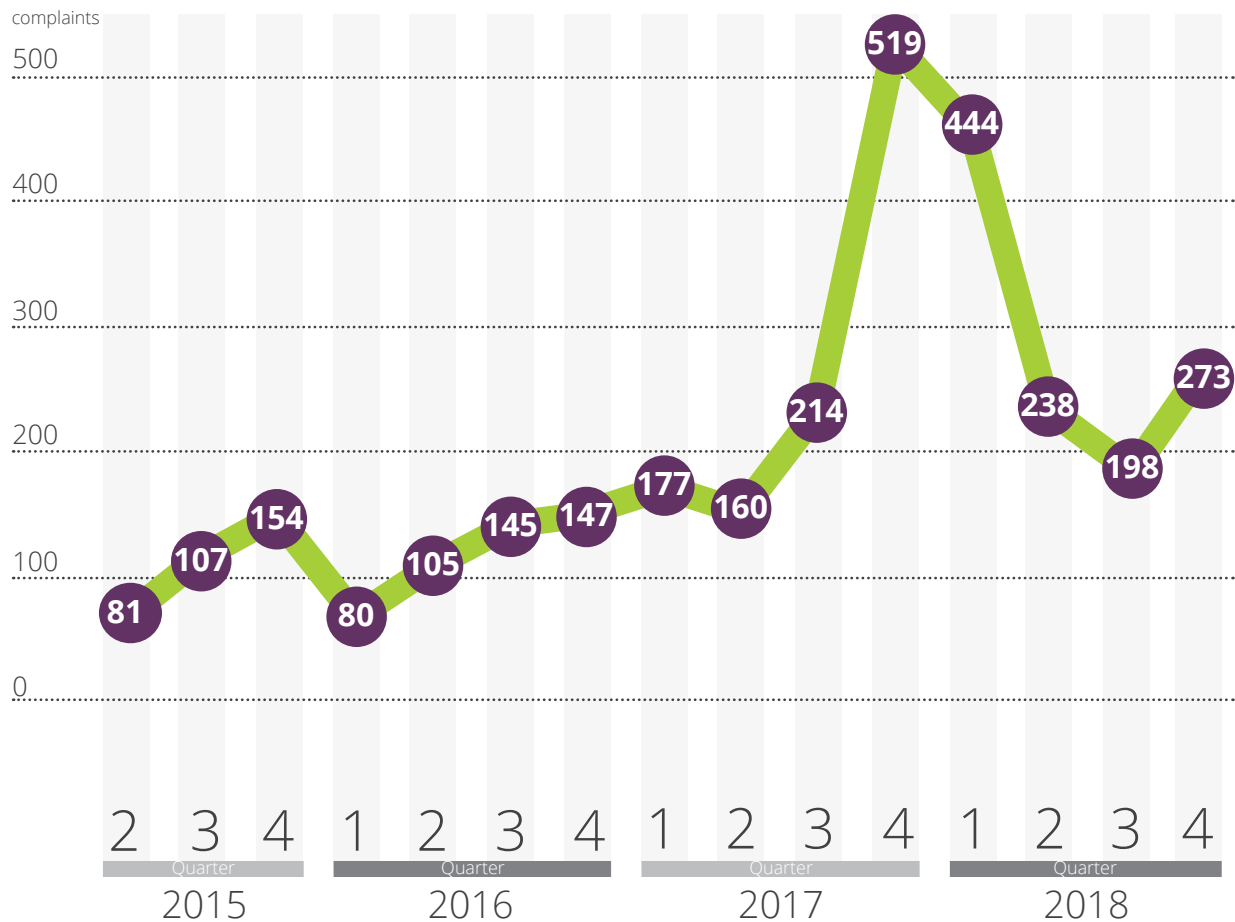
(Clause 5.3.1 (c) of Rules of Procedure)



In the fourth quarter of 2018, the BOC undertook 273 investigations out of 427 complaints received (64%). The rest remained at the stage of preliminary assessment (11%) or were dismissed as not fitting the Council's eligibility criteria (25%) as of December 31, 2018.

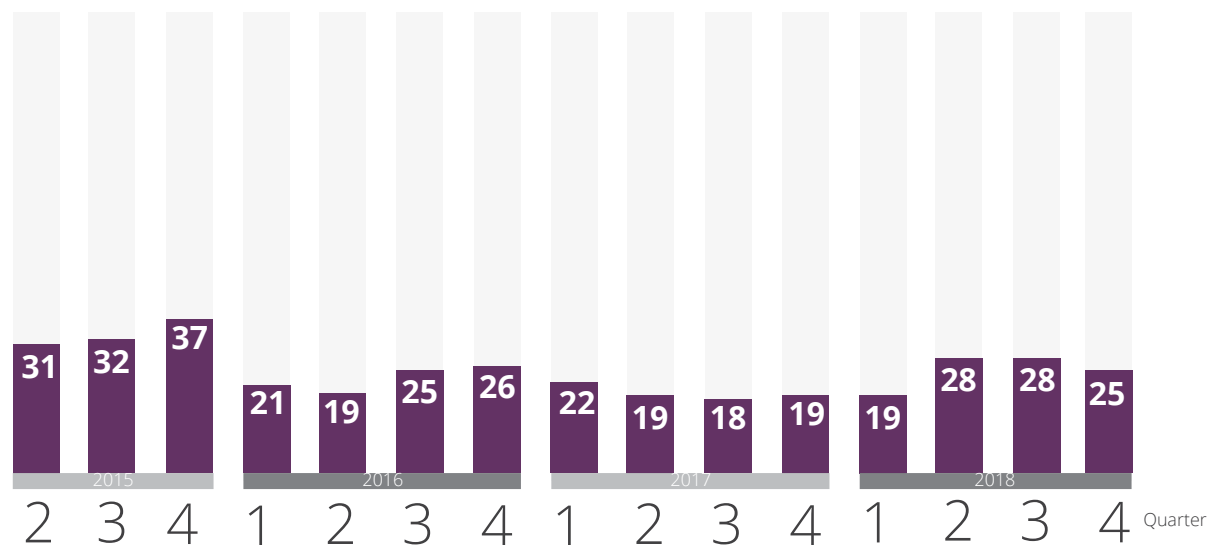


NUMBER OF INITIATED INVESTIGATIONS:



This quarter we initiated **38%** more investigations than in Q3 2018.

RATIO OF DISMISSED COMPLAINTS:



MAIN REASONS FOR COMPLAINTS DISMISSAL IN QUARTER IV 2018

Complaints outside Business Ombudsman's competence

36

Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made

20

14 The complaint had no substance, or other agencies or institutions were already investigating such matter

14 In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation

5 The party affected by the alleged business malpractice had not exhausted at least one instance of an administrative appeal process

4 Complaints arising in the context of private-to-private business relations

4 A complaint filed repeatedly

8 Other reasons

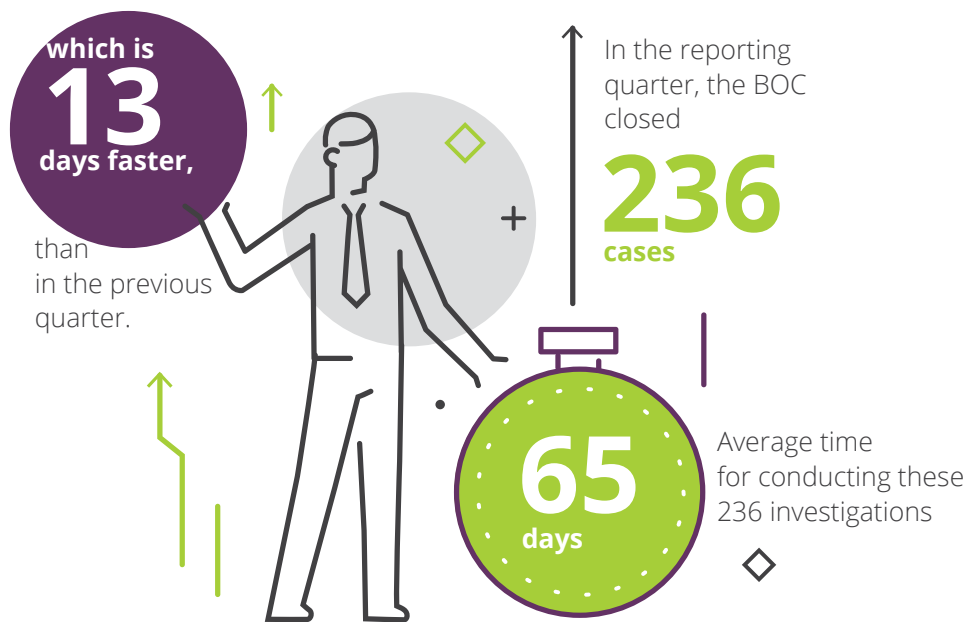
The most widespread reason (34%) for complaints dismissal – they were outside the Business Ombudsman's competence.

Active court proceedings (19%), absence of substance (13%) and lack of cooperation on the part of the Complainant were also typical for this period.



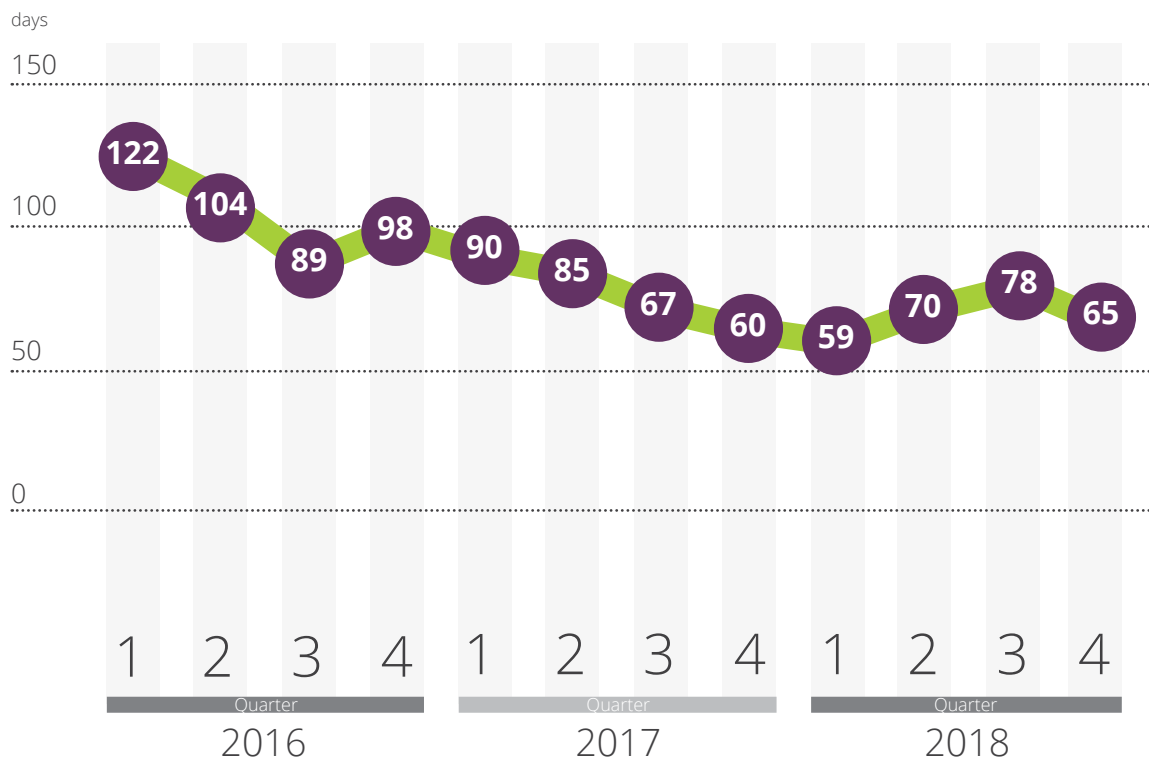
1.4. Timelines of conducting investigations

(Clause 5.3.1 (d) of Rules of Procedure)

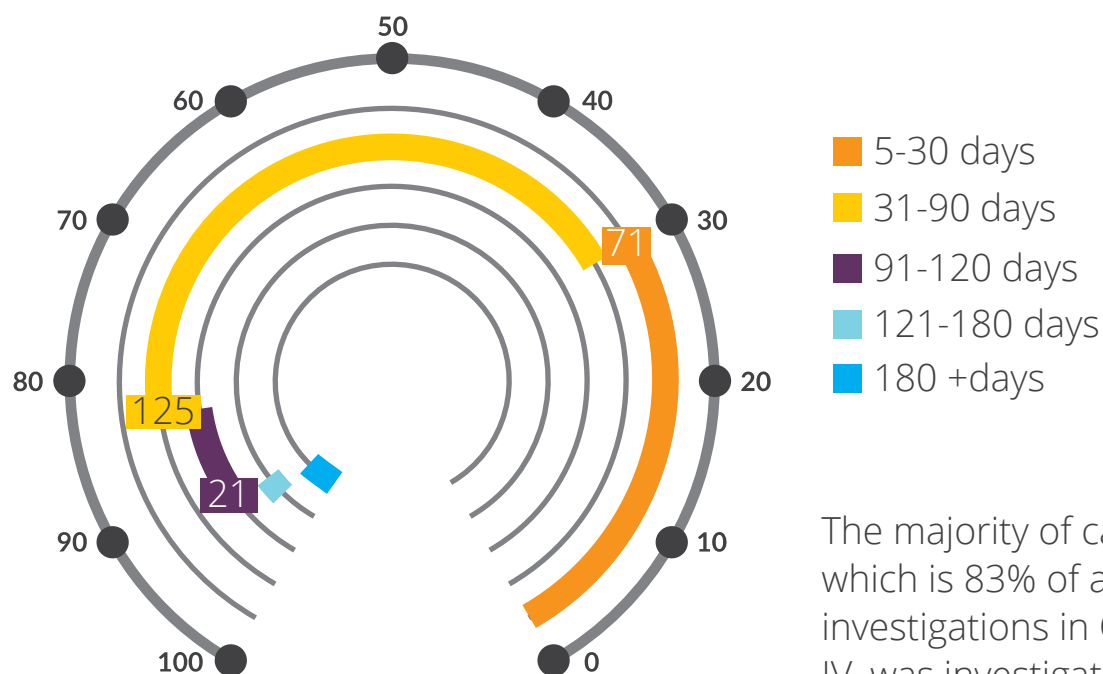


In Q4 2018 we perfectly fit our Rules of Procedure's average investigation duration of 90 days.

AVERAGE TIME FOR CONDUCTING INVESTIGATIONS SINCE 2016:



RATIO OF CLOSED CASES BY DAYS:



The majority of cases – 196, which is 83% of all closed investigations in Quarter IV, was investigated within 90 days as envisaged by our Rules of Procedure.

1.5. Government agencies subject to the most complaints

TOP-10 COMPLAINNEES

	Q4 2018	Change as compared to Q3 2018	Change as compared to Q4 2017
State Fiscal Service	278	76%	-49%
National Police of Ukraine	30	36%	20%
Prosecutor's Office of Ukraine	21	-28%	-5%
Ministry of Justice	17	42%	42%
Local councils and municipalities	14	-22%	-52%
Ministry of Regional Development	10	150%	-33%
Parliament, the Cabinet of Ministers, the President of Ukraine	8	100%	60%
State Security Service	7	-13%	-46%
Ministry of Finance of Ukraine	5	67%	150%
State owned enterprises	5	-38%	-44%
Other	32	-24%	-43%

OTHER COMPLAINNEES INCLUDE:

Ministry of Social Policy and Labour of Ukraine	4
Commercial and other courts	3
Ministry of Ecology and Natural Resources of Ukraine	3
NABU	3
State Service of Ukraine on Food Safety and Consumer Protection	3
Antimonopoly Committee of Ukraine	2
State Funds	2
Ministry of Agrarian Policy and Food of Ukraine	1
Ministry of Economic Development and Trade of Ukraine	1
Ministry of Energy and Coal Industry of Ukraine	1
Ministry of Health of Ukraine	1
National Bank of Ukraine	1
National Commission for State Regulation of Energy and Public Utilities	1
Other	6

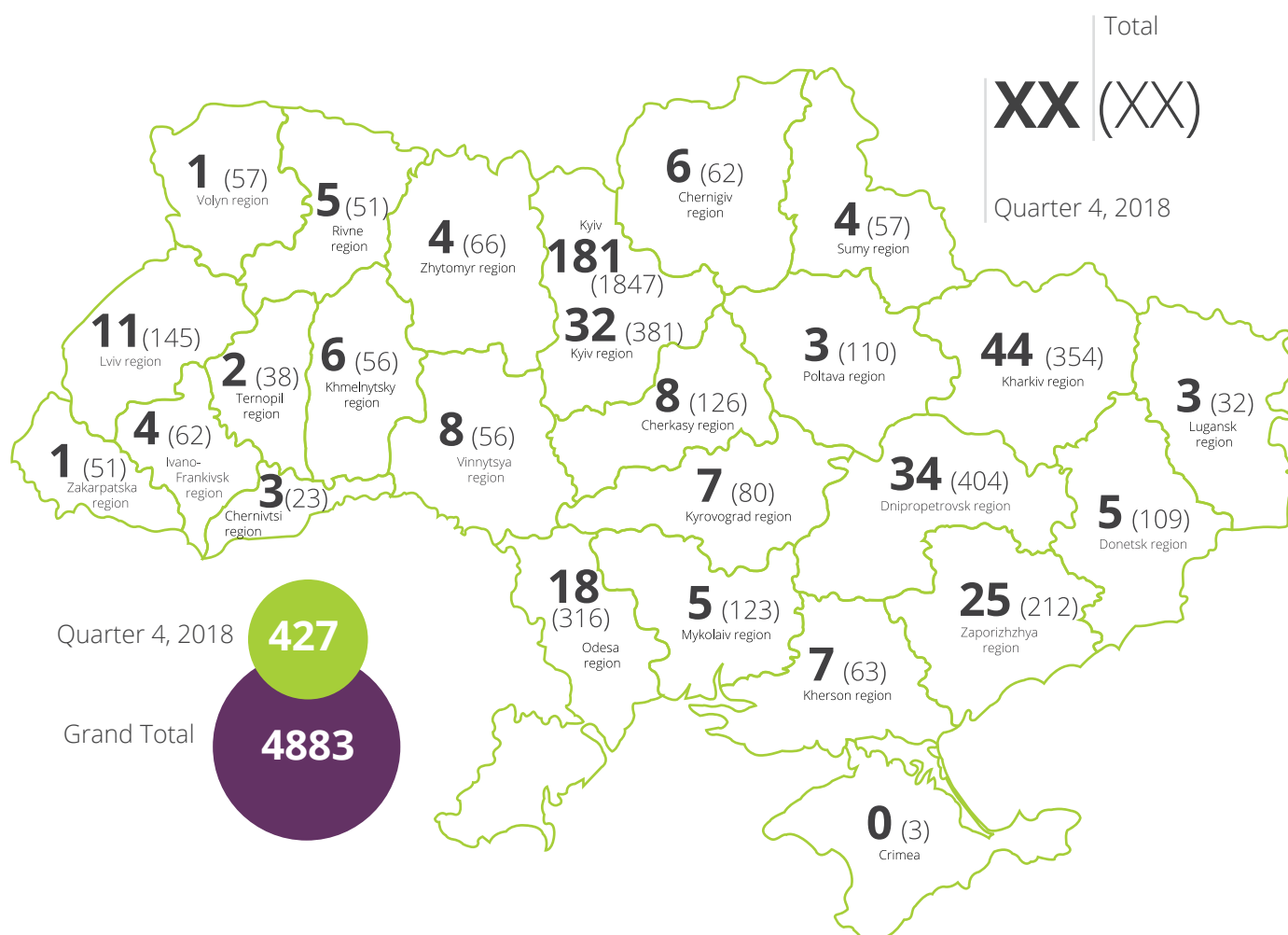
The share of complaints concerning actions of the SFS amounted to 65% in Q4 2018, which is +14 pp from Q3 2018.

In the reporting quarter companies lodged over one third more complaints regarding actions of the National Police, than in Q3 2018, and one fifth more than in Q4 2017. In the meantime, the number of appeals against the Prosecutor's Office and the State Security Service decreased in comparison with both Q3 2018 and Q4 2017.

The number of appeals regarding the Ministry of Justice has increased since Q3 2018 and that's how this institution hit the forth position in the 'anti-rating' of the most appealed state bodies.

Entrepreneurs filed more complaints against the Ministry of Regional Development, the Ministry of Finance and the Parliament, the Cabinet of Ministers and the President of Ukraine. At the same time, the number of appeals concerning local councils and state owned enterprises decreased.

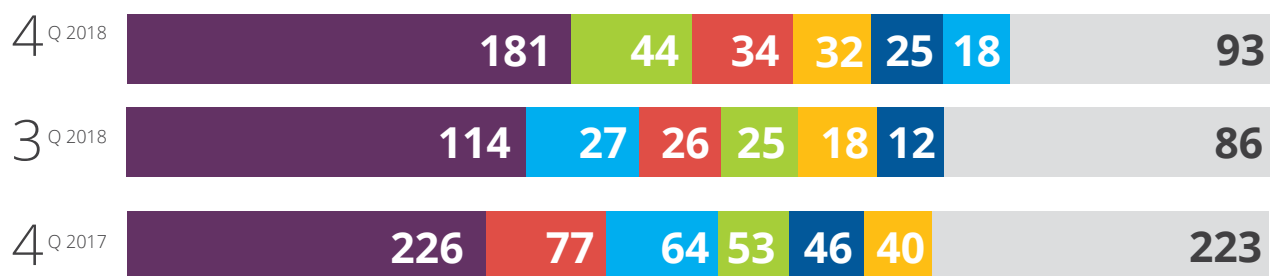
1.6. Geographical distribution of complaints received



From quarter to quarter, we observe an established list of the most active regions. However, in the reporting period Zaporizhzhia Oblast hit the TOP-5, displacing Odesa. The majority of appeals (42%) came from Kyiv, which is +5pp from Q3 2018.



TOP-6 REGIONS



Kyiv



Kharkiv region



Dnipropetrovsk region



Kyiv region



Zaporizhzhia region



Odessa region

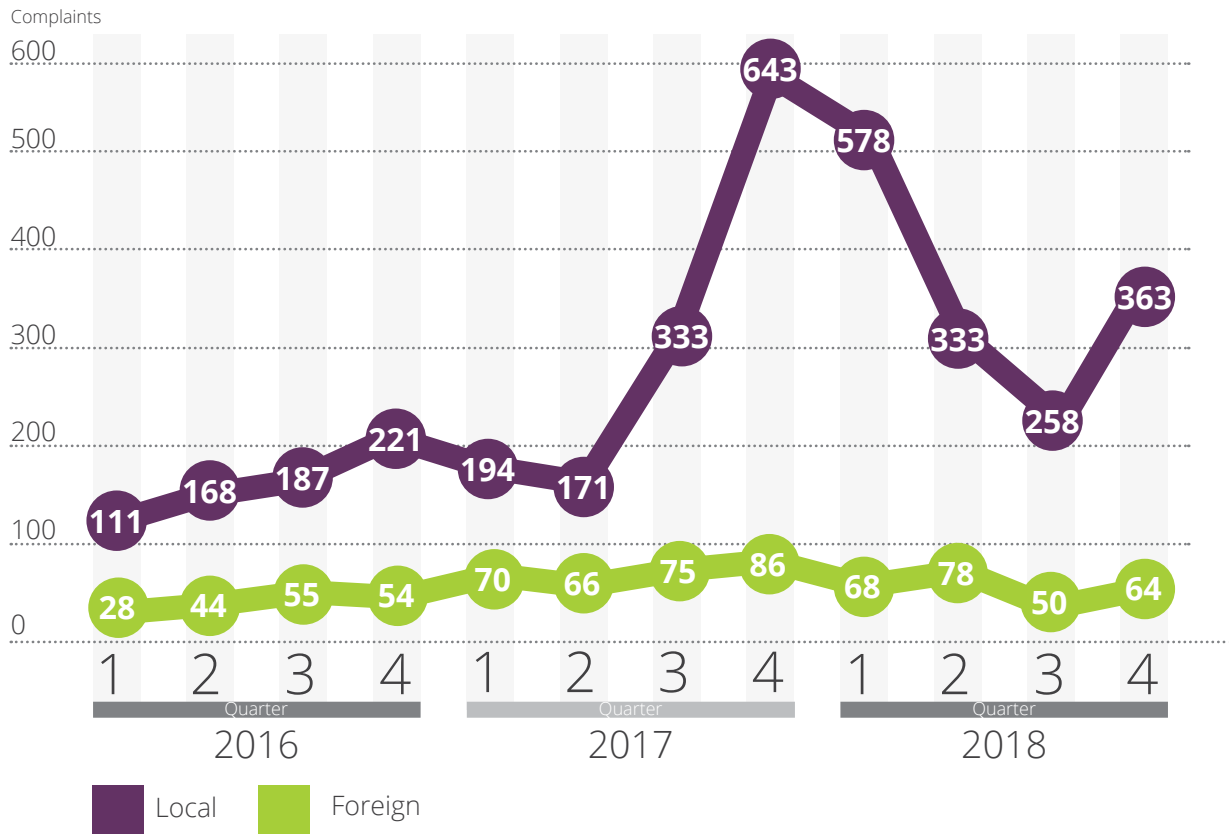


Other

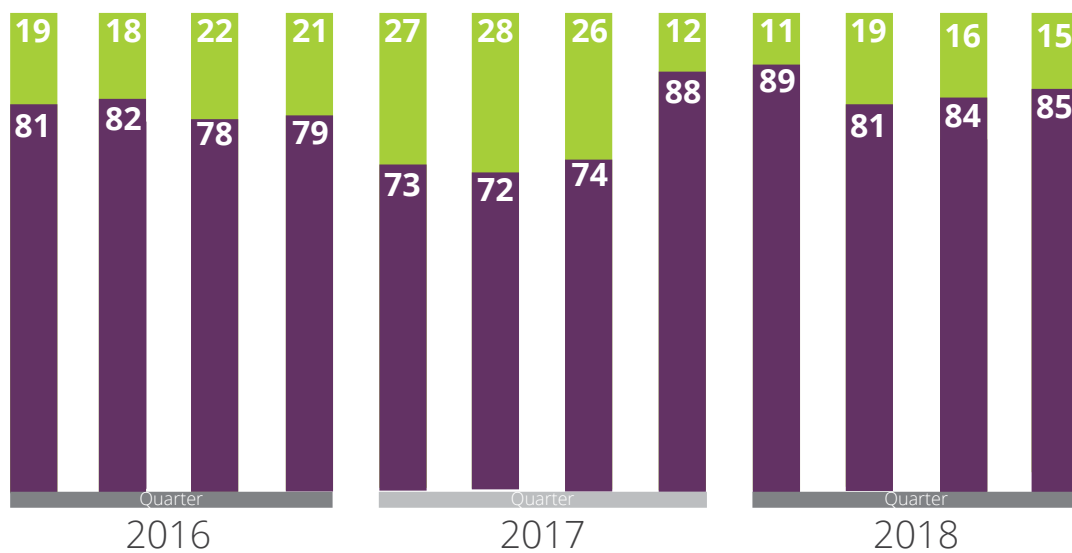
1.7. Complainants' portrait

LOCAL VS FOREIGN COMPLAINANTS

Number of complaints



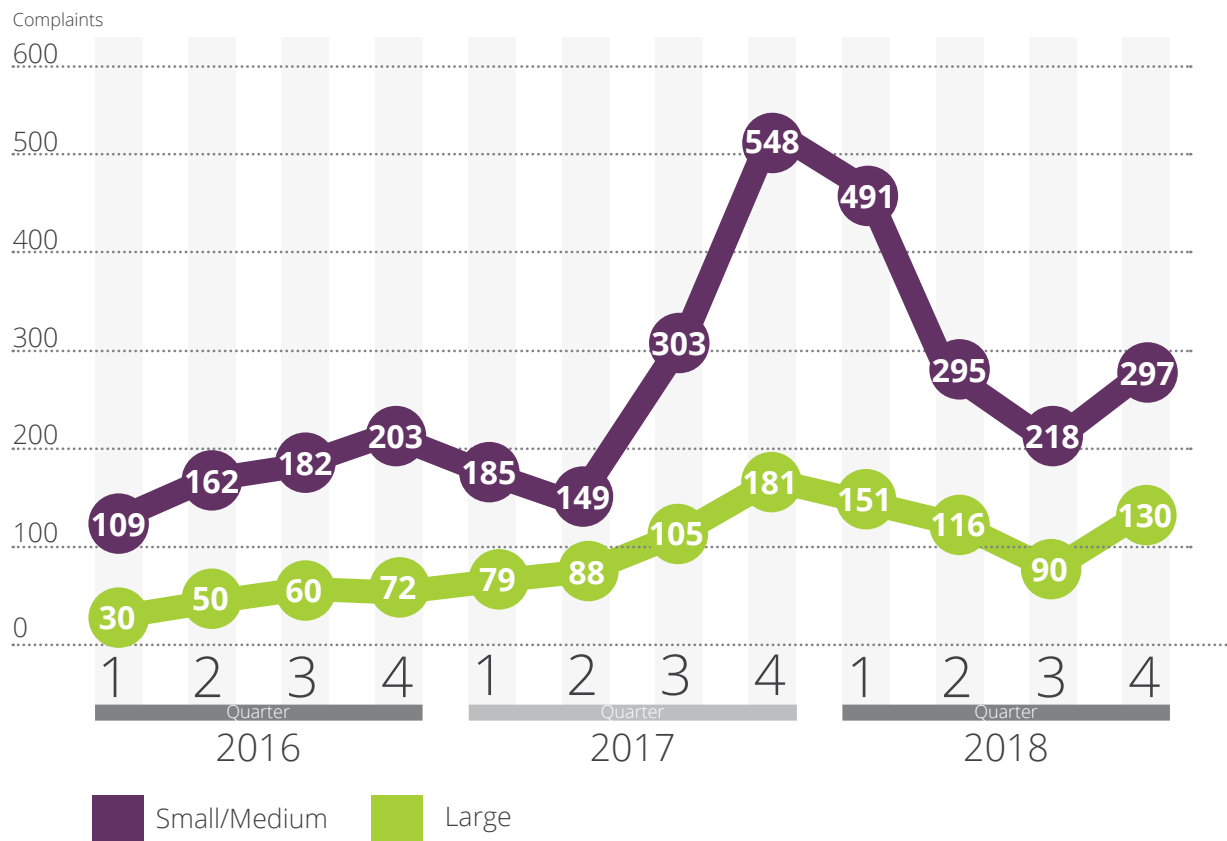
Structure



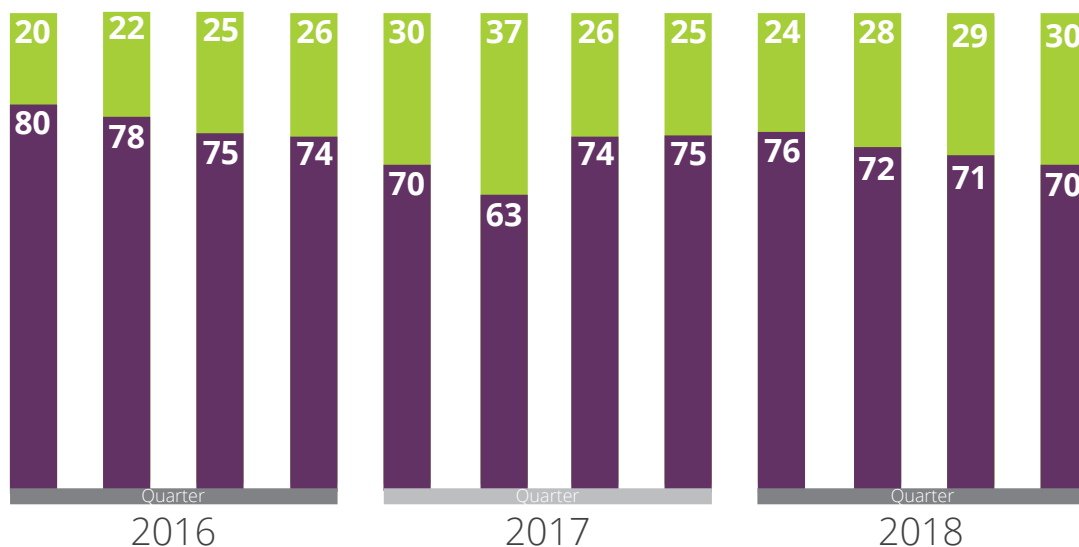
As compared to Q3 2018, in the reporting period foreign companies lodged 22% more complaints on state bodies' malpractice.

SIZE OF BUSINESSES

Number of complaints








Structure



The structure of complaints based on the size of companies, who submitted them, remained almost the same. 30% of appeals came from large companies. This is 1 pp more than in the previous quarter.

TOP-5 COMPLAINANTS' INDUSTRIES

	Q4 2018	Q3 2018, % change	Q4 2017, % change
 Wholesale and Distribution	130	71%	-45%
 Real Estate and Construction	49	113%	-2%
 Manufacturing	47	27%	-55%
 Agriculture and Mining	33	18%	-64%
 Individual Entrepreneur	27	-4%	-36%
All Other	141	22%	-34%

Complaints were coming predominantly from wholesalers and distributors, real estate and construction, manufacturers, agriculture and mining, as well as individual entrepreneurs.

As compared to Q3 2018, a growth in the number of appeals is recorded for all the abovementioned industries, except for individuals. The largest increase is recorded for companies from the real estate (+113%) and distribution sector (+71%).

A separate section of this report is devoted to industry specific analysis of complaints – please, see next pages to learn more.

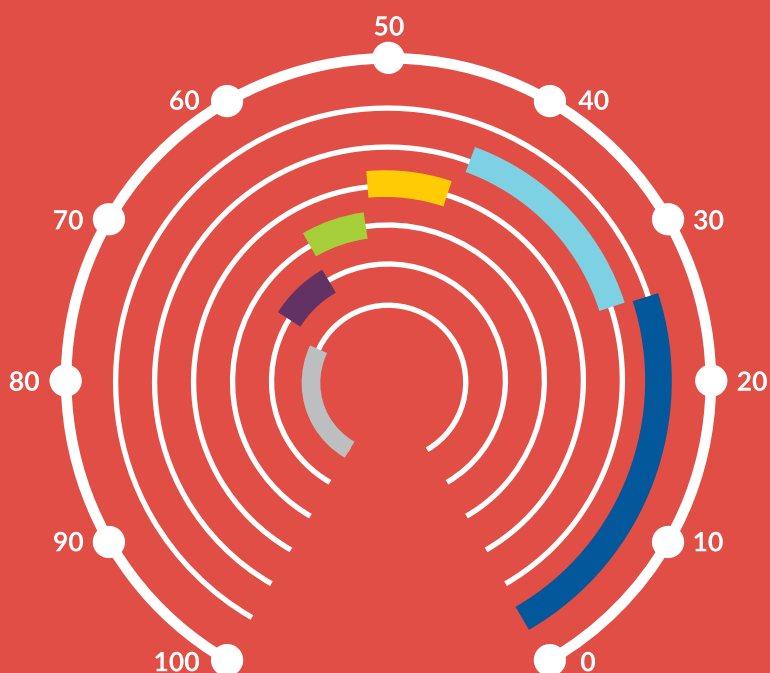
OTHER INDUSTRIES:

Retail	20	Business Services	2
Warehousing	10	Energy and Utilities	2
Autotransport	8	Oil and Gas	2
Financial Services	8	Private security firms activity	2
Repair and Maintenance Services	8	Banks	1
Scientific research and development	7	Cleaning services	1
Activity in the field of law	6	Computer and Electronics	1
Consulting	6	Fishing services	1
Physical Person	6	Forestry and logging	1
Telecommunications	6	Funds management	1
Education	4	Insurance	1
Electric installation works	4	IT companies	1
Engineering, geology and geodesy areas activity	4	Maintenance of buildings and territories	1
Transportation and Storage	4	Public administration	1
Delivery services	3	Publishing and printing services	1
Farming	3	Restaurant business	1
Health, Pharmaceuticals, and Biotech	3	Software and Internet	1
Public Organizations	3	Waste collection and disposal	1
Supply of electricity, gas, hot water, steam and air conditioning	3	Other	3

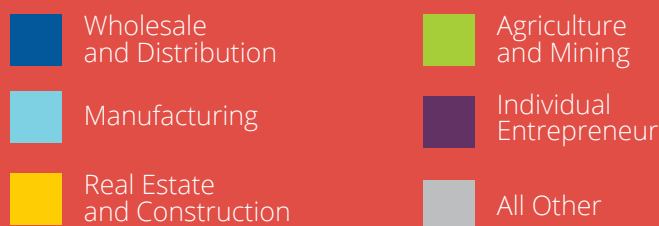
1.8. Industry analysis of complaints

Since launch of operations the Business Ombudsman Council has received 4883 complaints from companies operating in over four dozens of economic spheres. Five industries, from which we received the most appeals are as follows:

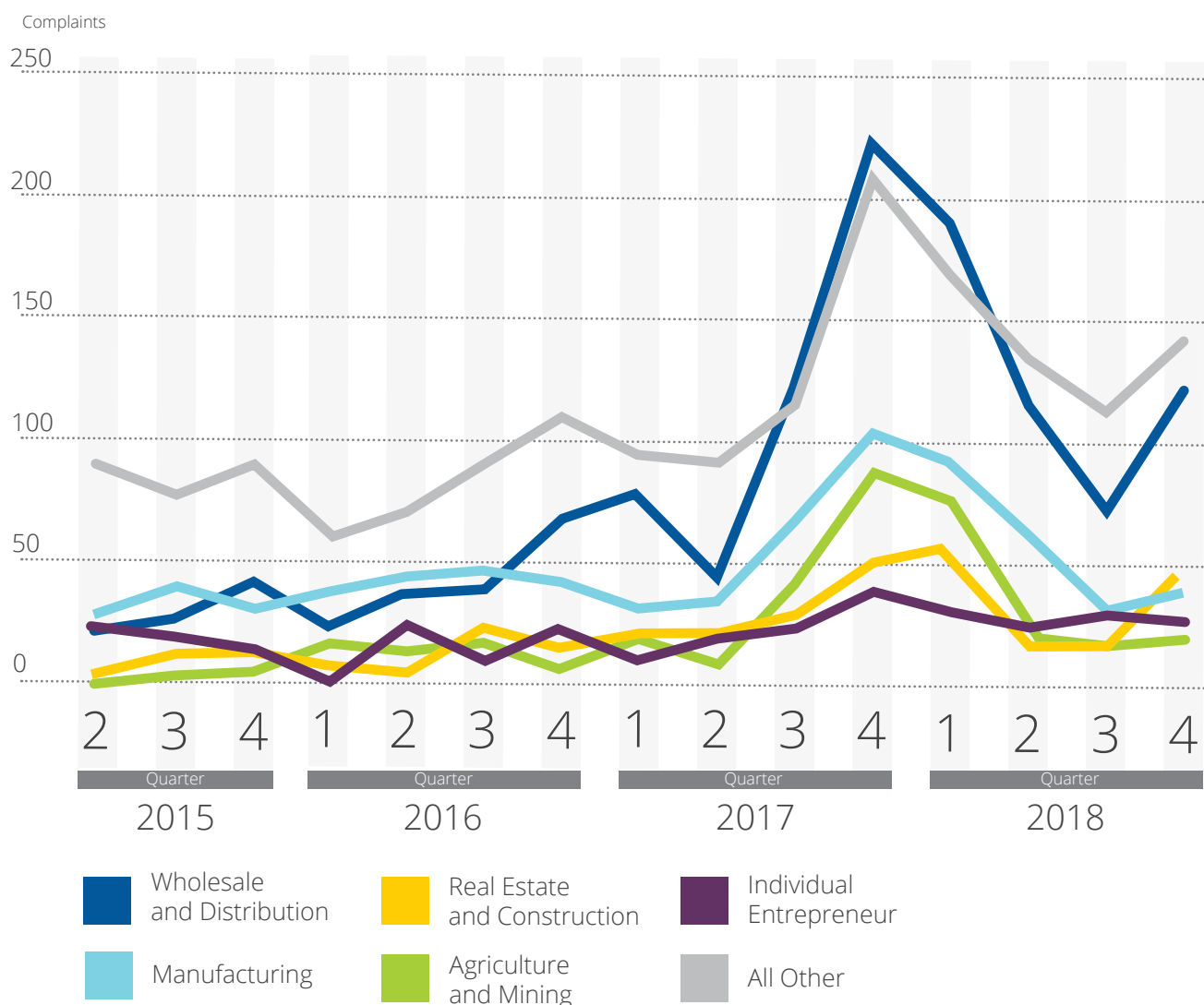
Structure of complaints by industries, 2015-2018



Wholesalers and distributors is the largest group of applicants – since the BOC's launch of operations they have submitted 26% of complaints. They are followed by manufacturers, who possess 15% in the structure of appeals. Agriculture & mining sphere as well as real estate & construction amount to 9% and 8% of complaints respectively. The TOP-5 is enclosed by individual entrepreneurs with 7%.

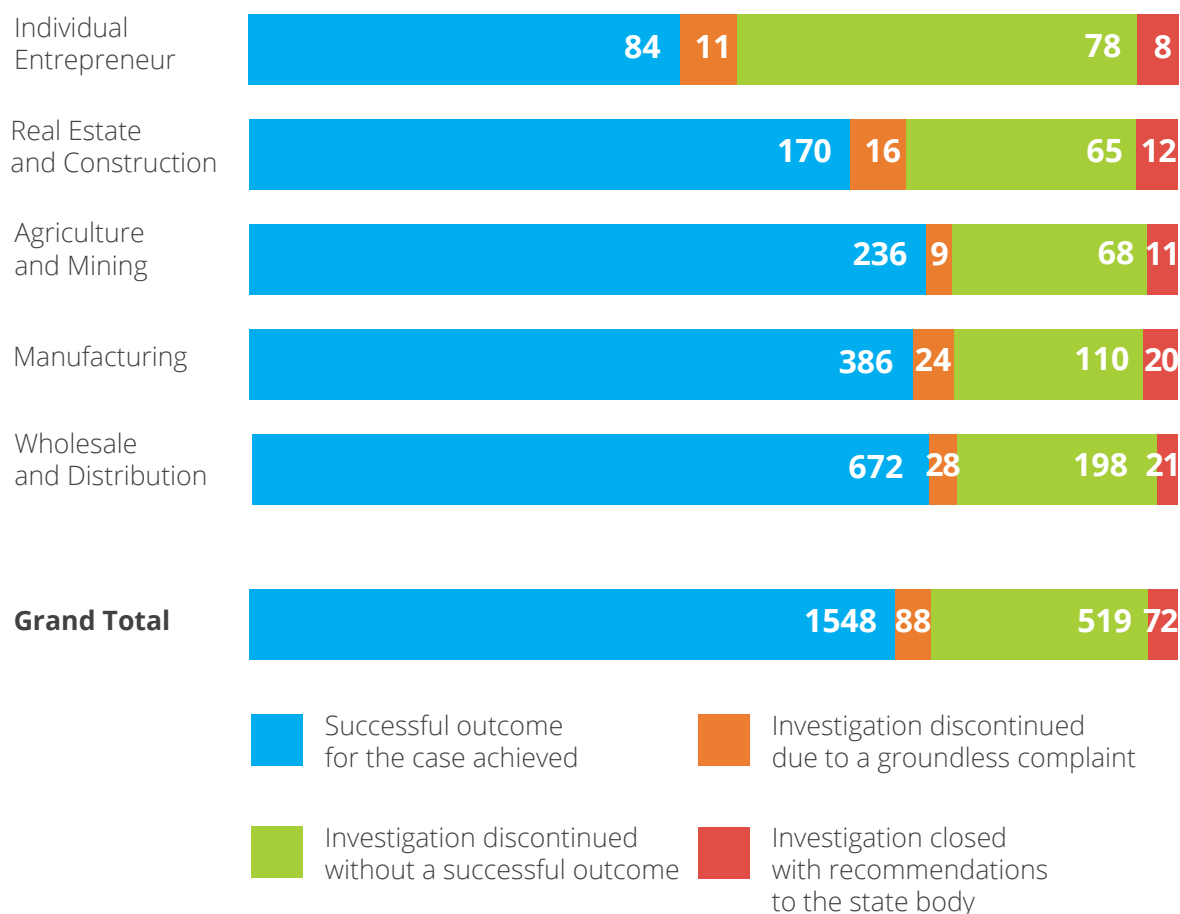


Number of complaints received from TOP-5 Industries by quarters (2015-2018)



The peak of complaints received is recorded in Q4 2017, when the appeals flow intensified from all the spheres. Such a growth was mainly driven by a great number of complaints on tax invoices suspension. However, the most increase was performed by wholesalers, manufacturers, and agricompanies. This was not coincidentally, as these specific industries – distribution, agriculture, manufacturing – were among the riskiest in terms of fictitious operations from the SFS standpoint.

TOP-5 INDUSTRIES: STATUSES OF CLOSES CASES (2015-2018)



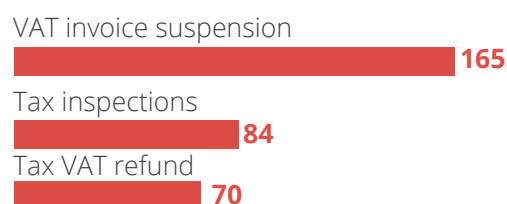
While the average share of successfully closed cases among TOP-5 industries is 70%, the largest one (73%) is marked for simultaneously two spheres – wholesalers and agricompanies. They are followed closely by manufacturers with 71% of success. The lowest rate of successful investigations is recorded for individual entrepreneurs – only 46%.

TOP-5 INDUSTRIES: THEIR TOP-3 SUBJECTS OF COMPLAINTS (2015-2018)

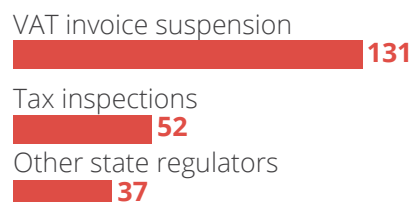
WHOLESALE AND DISTRIBUTION



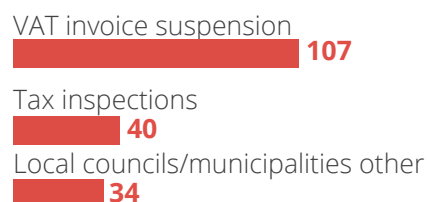
MANUFACTURING



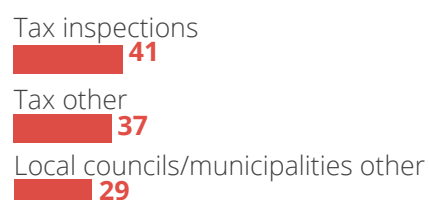
AGRICULTURE AND MINING



REAL ESTATE AND CONSTRUCTION



INDIVIDUAL ENTREPRENEURS





The number one issue of all industries in TOP-4 was suspension of tax invoices. Clearly, this subject didn't hit the list of individuals, since usually they choose simplified tax systems for their businesses and hence do not pay VAT.

Tax inspections is the only matter, which is recorded in the TOP-3 of all analyzed industries. Moreover, the share of this subject is also similar for each sector – circa 10-12%.

At the same time, the #3 subject varies in every industry. The only exception refers to municipalities, which hit the list of both construction companies and private businessmen.



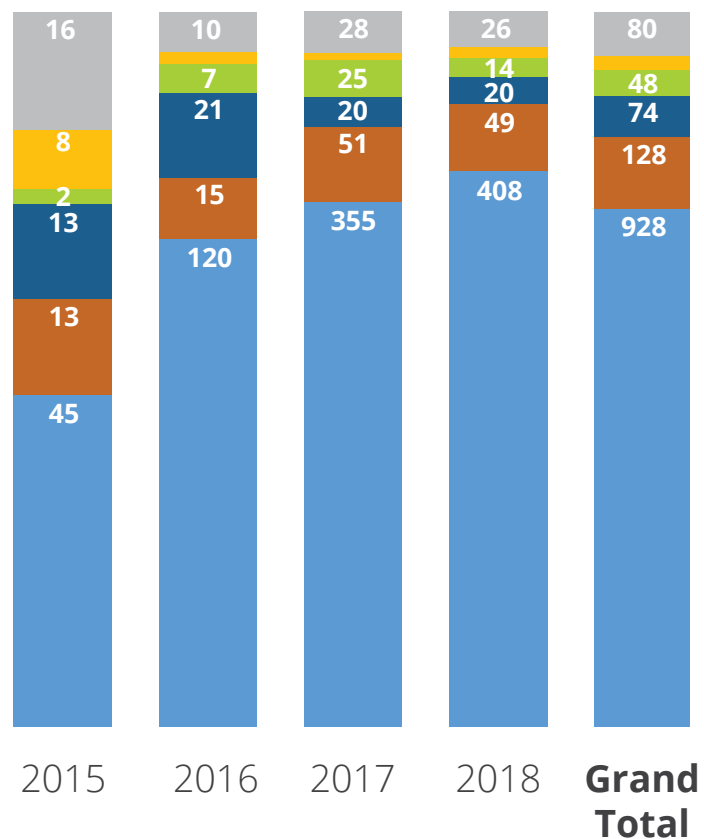
WHOLESALE AND DISTRIBUTION

Certain industry players, whose cases were successfully closed with the Business Ombudsman Council's facilitation:



Wholesale and distribution: key matters of complaints (2015-2018)

- Tax issues
- Actions of law enforcement bodies
- Customs issues
- Actions of state regulators
- Legislation drafts/amendments
- All Other

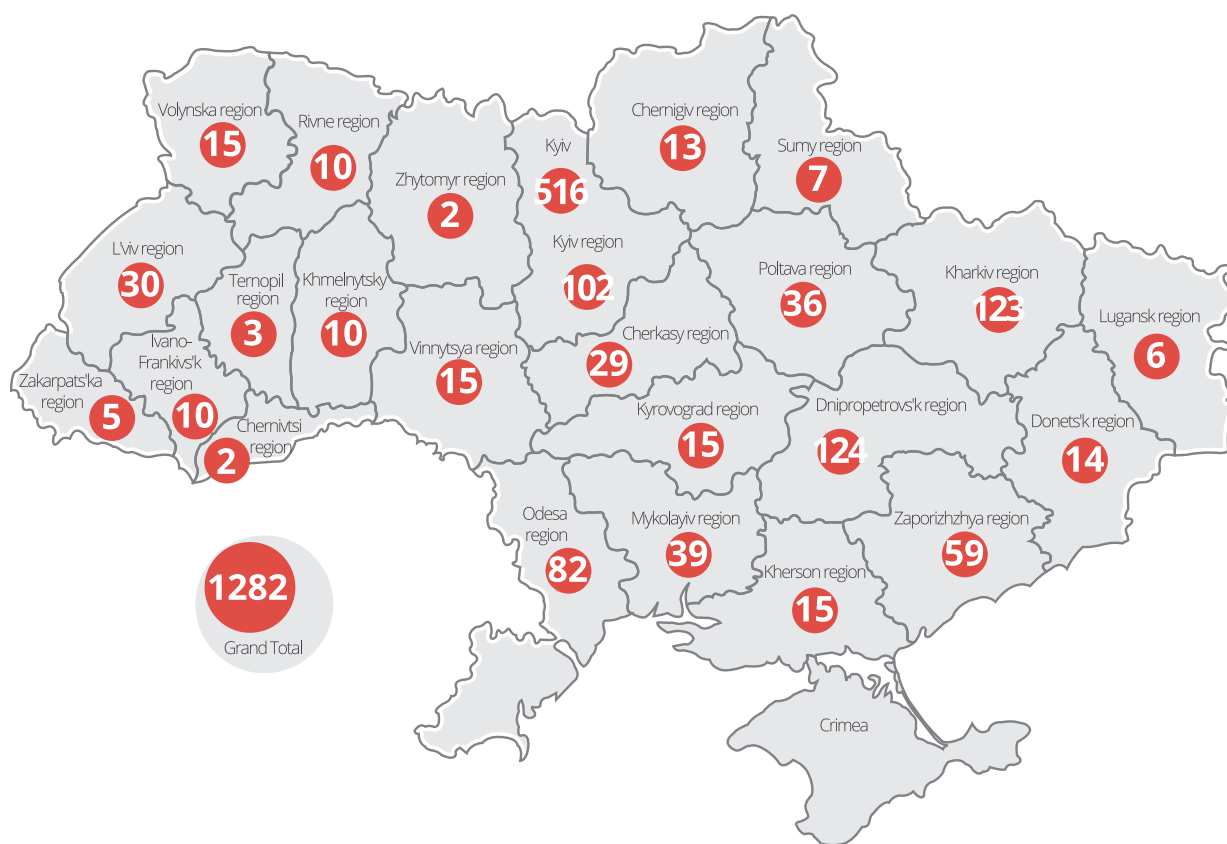


Over 70% of appeals lodged by representatives of wholesale and distribution industry related to tax issues. The peak of this matter is recorded in 2018, when it amounted to over ¾ of all complaints received.

The share of customs issues, which used to rank second in 2015-2016 (with up to 13%), had been gradually decreasing and amounted to less than 4% by the end of 2018.

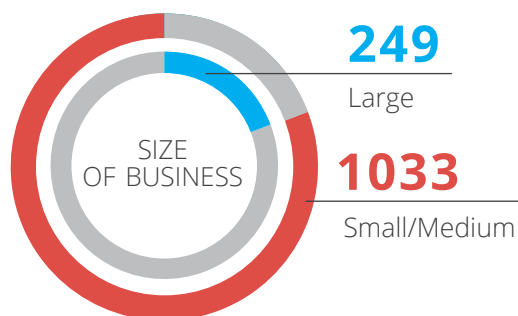
Circa 10% of appeals concerned actions of law enforcers in 2015-2018.

Wholesale and distribution: geography of complaints (total 2015-2018)



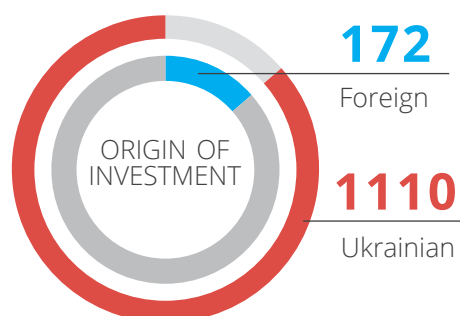
Complaints from companies, operating in wholesale and distribution sphere, mainly came from the city of Kyiv (40%), Dnipropetrovsk and Kharkiv Oblasts – 10% each.

Wholesale and distribution: size of business (total 2015-2018)



81% of wholesalers, which turned to us, represented small and medium business.

Wholesale and distribution: origin of investment (total 2015-2018)



Prevailing majority of them (86%) were Ukrainian companies.



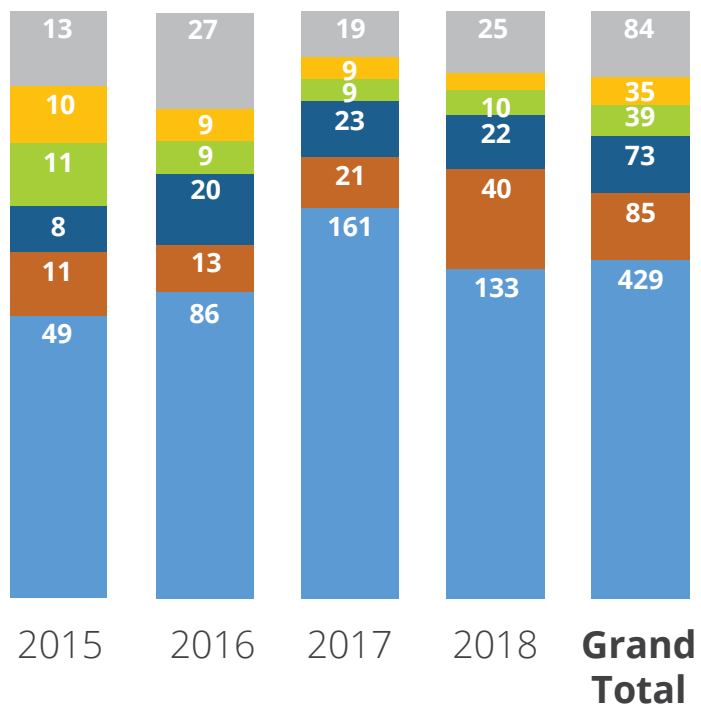
MANUFACTURING

Certain industry players, whose cases were successfully closed with the Business Ombudsman Council's facilitation:



Manufacturing: key matters of complaints (2015-2018)

- Tax issues
- Actions of law enforcement bodies
- Actions of State Regulators
- Customs issues
- Legislation drafts/amendments
- All Other



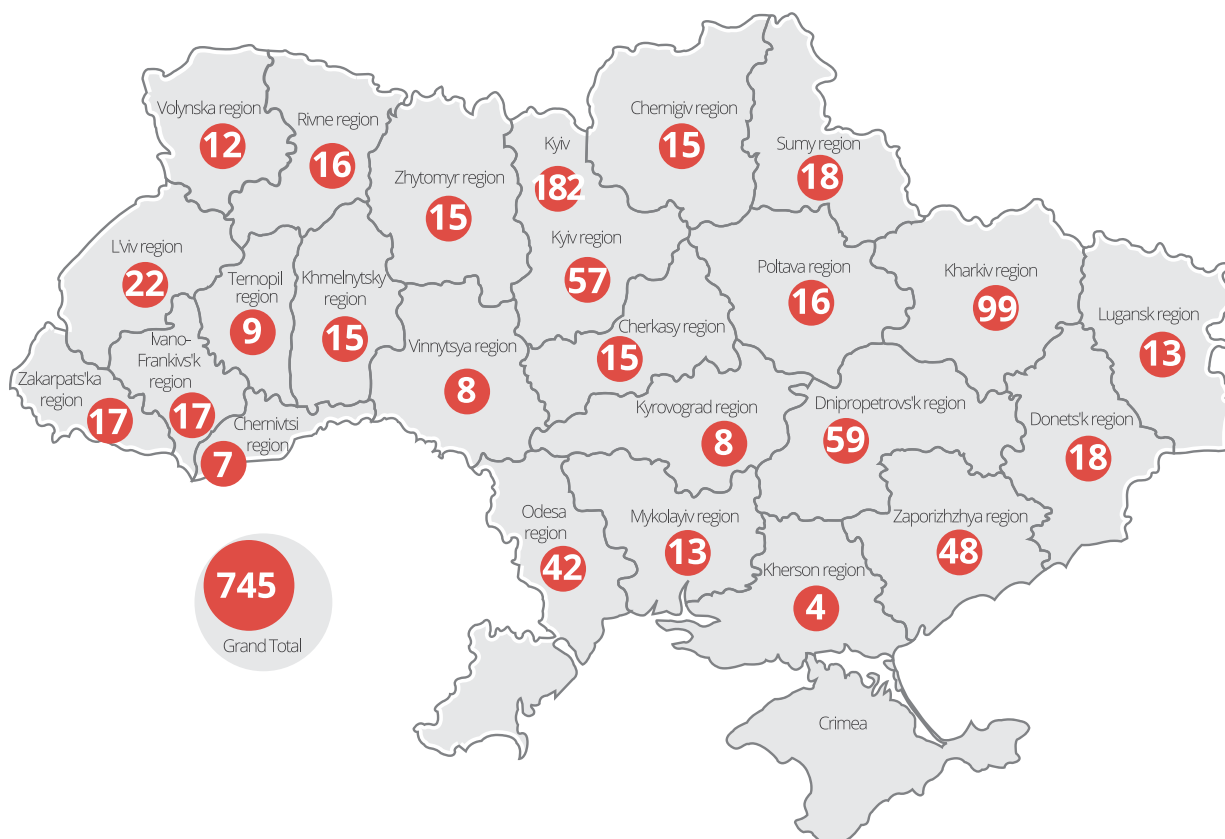
Portfolio of complaints, lodged by manufacturers, is less concentrated than that of wholesalers. Tax issues amount to 58% of all industry appeals to the Council in 2015-2018.

Actions of law enforcers made up 11% of complaints in total, although by the end of 2018 their share grew to all-time high 17%.

Actions of state regulators generated 10% of complaints from manufacturers in 2015-2018, which brought this subject up to the 3rd position in TOP list.

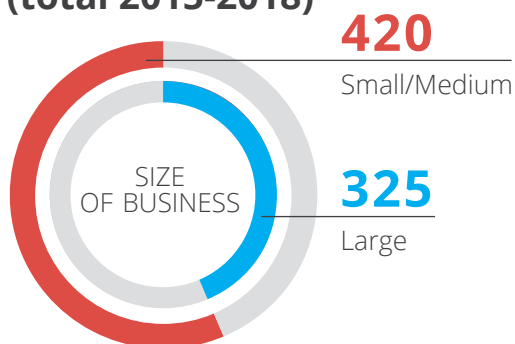
Customs issues and legislation amendments (5% each) hit the TOP-5 list of manufacturers.

Manufacturing: geography of complaints (total 2015-2018)



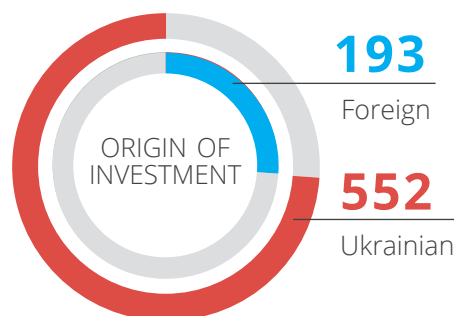
A quarter of manufacturers' complaints came from the capital of Ukraine. Dnipro (13%) and Kharkiv (8%) were also among the most active regions.

Manufacturing: size of business (total 2015-2018)



Although the share of appeals from small and medium sized companies prevails, large companies also possess a high stake of 44%, which is 17 pp higher than the average share of large enterprises in all industries (27%).

Manufacturing: origin of investment (total 2015-2018)



The other particularity of manufacturers is that the share of complaints lodged by foreign companies among them (26%) is much higher than the average one in all other spheres – 17%.

AGRICULTURE AND MINING

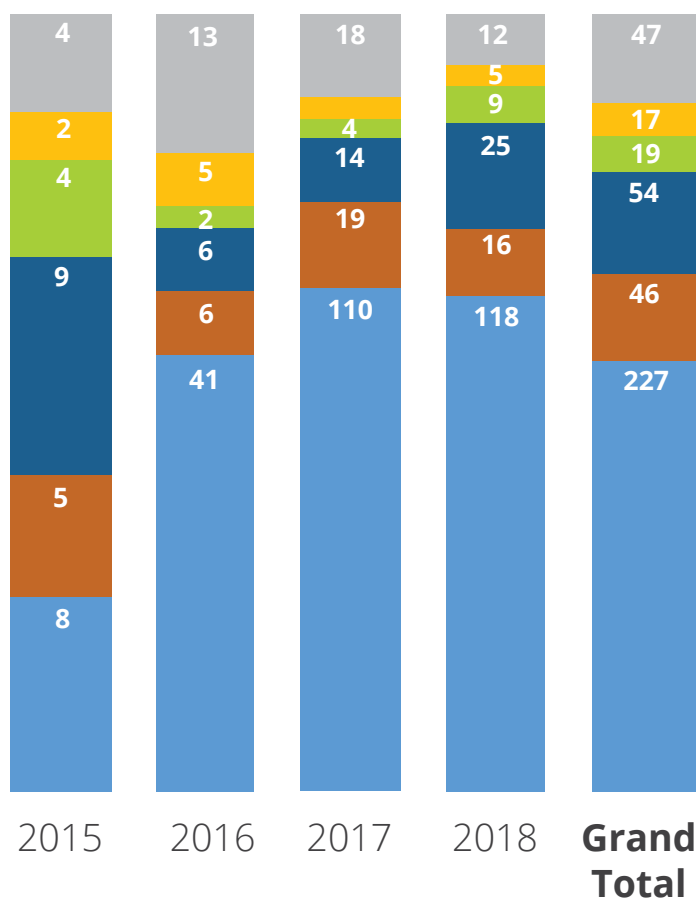
Certain industry players, whose cases were successfully closed with the Business Ombudsman Council's facilitation:



agroregion

Agriculture and Mining: key matters of complaints (2015-2018)

- Tax issues
- Actions of law enforcement bodies
- Actions of State Regulators
- Ministry of Justice actions
- Actions of Local Councils/Municipalities
- All Other

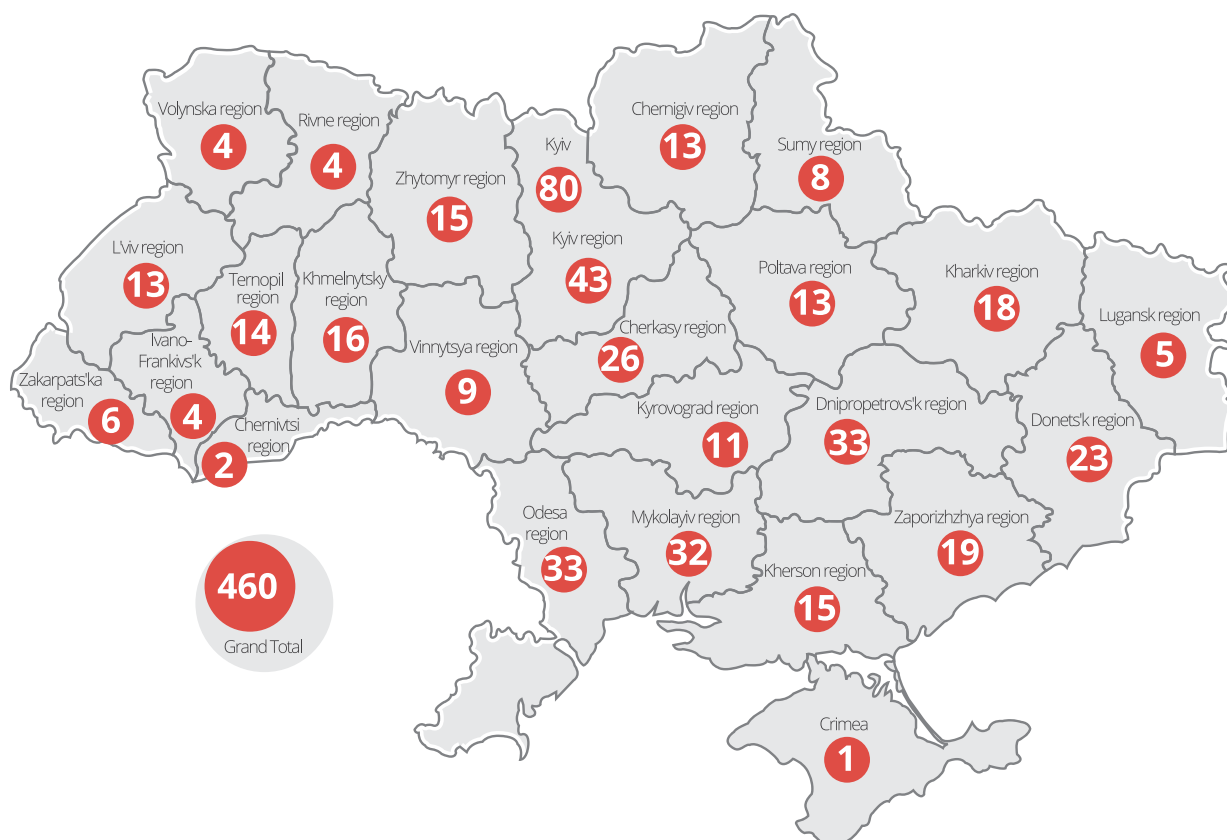


Tax issues amounted to 60% of appeals from agricultural and mining companies in the analyzed period of 2015-2018.

Unlike all other industries, actions of state regulators (12%) became the second most common issue for agricultural and mining spheres.

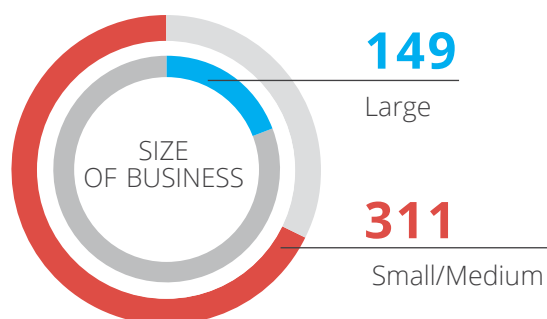
Law enforcers caused every tenth complaint of companies, operating in agricultural and mining sector.

Agriculture and Mining: geography of complaints (total 2015-2018)



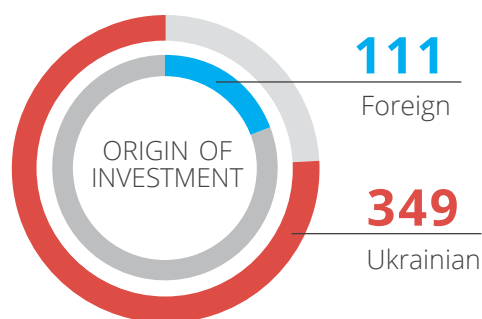
In contrast to other industries, Kyiv possesses the lowest share in appeals, submitted by agricultural and mining sector – only 17%. Kyiv region comes second with 10%, while the third position is shared by simultaneously three Oblasts – Dnipropetrovsk, Mykolaiv and Odesa (7% each).

Agriculture and Mining: size of business (total 2015-2018)



Complaints from small and medium companies prevailed in the bulk of appeals, received from agriculture and mining industry.

Agriculture and Mining: origin of investment (total 2015-2018)



Over three quarters of these companies were Ukrainian.

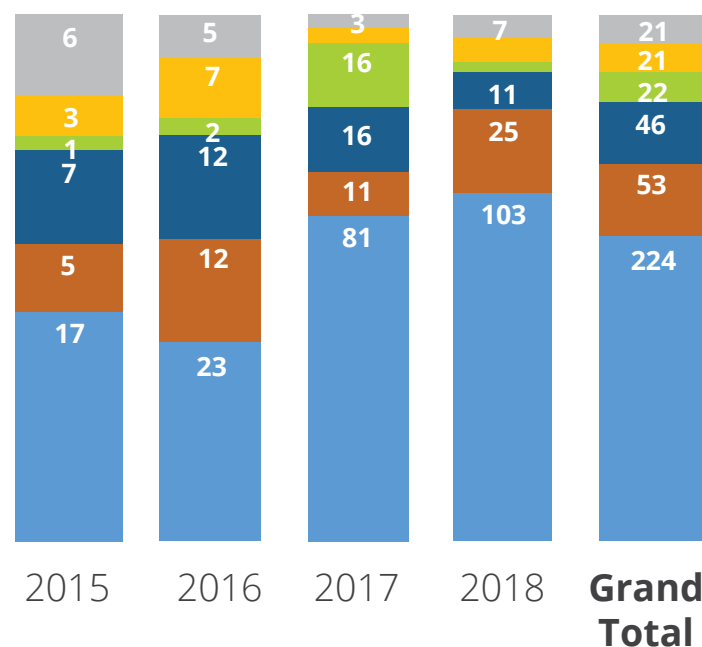
REAL ESTATE AND CONSTRUCTION

Certain industry players, whose cases were successfully closed with the Business Ombudsman Council's facilitation:



REAL ESTATE AND CONSTRUCTION: KEY MATTERS OF COMPLAINTS (2015-2018)

- Tax issues
- Actions of law enforcement bodies
- Actions of State Regulators
- Ministry of Justice actions
- Actions of Local Councils/Municipalities
- All Other



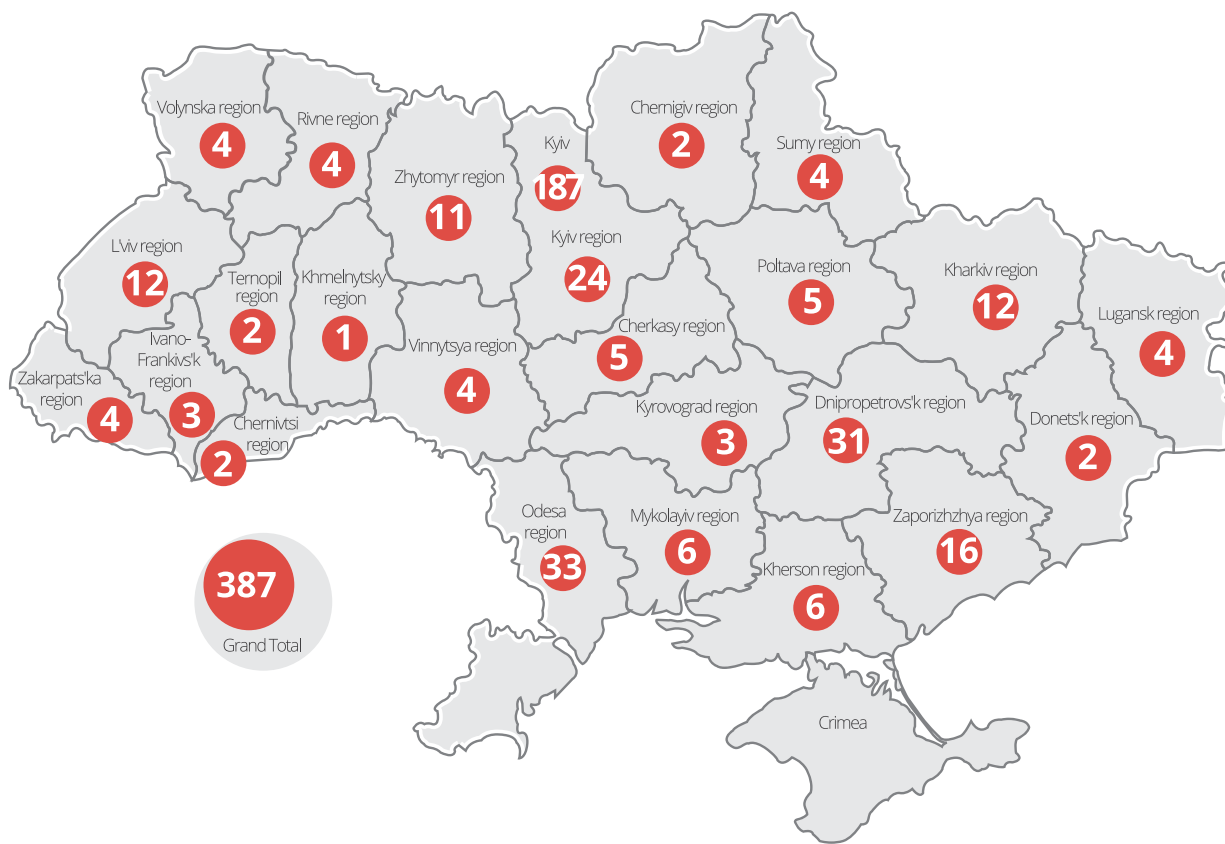
Over the past two years, the share of tax issues has increased significantly: from 38% in 2016 to 62% in 2018.

The half of total complaints (25 of 53) against law enforcers was lodged in 2018. All in all their share amounted to 15% through 2015-2018.

On the contrary, the number of appeals concerning the third most widespread issue of real estate and construction industry – actions of municipalities, who issue permits and allocate land plots – decreased in 2018, which is a positive trend. In total the share of local councils makes up 12% of appeals, which is an absolute record among all industries.

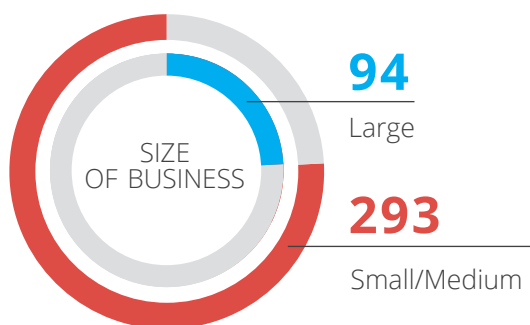
The share of appeals regarding the Ministry of Justice is the highest among all TOP-5 industries – it made up 5% in 2015-2018.

REAL ESTATE AND CONSTRUCTION: GEOGRAPHY OF COMPLAINTS (TOTAL 2015-2018)



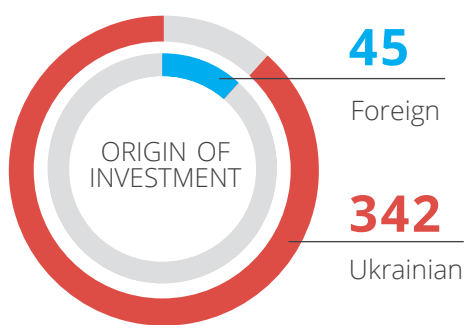
Real estate and construction industry's complaints mainly came from the city of Kyiv (48%), Odesa (9%) and Dnipropetrovsk (8%) Oblasts.

Real estate and Construction: size of business (total 2015-2018)



Over three quarters of appeals in real estate sphere came from small and medium sized enterprises.

Real estate and Construction: origin of investment (total 2015-2018)



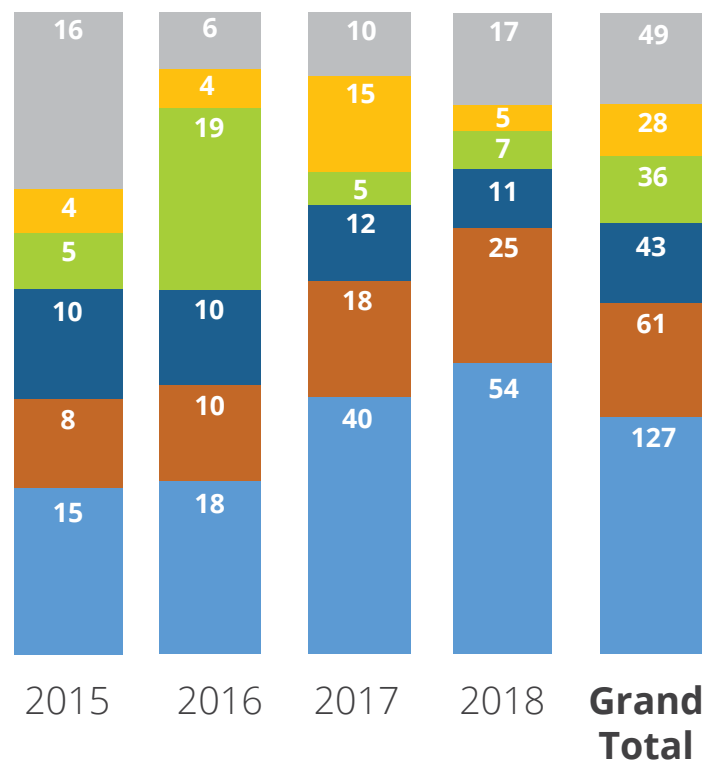
As per the origin of investment, the majority of them (88%) were local companies.



INDIVIDUAL ENTREPRENEURS

Individual entrepreneurs: key matters of complaints (2015-2018)

- Tax issues
- Actions of law enforcement bodies
- Actions of Local Councils/Municipalities
- Legislation drafts/amendments
- Actions of State Regulators
- All Other



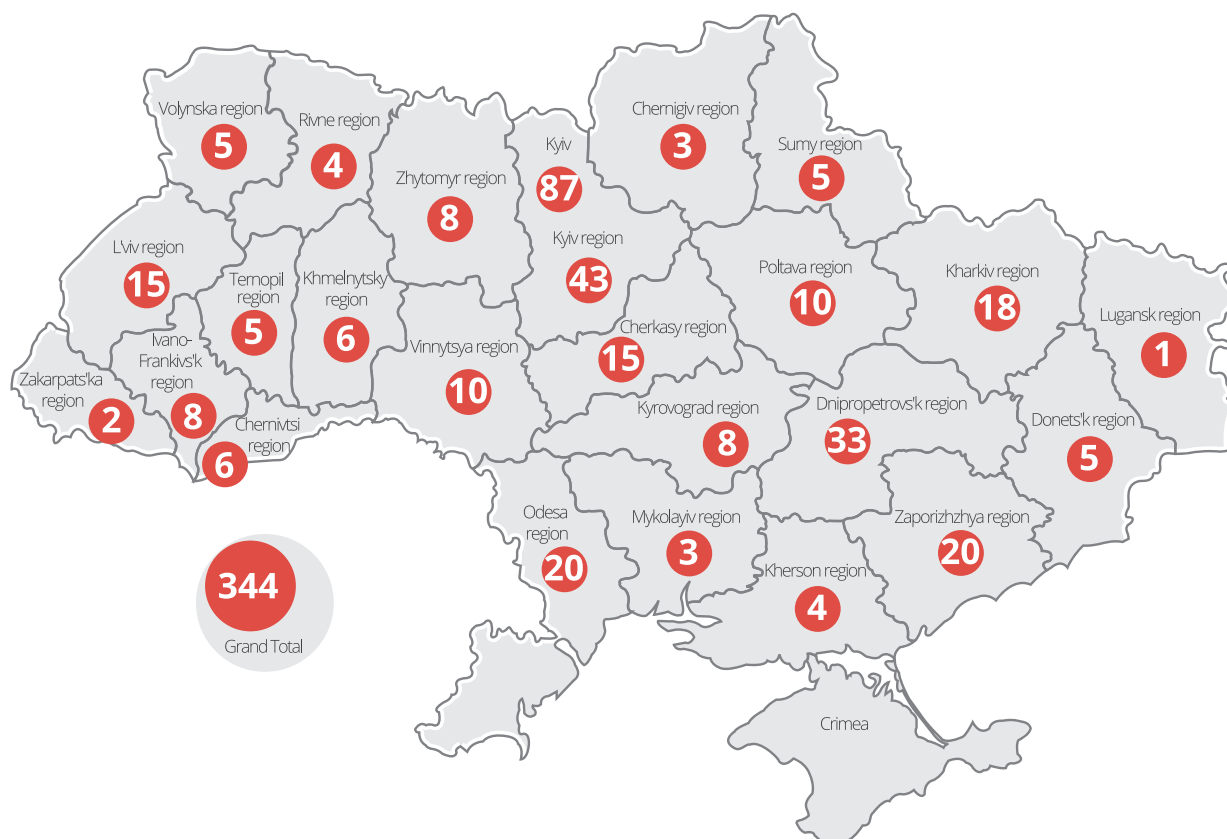
In comparison with industries analyzed above, individual entrepreneurs felt the less pressure on the part of tax bodies – 37% of appeals in 2015-2018.

The share of law enforcement bodies is rather high – 18%. Moreover, it grew up to 21% in 2018, while the average figure among all industries that year was 14%.

At the same time individual entrepreneurs are the most active in suggesting amendments to legislation – 10% of total complaints in 2015-2018.

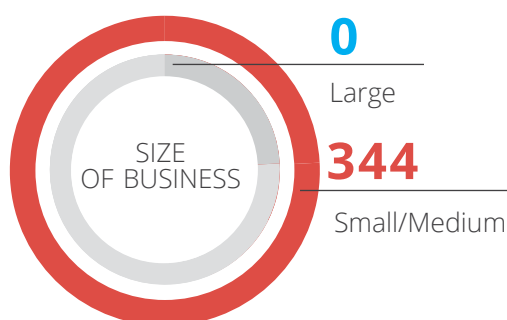
Businessmen also complain a lot about municipalities – every eighth appeal they submitted concerned actions or inactivity of a local council.

Individual entrepreneurs: geography of complaints (total 2015-2018)



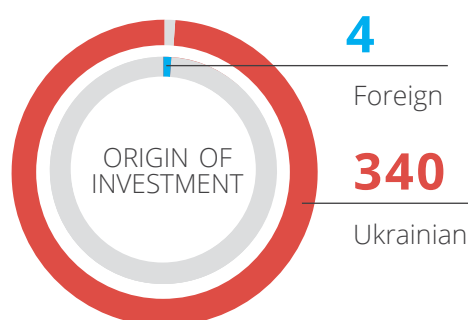
A quarter of entrepreneurs, who addressed us, were from the capital, 13% more were from Kyiv Oblast. Circa 10% of appeals came from Dnipropetrovsk Oblast.

Individual entrepreneurs: size of business (total 2015-2018)



Proceeding from our classifications, all the entrepreneurs run small/medium businesses.

Individual entrepreneurs: origin of investment (total 2015-2018)



Only 1% of our applicants among individual entrepreneurs were foreigners.

1.9. Feedback



In the reporting quarter,
we received

120

**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
most in dealing with us and what areas need
improvement.

As a result, an absolute majority –

97%

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

Vyacheslav Kolosvetov
General Director of CHS,
LLC



We express our deep respect
and wish you further success in your
hard work to protect the rights
of honest business in Ukraine”



Nadiya Voronytska-Gaidak
Lawyer Femida Legal Association

We express our gratitude
to the Business Ombudsman
Council for fruitful cooperation
and mutual understanding”

Pavel Sholudko
Director of LLC ICS-TECHNO



Thank you for your reliable partnership! We wish you to develop dynamically without losing the conquered positions"



ТОВ «ІКС-ТЕХНО»
Виконавчий офіс ЄДРПОУ 31404888
20134, Україна, м. Київ, вул. Миколи Багаченка, буд. 7-А, каб. 3-12
телеф. (044) 503-53-24, 503-05-38
e-mail: info@ics-tech.com.ua / http://www.ics-tech.com.ua

Рада бізнес-омбудсмена
04070, м. Київ, вулиця Спаська, 30-А

ПОДЯКА

Адміністрація ТОВ «ІКС-ТЕХНО» висловлює щирі подяки Крижавському Олені за надану допомогу у поверненні нашому підприємству належну сплатену до бюджету податку на додану вартість. Завдяки активній та ефективній співпраці, наше питання було вирішено у найкоротший термін.

Дякуємо Вам за надані партнерські відносини! Бажаємо Вам динамічно розвиватися, не втрачаючи завоюваних позицій.

Директор


Шолудко П.Ф.


**ПРИВАТНЕ СІЛЬСЬКОГОСПОДАРСЬКЕ ПІДПРИЄМСТВО
АГРОФІРМА «КОЛОС»**

72111 Запорізька область, Приморський район, с. Радолівка, провулок Гладенний, 7
код ЄДРПОУ 31177199

№-02 від 18.10.2019 р.

Бізнес-омбудсмену
Андрію Петру

04070 м. Київ, вул. Спаська, 30а

Шановний пане Андрію!

В червні 2018 р. ПСП Агрофірма «Колос» зверталося до Вас зі скаргою на недоброякісну індивідуальну послугу особи Г.Г. ДМС у Запорізькій області, що мала місце під час проведення планової перевірки нашого підприємства.

В подальшому, виконанням Радли - мандатним інспектором Юлією Михайловою та інспектором Кирилом Сосновим здійснювалося супроводження та представлення від імені Ради бізнес-омбудсмена при розгляді скарги нашого підприємства в Державній фіскальній службі України.

На деякий час результати розгляду, які не відповіли, нас змусили за необхідності поглибити роботу Ради бізнес-омбудсмена в цьому, та порозуміли Юлію Михайловою та Кирилом Сосновим які ретельно виконали нашу скаргу та зверли питання, пропонували детальний аналіз ситуації, проаналізували та надіслали їм обґрунтовану та об'єктивну оцінку, які інформували з наданням доступу до ДМС України.

Окремі завдання за необхідності виконувати надавалися Юлією Михайловою, які здійснювали свою роботу не тільки на високому професійному рівні, а й самовіддано, як то казати, з нахилом серця.

Подяками вдячними є особи Ради Бізнес-омбудсмена досі нам єдині і патентовані відстоювати свої законні права, робити також чинимі свої зусилля в побудову економіки України, як розвиненої та процвітаючої держави.

З найвизначенішими подяками та повагою:

Директор

В.О. Педан

Проставлено ПСП АФ «Колос»,
адресат

О.І. Бондаренко

Volodymyr Pedan

Director of KOLOS Agrofirma
Private Agriculture Enterprise

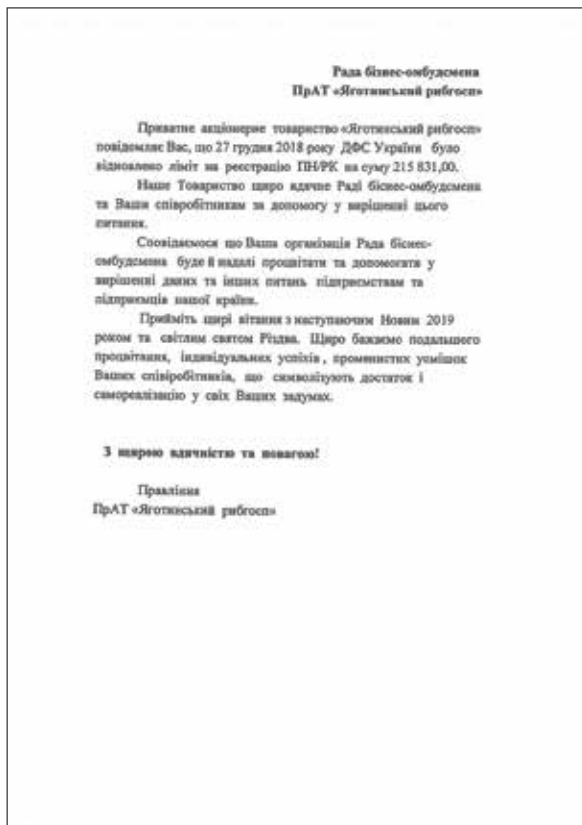


The Business Ombudsman Council gives us strength and inspiration to uphold our legal rights, thus contributing to the construction of civilized Ukraine as an advanced and prosperous state."

Vasyl Martsinkovsky
Director of TRIZ LTD



We express our sincere gratitude for your assistance in solving the problem issue and look forward to further cooperation!"



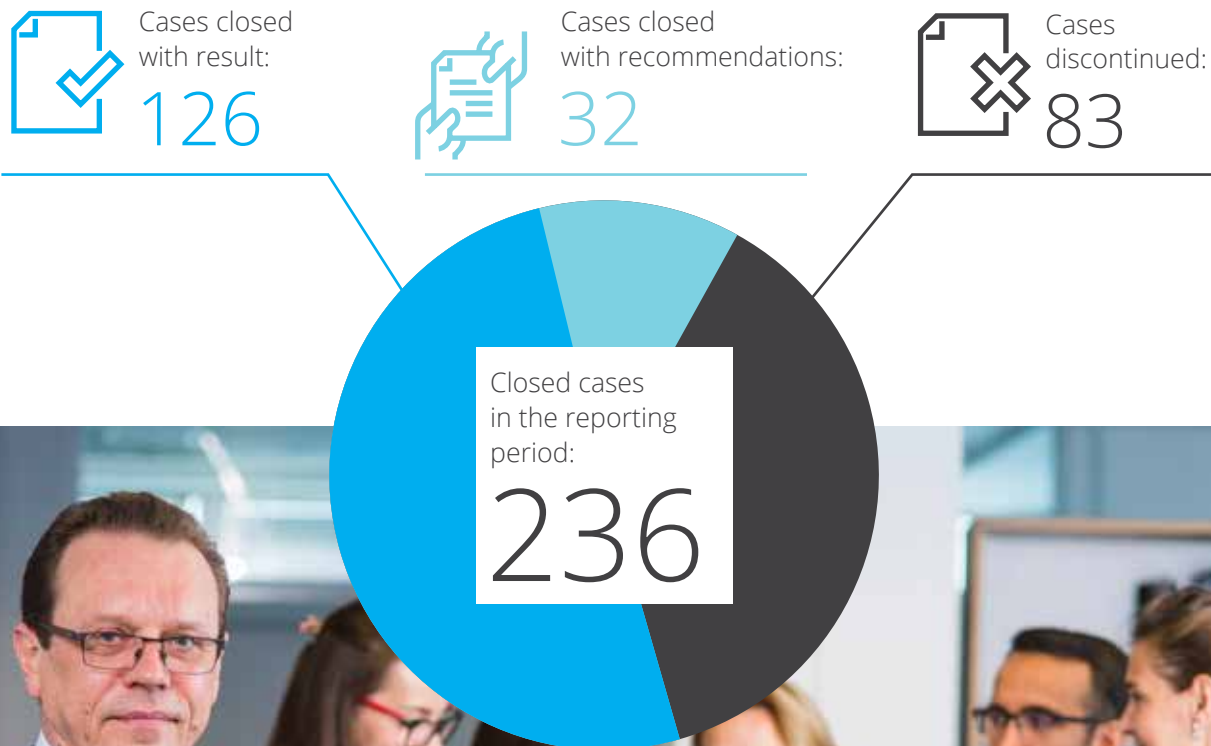
Manager
YAGOTYNS'KYI RYBGOSP PrJSC

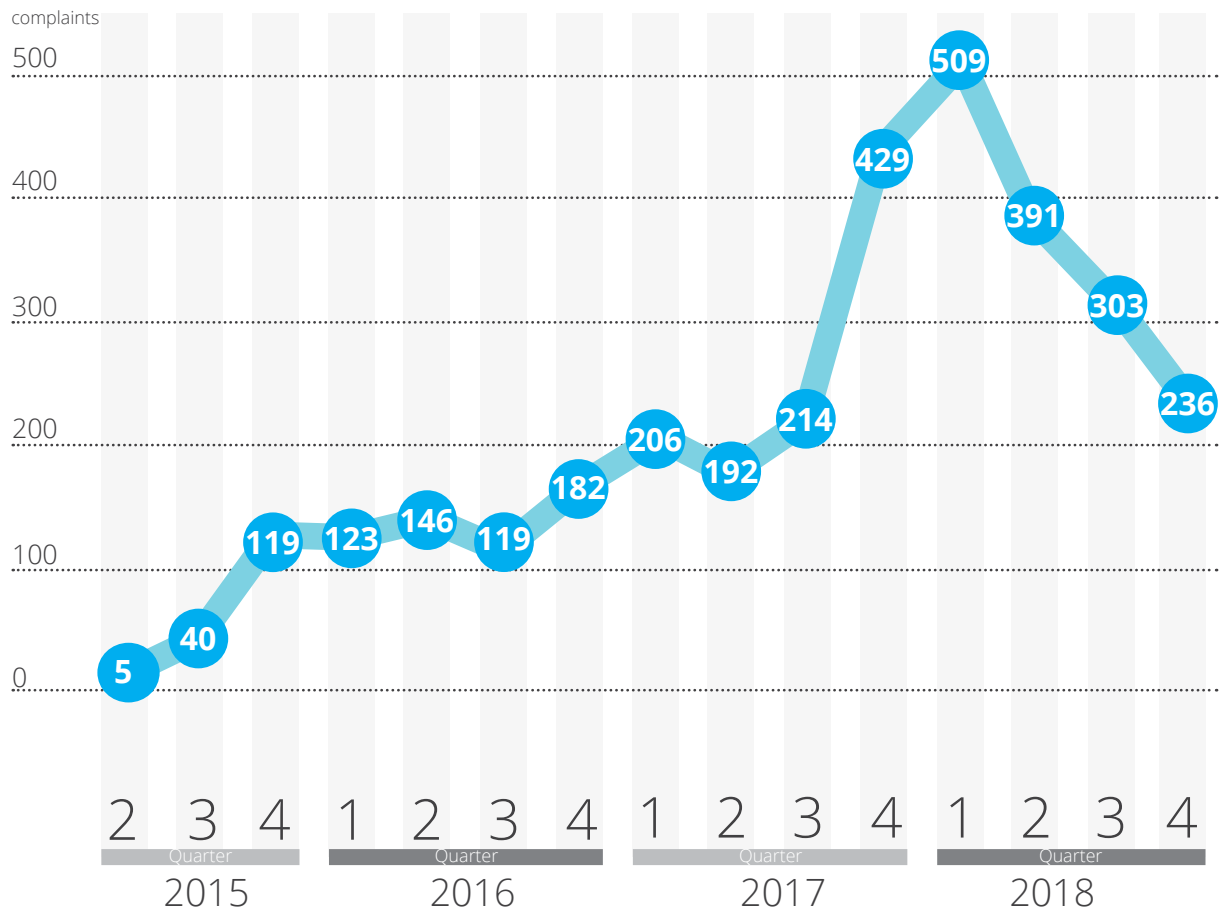


We would like to sincerely thank the Business Ombudsman Council for helping us to resolve the issue. We hope that your organization will continue to thrive and assist in solving the issues of enterprises and entrepreneurs of our country."

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

2.1. Information on closed cases and recommendations provided





Total number of closed cases
since launch of operations:

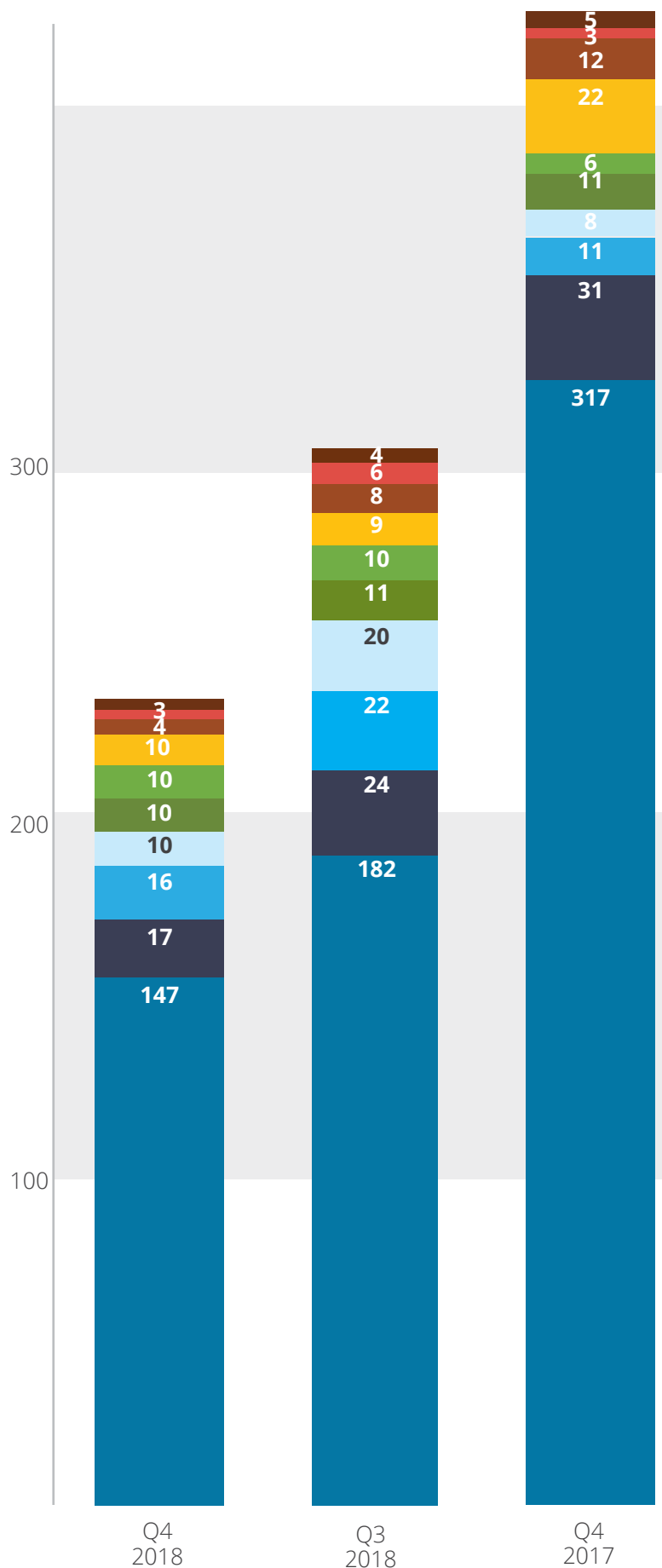
3240

In this reporting quarter, we closed 236 cases. Over a half of these cases were closed with an immediate desirable result for complainants.

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

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

The majority of closed cases (62%) concerned tax issues. Law enforcers featured in 8% of closed investigations.





+

FINANCIAL IMPACT
IN QUARTER IV 2018:

UAH
275^{mn}

Direct financial impact
of BOC's operations
20 May 2015 – 31
December 2018:
exceeds

UAH
13,35
bn

Tax inspections	184,836,598
Other state regulators	27,415,229
Tax VAT refund	27,140,541
Tax other	12,946,842
Tax VAT invoice suspension	10,835,269
Tax VAT electronic administration	9,458,215
State companies other	1,710,000
Overpaid customs duties refund	986,566
Ministry of Justice Enforcement Service	101,533

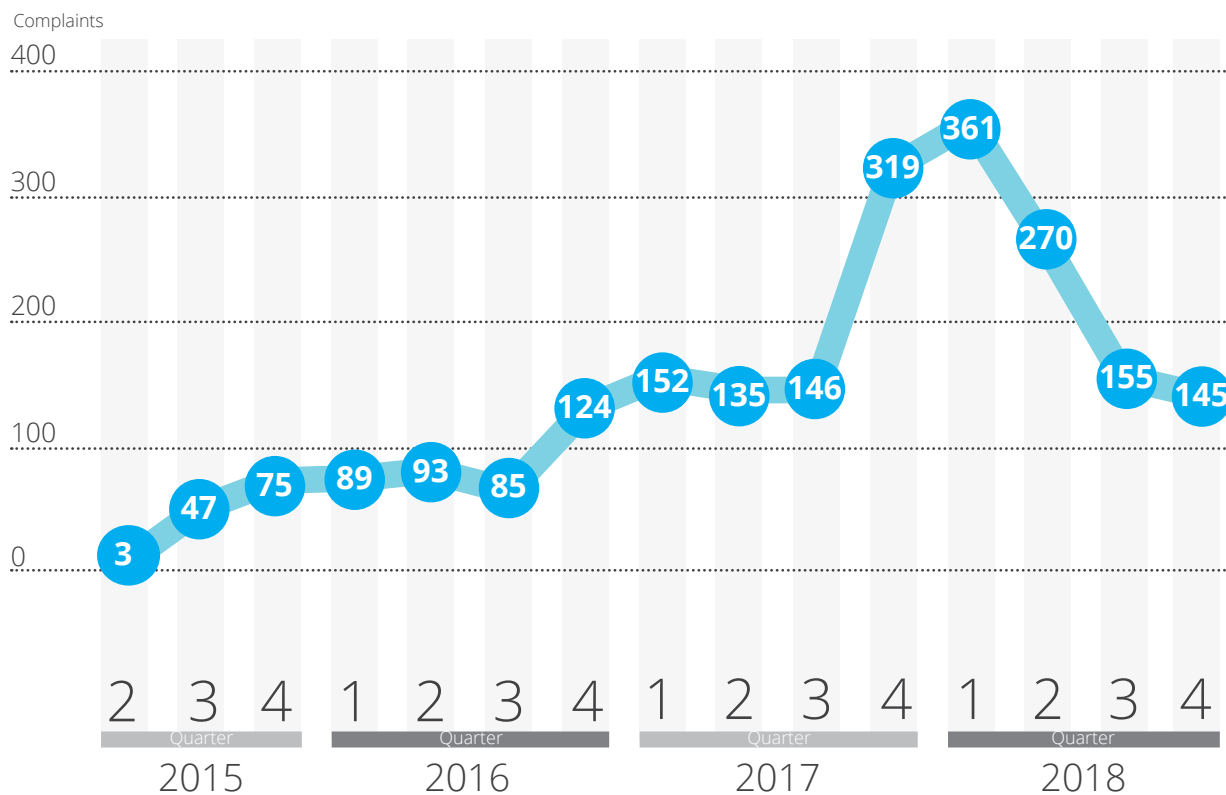
NON-FINANCIAL IMPACT OF BOC'S OPERATIONS IN QUARTER IV 2018:

	Q4 2018	Q3 2018	Q4 2017
Malpractice ceased by complainee	26	42	44
Criminal case against the Complainant closed; property/accounts released from under arrest	8	7	11
Permit/license/conclusion/registration obtained	6	8	9
Legislation amended/enacted; procedure improved	5	4	6
Tax records reconciled, tax reporting accepted	3	11	23
State official fired/penalized	3		1
Criminal case initiated against state official/3rd party	2		3
Claims and penalties against the Complainant revoked Sanction lifted		2	3
Contract with state body signed/executed			5

Officials' ceased malpractice remains the key non-financial impact of our work. Closed criminal cases, obtained licenses and amended legislation were also among our key intangible results of our work in Q4 2018.

Recommendations provided and systemic issues solved

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



Total number of recommendations issued since launch of operations:

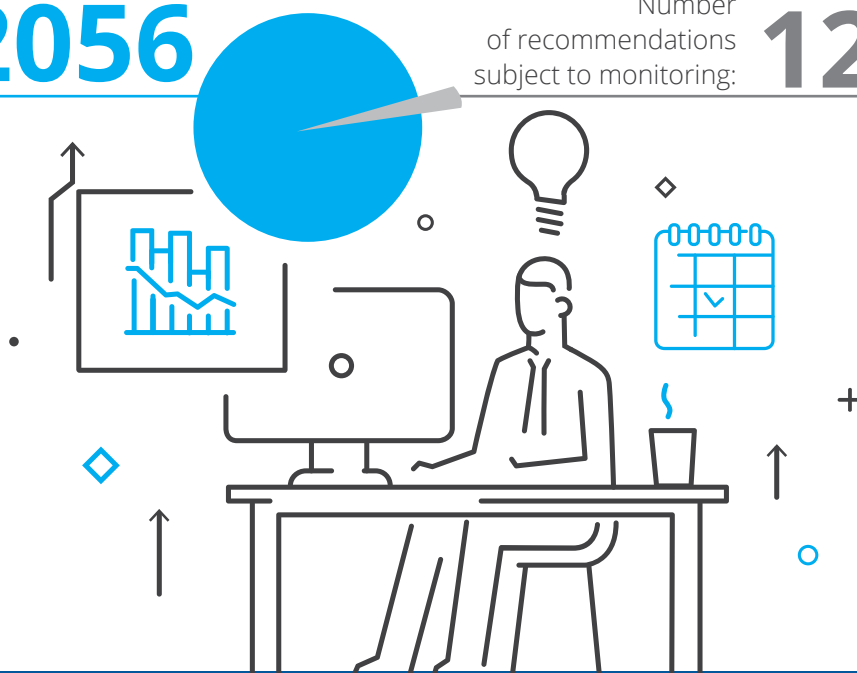
2185

Number of recommendations implemented:

2056

Number of recommendations subject to monitoring:

129



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

	Recommendations implemented	Recommendations issued	Ratio of implemented to issued Q4 2018	Ratio of implemented to issued Q3 2018	Ratio of implemented to issued Q4 2017
State Fiscal Service	1452	1502	97%	96%	93%
Prosecutor's Office of Ukraine	78	96	81%	81%	78%
Ministry of Justice	74	78	95%	97%	96%
National Police of Ukraine	70	82	85%	83%	88%
Local councils and municipalities	69	80	86%	87%	87%
State Security Service	45	48	95%	93%	91%
Ministry of Regional Development	42	44	95%	95%	93%
Ministry of Economic Development and Trade of Ukraine (MEDT)	32	38	84%	85%	84%
Ministry of Ecology and Natural Resources of Ukraine	31	33	94%	90%	100%
Ministry of Internal Affairs	20	22	91%	86%	90%
Parliament, the Cabinet of Ministers, the President of Ukraine	19	24	79%	83%	75%
State owned enterprises	19	22	86%	83%	100%
Ministry of Social Policy and Labour of Ukraine	17	19	89%	89%	78%
Ministry of Finance of Ukraine	14	15	93%	93%	58%



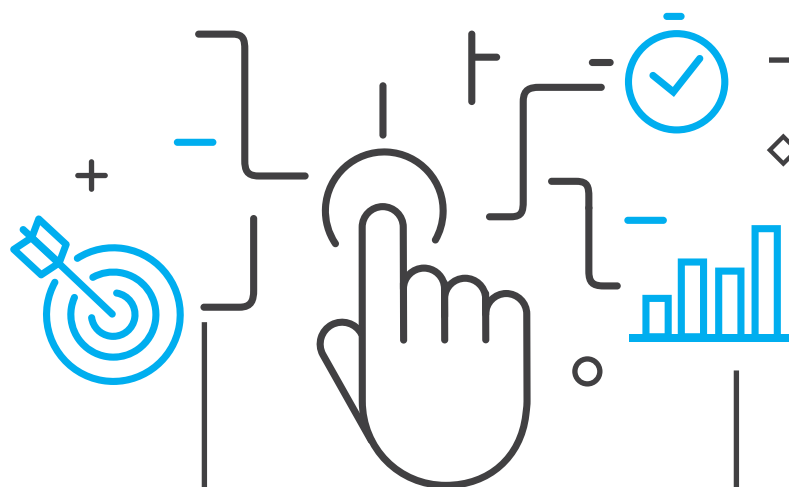
	Recommendations implemented	Recommendations issued	Ratio of implemented to issued Q4 2018	Ratio of implemented to issued Q3 2018	Ratio of implemented to issued Q4 2017
Ministry of Health of Ukraine	9	9	100%	100%	100%
Ministry of Infrastructure of Ukraine	9	10	90%	88%	60%
Other	9	9	100%	100%	71%
Commercial and other courts	7	7	100%	100%	100%
Ministry of Agrarian Policy and Food of Ukraine	7	8	88%	88%	95%
Ministry of Energy and Coal Industry of Ukraine	7	8	88%	88%	50%
National Commission for State Regulation of Energy and Public Utilities	7	8	88%	88%	83%
Antimonopoly Committee of Ukraine	6	6	100%	100%	67%
State Service of Ukraine on Food Safety and Consumer Protection	3	4	75%	75%	50%
NABU	3	3	100%	100%	100%
State Service of Ukraine on Food Safety and Consumer Protection	3	4	75%	75%	100%
National Bank of Ukraine	2	2	100%	100%	100%
State Funds	2	4	50%	33%	50%
Ministry of Education and Science of Ukraine	1	1	100%	100%	100%
National Council of Ukraine on Television and Radio Broadcasting	1	1	100%	100%	100%
State Emergency Service of Ukraine	1	1	100%	100%	100%
Communal Services of Ukraine	0	1	0%	0%	-
Grand Total	2056	2185	94%	93%	91%



State bodies
implemented

94%

of our
recommendations.



The State Fiscal Service contributed the most to this growth – this agency has implemented 101 more individual recommendations since Q3 2018 resulting in the total 97% implementation rate.

Law enforcers also performed well: the National Police improved its ratio by 2pp, the State Security Service by 1 pp, while the Prosecutor's Office remained at the level of 81%, although it implemented 8 new recommendations in Q4 2018.

The Ministry of Justice, which used to hold the second position in the abovementioned list for many quarters in a row, has worsened its ratio by 2 pp. Having said that, its performance is still higher than average – 95%.

The implementation rate of the supreme authorities block (The Parliament, the Cabinet of Ministers, the President of Ukraine) decreased by 4 pp. Local councils and the MEDT both lost 1 pp.

By contrast, the following state bodies improved their positions: the Ministry of Ecology and Natural Resources (+4 p.p.), the Ministry of Internal Affairs (+5 p.p.), the Ministry of Infrastructure (+2 p.p.), as well as State owned enterprises (+3 p.p.) and State Funds (+17 p.p.).

SYSTEMIC ISSUES SOLVED

The State Fiscal Service of Ukraine (SFS)

ISSUE ARISING FROM INVESTIGATION

The electronic system of VAT administration (SEA) inappropriately processed cancelled duplicate tax invoices. As long as a duplicate tax invoice had been deleted, the system would have reduced the registration limit by the canceled invoice amount, although it should have remained unchanged.

For enterprises it meant financial losses. To continue their activities, they often had to add additional funds to their tax accounts.

RESULT ACHIEVED WITH THE BOC FACILITATION

The Council's investigators addressed the SFS with a request to correct the SEA error and adjust the formula on a case-by-case basis. It turned out that to resolve the problem, it was necessary to amend the legislation. As a result of eighteen months' work, a regulation amending the legislation and allowing cancellation of duplicate tax invoices without reducing the registration limit was adopted. These changes became effective on December 1, 2018.



The State Fiscal Service of Ukraine (SFS)

ISSUE ARISING FROM INVESTIGATION

In December 2016, the Verkhovna Rada of Ukraine adopted amendments to the Tax Code. These changes (p.200-1.9) allowed enterprises to register tax invoices even with a negative balance value. But the SFS and the Ministry of Finance did not provide this opportunity to taxpayers, because they did not develop the corresponding software. This issue was addressed to the BOC by a joint-stock company.

RESULT ACHIEVED WITH THE BOC FACILITATION

Within the framework of the Memorandum on Partnership with the SFS, the Council introduced the complaint to the tax Expert Group meeting. The Council stressed the importance of the issue for taxpayers and the need for its prompt resolution.

Having revised the system, the SFS reported that the mechanism was implemented. Since then taxpayers have been able to register tax invoices even with a negative balance value.

SYSTEMIC RECOMMENDATIONS IMPLEMENTED

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

SYSTEMIC REPORT

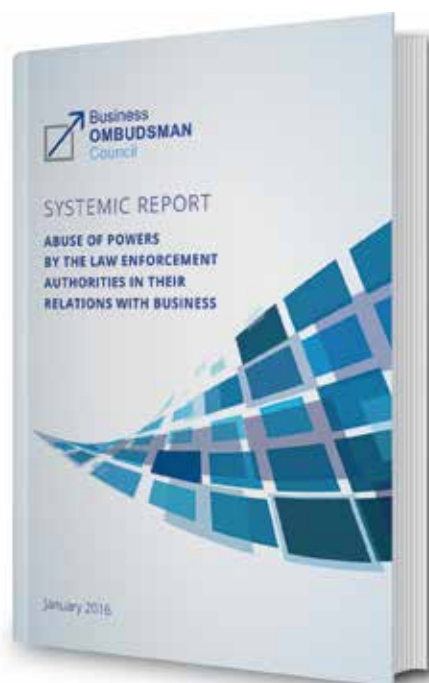
ABUSE OF POWERS BY THE LAW ENFORCEMENT AUTHORITIES IN THEIR RELATIONS WITH BUSINESS

ISSUE

Investigators tend to delay a pre-trial investigation and maintain a criminal proceeding in the “suspended” state without issuing such procedural decisions as closure of criminal proceedings or lodging a suspicion notice.

In such circumstances pre-trial investigation authorities might be engaged in creating appearance of activity by carrying out searches, summoning officials for interrogations and seizing property objects and documents.

Meanwhile, representatives of businesses facing such kind of procedural actions, lack mechanisms of protection of their legitimate interests and procedural rights similar to those which are granted to persons who were furnished with the suspicion notice or accused.



BOC'S RECOMMENDATION

To vest persons authorized to carry out organizational and administrative functions on behalf of the entity (such as director, financial director, chief accountant or members of the management board of the joint stock company) that is subjected to various investigatory actions at the pre-trial investigation stage with selected procedural rights granted to persons who were furnished with the suspicion notice, which are enlisted in Article 42 of the CPCU (“Suspected Person/Accused Person”), namely...

- a) Collect and submit evidences to an investigator, prosecutor or an investigatory judge;
- b) Participate in the procedural actions;
...
- e) Demand indemnification of damages caused by illicit decisions, actions or inactions of the authority carrying out operative / investigative activity, pre-trial investigation, public prosecutor's office or court.

This recommendation has been partially implemented in lieu of the adoption of the Law of Ukraine dated September 18, 2018 # 2548- VIII (also known as “**Masks-show-stop 2**”), which entered into force on **November 4, 2018**, where certain procedural rights were granted to “*other persons, whose rights or legitimate interests are being limited in course of pre-trial investigation, or their representatives*”, such as rights related to challenging violation of reasonable terms (please see more details below), namely:

- i. The right to lodge, in events set forth by the CPC of Ukraine, a motion to initiate any procedural actions, which should be considered by an investigator, a prosecutor within 3 days from the moment of submission, and satisfy them, if there are reasons for that (part 1 of art. 220 of the CPC of Ukraine with amendments introduced by Masks-Show Stop 2);
- ii. the right to lodge a motion with an investigator, a prosecutor seeking closure of criminal proceeding in case of existence of valid decision of an investigator, a prosecutor on closure of criminal proceeding on reasons prescribed by para. 1, 2, 4, 9 of this part, in criminal proceeding regarding the same offence, which was investigated in accordance with rules related to investigatory competence (para. 9-1 of part 1 of art. 284 of the CPC of Ukraine with amendments introduced by Masks-Show Stop 2);
- iii. the right to challenge with an investigatory judge a refusal of an investigator,

a prosecutor to satisfy a motion seeking closure of a criminal proceeding based on a reason prescribed by para. 9-1 of part 1 of art. 284 of the CPC of Ukraine (para. 11 of part 1 of art. 303 of the CPC of Ukraine with amendments, introduced by Masks-Show Stop 2).

The foregoing scope of procedural rights partially correlates with para. “b” of the Council’s recommendation – a right to participate in procedural actions (some of them).

It is worth noting that while lodging any kind of foregoing motions or complaints, persons lodging them are not deprived of a right to attach any kind of materials or evidence, (collections of evidence, to say, is one of professional rights of attorneys-at-law in accordance with para. 7 of part 1 of art. 20 of the Law of Ukraine “On the Bar and Practice of Law”). Hence, foregoing scope of procedural rights partially correlates also with para. “a” of the Council’s recommendation – a right to collect and submit evidences to an investigator, or an investigatory judge.

- iv. Masks-Show Stop 2 also implemented certain measures aimed at improving a mechanism enabling reimbursement of damages caused by illicit decisions, actions or inactions of investigatory bodies, prosecutor’s offices and courts (please see more details below). This mechanism, prescribed by art. 130 of the CPC of Ukraine and art. 1176 of the Civil Code of Ukraine, could be used by any person regardless of his/her procedural status in the criminal proceeding.



ISSUE

Existence of the so-called “fact-based” criminal proceedings (those which are being investigated without furnishing anyone with the suspicion notice).

Lack of effective mechanisms for challenging the violation of reasonable time-frames by a person who has not been furnished with the suspicion notice or accused, but whose rights or legitimate interests have been restricted within the framework of pre-trial investigation.

BOC’S RECOMMENDATION

Amend Article 308 of the CPCU to enable third parties, whose rights are being restricted and/or violated in course of the pre-trial investigation (in whose relation a pre-trial investigation is taking place) with the right to challenge failure to observe reasonable time limits to the superior prosecutor. Currently only a suspected person, an accused person and a victim are vested with such a right.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

Implementation of this recommendation (which has been partially implemented earlier) continued through the adoption of the Law of Ukraine dated September 18, 2018 # 2548-VIII (also known as “**Masks-Show Stop 2**”), which entered into force on **November 4, 2018**, where “other persons, whose rights or legitimate interests are being restricted within the course of pre-trial investigation, or their representatives” were granted, among others, with the right to lodge motions with investigatory judges seeking closure of criminal proceedings if terms of pre-trial investigation from the moment of entering information in the Unified Register of Pre-Trial Investigations to the moment of notification on suspicion has expired (part 9 of art. 284 the CPC of Ukraine with amendments introduced by the Masks-Show Stop 2).



ISSUE

The scope of procedural measures, employed at the pre-trial investigation stage, has a non-proportional nature, namely: when in the course of investigatory actions or exercise of measures aimed at securing a criminal proceeding, documents, that are not relevant to the respective criminal proceeding, are also seized; when scope of procedural measures comprising arrest of property (arrests of bank accounts, finished commodities, means of production and corporate rights) was excessive, as overall value of arrested property was significantly higher than the value of claims lodged against a particular business, etc.

BOC'S RECOMMENDATION

To improve the mechanism of personal liability of employees of law enforcement agencies for violations committed while carrying out investigatory actions. In particular, in addition to the existing Disciplinary Charters (Codes) of the Public Prosecutor's Office of Ukraine and Draft Law of Ukraine "On Disciplinary Charter of the National Police", both of which represent internal institutional mechanisms, to consider the opportunity of involving NGOs in the work of such disciplinary commissions.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

Implementation of this recommendation (which has been partially implemented earlier) continued through the adoption of the Law of Ukraine dated September 18, 2018 # 2548-VIII (also known as "Masks-Show Stop 2"), which entered into force on November 4, 2018, where art. 130 of the CPC of Ukraine was supplemented by part 2 with the following wording: "2. The State, having reimbursed damages caused by an investigator or a prosecutor, exercises the right of a regress claim towards such persons if the latter's actions constitute a criminal offence, which is confirmed by an effective verdict of conviction, or a disciplinary offence regardless of expiration of terms of application of a disciplinary action".

SYSTEMIC REPORT

GETTING ACCESS TO ELECTRICITY

ISSUE

Procedure of getting access to power networks is slow and costly and is affected by a corruption component appearing at the various stages of hook-up service's provision

BOC'S RECOMMENDATION

To move towards fixed rates for getting hooked up to electricity, with the cost calculation to be based on the quantity of power capacity declared by the customer. Hence, the obligation to prepare a project design would be transferred to a power utility, thus relieving the customer from the obligation to seek technical conditions for getting hooked-up to electricity from the utility company

ACTIONS TAKEN BY GOVERNMENT AGENCIES

On 22 December 2018, the Resolution of the National Energy and Utilities Regulatory Commission No. 1965, dated 18 December 2018 "On Approving the Methodology (Order) for the Formation of the Fee for Hooking-Up to Transmission and Distribution Systems" (the "**Methodology**") entered into force, which, inter alia, establishes:

- 1) **in case of a standard hook-up** – calculation of the fee depends on the declared power of the customer's electrical installation (paragraph 3 of the Methodology);
- 2) **in case of a non-standard hook-up** – the fee is determined by adding the following components: (i) the connection fee (based on the capacity being created); and (ii) the fee for creation of the linear part of electrical networks (paragraphs 4 and 5 of the Methodology). Meanwhile, until 31 December 2020 a single unit cost of 1 kW power connection for all operators of distribution systems is determined at 3.48 UAH/kW (net of VAT).

As the National Energy and Utilities Regulatory Commission reported on its official website¹, the approved Methodology would ensure:

introduction of a transparent, predictable and unbiased procedure for calculating the payment for hooking up the electrical installations to power networks;

- equal access to power networks;
- calculation of the exact cost for getting hooked up at the planning stage;
- improving Ukraine's ranking in the Getting Electricity indicator of the Doing Business.

On 28 December 2018 the National Energy and Utilities Regulatory Commission also adopted the Resolution No. 2068 "On Approving the Fee Rates for the Standard Hook-Up for 2019" as well as the Resolution No. 2069 "On Approving the Fee Rates for the Non-Standard Hook-Up and the Fee Rates for the Linear Part of the Accession for 2019", which sets forth the respective indicators, introduced by the Methodology, for 2019. The said resolutions are due to become effective on 22 January 2019.



SYSTEMIC REPORT

REDUCING THE RISK OF CORRUPTION AND ATTRACTING INVESTMENT TO THE CONSTRUCTION INDUSTRY

ISSUE

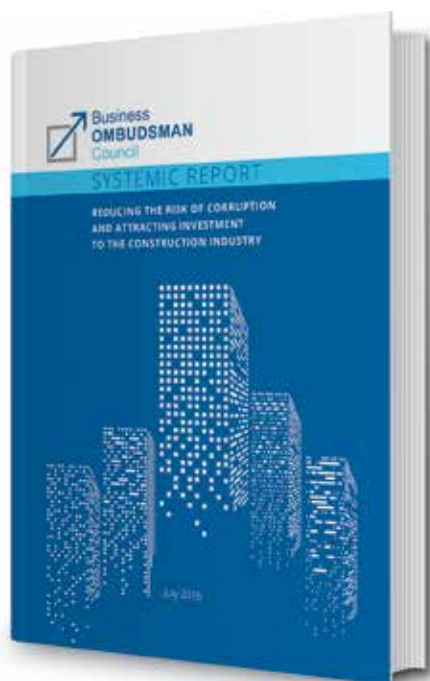
Lack of transparency in considering permitting documents in construction.

BOC'S RECOMMENDATION

Launch an "e-office" for submitting documents to the State Architectural and Construction Inspection (SACI) for the purpose of obtaining permits to carry out construction works.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

In October 2018 the SACI launched online tools "Developer's E-office" and "Prozora DABI" (Transparent SACI). These services will contain all documentary information about the construction: from applying for preparatory works to commissioning of the object. The system ensures that applicants can now track stages of specified procedures, which eliminates risks of abuse. This will also facilitate communication and interaction between the state and the construction market players.



2.3. New systemic report on labor market issues

The Ukrainian labor market has greatly changed over last years. These changes are associated not only with the configuration of employment and the level of migration of working-age people, but also with the need to introduce modern approaches to the state supervision of the labor-related issues.

This systemic report of the Business Ombudsman Council (the “BOC”) is devoted to the analysis of current labor-related issues and interaction between businesses and respective state authorities. It is noteworthy that among the most problematic factors for doing business in Ukraine provided by the Global Competitiveness Report Index, the indicators “Restrictive labor regulations” and “Poor work ethic in national labor force” have approximately the same level as the “Insufficient capacity to innovate” indicator and the “Inadequate supply of infrastructure” indicator.

We have identified the following areas related to labor issues and which, in the BOC’s opinion, require systemic improvements:

- Efficiency of the state labor regulation and supervision
- Prevention and identification of illegal (informal) employment
- Some aspects of issuing permitting documents
- The use of foreign labor
- Educational services in the field of occupational and industrial safety
- Labor law compliance and prevention



Improvement of the state labor regulation and supervision effectiveness requires strengthening the institutional capacity of the State Labor Service of Ukraine (the “SLS”) through the introduction of a web-platform for the supervision (inspection) activity, risk-based supervision approach, and better interaction between the relevant state authorities. The BOC also recommends to improve a number of specific procedures related to mining operations and hazardous works.

Development of the rules for interaction and strengthening of cooperation between the SLS, the government bodies, and the National Police of Ukraine **would lead to more efficient prevention and detection of illegal (informal) employment.**

Improvement of the procedures related to foreign specialists’ employment should help to increase the investment attractiveness of Ukraine. In particular, the BOC recommends to simplify procedures for obtaining the employment permit and its duplicate for foreigners, to establish a preferable regime for foreigners who have graduated from Ukrainian educational institutions.

The BOC paid special attention to **redesigning the process of occupational safety education**, as a significant market for such educational services has already been formed in Ukraine. The main idea of the proposed changes is to prevent conflicts of interest and increase the transparency of the educational process.

An important avenue for the BOC is building capacity on compliance with labour legislation of the state authorities as well as businesses by training the staff. This is an issue to which the BOC paid special attention in this report.



2.4. Summary of important investigations

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

TAX ISSUES

SUBJECT: TAX INSPECTIONS

#1

SFS drops over UAH 2 mn additionally charged to «Dobrobut Dytynstvo» children's hospital

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

Complaint in brief:

On August 2, 2018, a children's medical center "Dobrobut- Dytynstvo" appealed to the Council. The Complainant disagreed with the tax audit conclusions regarding additional payments worth about UAH 3 mn in taxes and fines.

In May the SFS audited company's compliance with the tax, currency legislation and social insurance payment.

One should mention methods the SFS exploits when identifying tax obligations. The fiscal body assumed that the children's hospital transferred 4/5 of the call centre maintenance cost to other hospitals of the network. In this way the SFS calculated taxes, which these hospitals should have paid if they had maintained separate call-centres. It amounted to over UAH 1 mn of VAT.

The company insisted that the SFS competence did not include choosing the optimal business model for the enterprise. Moreover, it is wrong to calculate additional taxes based on the above- stated unconfirmed assumptions. In addition, according to the auditors, the debt of suspended individual entrepreneurs to the Complainant should have become uncollectable.

Disagreeing with such conclusions, the medical center appealed them in the SFS and turned to the Council for help.

Actions taken:

Having studied case materials, the Council's investigator prepared arguments in favor of the company. He pointed out there was no proper evidence of the contact center maintenance, and, accordingly, the cost of leasing and operation of premises, as well as the fact that, as a result of business activity termination by an individual (entering a record of termination in the USR), his obligations under concluded contracts were not terminated, but remained with him/her as an individual.

#2

Tax office drops extra payment of UAH 1.5mn for advertising agency

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

Result achieved:

The SFS accepted the Council's arguments and dropped over two thirds of additional payments. The case was closed successfully.

Complaint in brief:

On May 2, 2018, an advertising agency turned to the BOC with a complaint against the SFS. The Complainant disagreed with the findings of an audit that led to additional taxes and fines.

While reviewing the activities of the company over 2014- 2017, the SFS challenged the Complainant's activities with about 20 contractors stating that some of the partner companies did not have enough human and material resources to provide the stated services. However, the advertising market typically engages small contractors for different types of professional services and it is difficult to determine the volume and cost of a creative product. As a result, the SFS often questions the legitimacy of such operations.

The tax audit findings also noted (showed) that many of the Complainant's contractors had stopped submitting reporting to the tax authority. In some cases, more than a year had passed between the completion of a contract with the Complainant and the contractor's last tax report. The ad agency's position was that it could not be held responsible for its partners for months and years after they had cooperated and so it challenged the SFS decision.

Actions taken:

The BOC investigator carefully assessed the case materials. The Council participated in a hearing of the case at the SFS. The investigator asked the tax authority in writing to comprehensively and impartially consider the advertising agency's appeal.

Result achieved:

With the assistance of the Council, the SFS partly satisfied the complaint and dropped an additional payment of UAH 1.5mn. The case was closed successfully.

#3

SFS drops additional charges worth UAH 1.2 mn to Lviv company

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

Complaint in brief:

On September 7, 2018 a leading Ukrainian manufacturer of foods for domestic animals turned to the Council. The Complainant disagreed with the tax audit conclusions, according to which he had to pay about UAH 1.5 mn. of additional taxes and fines.

Having audited the company's activities, Lviv LTO Department questioned some operations with its counterparties. In particular, the tax authority identified delivered marketing services as fictitious. Questions about the reality of services were also triggered by corn supplies.

According to the Complainant, such Lviv LTO Department conclusions were ungrounded and arguments provided were illegal and unacceptable. Therefore, the company challenged them in the SFS and turned to the Council for help.

Actions taken:

Having thoroughly studied case materials, the Council upheld the company's position. The Council's investigator informed the SFS thereof in writing. He also participated in the company's complaint consideration at the Fiscal Service.

Result achieved:

With the assistance of the Council, in early November, the SFS dropped two of three tax notifications-decisions. It allowed the manufacturer to avoid paying taxes and fines totally worth over UAH 1.2 mn. The case was closed.

#4

SFS partially drops additional payment for agricompany from Kherson Oblast

Subject of complaint:
The Main Department of the State Fiscal Service in Kherson Oblast, the Autonomous Republic of Crimea and the city of Sevastopol (MD SFS), the SFS of Ukraine (SFS)

Complaint in brief:

On July 5, 2018, an agricultural company from Kherson Oblast applied to the Council. The Complainant disagreed with the tax audit findings, according to which it had to pay UAH 700k of additional payments and fines.

In early June, the MD SFS audited the company's activities: employees onboarding, payment of individual income tax, military fees for 2015- 2017, as well as a unified social contribution for 2011- 2017. According to the audit findings, the MD SFS established that the company had underestimated obligations on individual income tax and military fees. The tax authority arrived at this conclusion since the lease payment for land plots leased by the company was lower than minimum lease payment established by law. In the Complainant's view, these rules did not apply to it because the leased land plots were owned by individuals while the statutory requirement applies to lease of communal or public lands only.

#5

**Systemic problem
with processing
duplicate tax invoices
is resolved**

Subject of complaint:
The State Fiscal Service
of Ukraine (SFS)

The company challenged the MD SFS decision but its objections were rejected. To establish its case, the Complainant filed an appeal to the SFS and asked the BOC for help.

Actions taken:

The Council's investigators analyzed the Complainant's case, considering provisions of the effective legislation and case law. They sent legal opinions in support of the company's position to the SFS. In addition, the investigators participated in the Complainant's appeal consideration at the SFS.

Result achieved:

Following the appeal, the tax authority partially canceled tax notices- decisions worth over UAH 220k. The Complainant plans to challenge the remaining part of penalties and additional tax accruals in court.

SUBJECT: VAT ELECTRONIC ADMINISTRATION

Complaint in brief:

Starting from June 2017, the Council received 12 similar complaints from enterprises from different regions of Ukraine. The subject of complaints was the same: in the VAT system of electronic administration system (SEA), for some unknown reasons for complainants, the amount for which they could register tax invoices (the so called "registration limit") decreased.

The Council's investigators started looking into the subject matter of the complaints and found they had one thing in common in all cases. At some point of time all applicants erroneously issued a duplicate tax invoice. The number or date on duplicate tax invoices could be different, but they related to the same transaction. The erroneous tax invoices were finally "cancelled" by taxpayers (with calculation adjustments made up to it), but usually they did it with a delay – in the other reporting period.

As it turned out, the VAT SEA function, in the event of issuance and subsequent cancellation of the duplicate tax invoice did not work properly. In fact, this cancellation should not have affected the registration limit. However, as far as our complainants were concerned, the tax invoice registration limit was reduced by the canceled invoice amount. For enterprises it meant financial losses. To continue their activities, they often had to add additional funds to their tax accounts.

#6

LTO reduces penalty fee worth over UAH 4.5 mn. to PEUGEOT CITROEN Ukraine

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

Actions taken:

The Council's investigators addressed the SFS with a request to correct the SEA error and adjust the formula on a case-by-case basis. The investigators explained the problem to the fiscal service in writing and proposed troubleshooting options. However, it turned out that to resolve the problem, it was necessary to amend the legislation. In the end, under the auspices of the Ministry of Finance, a working group made up of the Council's, SFS's representatives and other experts was convened to address the issue. The Working Group members jointly analyzed the problem and developed a mechanism for its solution, which included appropriate amendments to legislation.

Result achieved:

As a result of eighteen months' work, a regulation amending the legislation and allowing cancellation of duplicate tax invoices without reducing the registration limit was adopted. These changes became effective on December 1, 2018. It will allow anyone facing the problem to restore the correct balance of the account and prevent such errors in the work of SEA in future.

Complaint in brief:

On July 10, 2018, an official French car importer appealed to the Council. The Complainant disagreed with the amount of a charged penalty fee.

In January 2018, a District Administrative Court of Kyiv cancelled the decision of the LTO regarding adding taxes to the Complainant's bill in the amount of about UAH 3 mn. The tax authority issued new tax notifications-decisions for the rest of amounts. The Company promptly paid the amounts specified in the tax notifications-decisions.

However, in a few months, the Complainant discovered there appeared a record of a penalty fee charge in his electronic office totally worth over UAH 5 mn. The fine related to old tax periods starting from June 2011.

Actions taken:

Having examined case materials, the Council's investigator met with the Complainant's and LTO representatives. The Complainant and the Council proved illegality of the charged penalty fee.

#7

**SFS refunds VAT
UAH 200k to a Ukrainian
subsidiary of the world
computer corporation**

Subject of complaint:
State Fiscal Service (SFS)

Result achieved:

With the assistance of the Council, the parties agreed to reduce the additionally charged amount up to UAH 656k. This allowed the company not to pay the illegally charged penalty fee in the amount of over UAH 4.5 mn. The case was successfully closed.

Complaint in brief:

On June 9, 2018, a Ukrainian subsidiary of the world computer corporation appealed to the Council. The Complainant could not get a budget VAT refund.

In mid-April, the company appealed to the SFS for a refund of VAT UAH 1 mn. However, as of early June, the tax authority ignored its appeal. So, the company lodged a complaint with the General Directorate of the SFS in Kyiv (GD SFS) and turned to the Council for help.

Actions taken:

Having examined case materials, the Council supported the Complainant's position. The Council's investigator asked the GD SFS in Kyiv in writing to check the reasons for delay and eliminate them. The tax authority replied that there was a positive balance in the system of electronic administration (SEA) – only UAH 200k. As it turned out, the company used a part of money from its account in the SEA VAT but, due to a technical error, the amount of about one million hryvnias continued to be displayed in the system.

At the trilateral meeting the company agreed to claim for only UAH 200k of the refund and, consequently, filed a new application for the VAT refund.

Result achieved:

The tax authority considered the Complainant's appeal. The company received the VAT refund of UAH 200k. The case was closed successfully.

#8

Director refuses to sign confessions under pressure of law enforcers...

Subject of complaint:
Investigative Department
for Financial Investigations
of the State Fiscal Service
(Tax Police)

Complaint in brief:

On August 10, 2018 a plumbing manufacturer, turned to the Council. The company complained of pressure from the Tax Police.

At the end of 2013, the company had to launch a bankruptcy procedure. There were government agencies among the manufacturer's creditors, particularly the SFS and the Pension Fund. The Complainant owed to the latter about UAH, 1 mn of a Unified Social Contribution (USC), including fines and penalties. Under the law, the creditors' meeting has the right to negotiate with the company-debtor on installments or delay in debt payments. So, the Complainant and his creditors signed a settlement agreement, under which the company had to repay the debt amount within the agreed term. As for the USC debt, which belonged to second-priority creditors' claims, the agreed term was 4 – 4.5 years. The settlement agreement was approved by the court. Due to such restructuring the Complainant managed to pay off all the creditors and save his business. The Complainant even early repaid the USC debt in full – in less than three years. A new company director was appointed, the company continued to operate.

However, in June 2018, at the request of the SFS, the Complaint was unexpectedly accused of evasion from USC payment. According to the company's representatives, they began being strongly pressed by the Tax Police. 20 employees were summoned for questioning. And a new director, who had nothing to do with the debts of 2012-2013, since he began working in the company only in 2015, was "taken in hand" by law enforcers. They forced him to plead guilty of tax evasion.

The investigator even furnished him a draft notice of suspicion and advised to confess everything. The director was reassured he could "ask for an exemption from criminal liability in view of damages recovery". And in fact, it would not have any consequences for the director, except for a lifetime damaged reputation for a crime he did not commit.

After the director refused to sign confessions, law enforcers became even more active in investigating a case in which the Complainant had already paid everything to the last penny. Tax Police officers appealed to the court twice for a permission to conduct a search in the company. They requested the documents which were not relevant to debts payment of 2012-2013.

Feeling a violent pressure from law enforcers, the Complainant turned to the Business Ombudsman Council for help.

Actions taken:

The Council's investigator thoroughly studied case materials and started working on the company's complaint.

#9

BOC admits only reasonable searches

Subject of complaint:
The Investigative
Department for Financial
Investigations of the Large
Taxpayers' Office (LTO)
of the State Fiscal Service
of Ukraine (Tax Police)

He informed the District Department of the SFS, the Tax Police and the Prosecutor's Office in writing thereof and asked to investigate the Tax Police officers' actions.

The Prosecutor's Office and the Tax Police did not acknowledge violations in the actions of their civil servants, however they did not refute these actions either. Taking into account the lack of proper response at the regional level, the investigator resorted to another instrument provided for by the Memorandum of Cooperation between the BOC and the SFS. He brought up the issue at the meeting of an Expert Group with the Tax Police top management.

Result achieved:

Following the meeting, the Council was assured the Complainant's case had been thoroughly examined, a criminal proceeding was being prepared to be closed. On November 13, the Complainant's representative informed that no investigative actions had been carried out since the appeal to the Council. It gives grounds to hope for a further positive solution of the company's issue through closing a criminal proceeding. Since the pressure on the Complainant by law enforcers stopped, the case was closed.

Complaint in brief:

On July 24, 2018, a private entrepreneur from Barabashovo market in Kharkiv addressed the Council. The Complainant reported on the unlawful actions of persons who introduced themselves as Tax Police officers, as a result of which his goods had been blocked.

The day before, a loaded truck arrived to Kharkiv market from Odesa. It contained property of 70 different private entrepreneurs. The Complainant was one of the goods owners. Immediately after the arrival of the truck, it was surrounded by two dozens of people who introduced themselves as the Tax Police officers. According to them, they had to search a cargo within the framework of criminal proceedings. At the same time, the abovementioned persons did not provide any permission to search or conduct urgent investigative actions to cargo owners.

Indignant entrepreneurs quickly gathered a crowd of colleagues at the scene, got mass media representatives involved and called the police. While protecting the goods from those who blocked them trying to search them without permission, the Complainant turned to the Business Ombudsman Council for help.

Actions taken:

Immediately on the day of the complaint receipt the Council's representatives called the LTO and the Tax Police. They found

SUBJECT: TAX OTHER

#10

**Resolved in one day:
successful case of Kryvyi
Rih company**

Subject of complaint:
The State Fiscal Service
of Ukraine (SFS)

out that the said persons were actually working in the Tax Police and looking for seized property. At the same time, the LTO and the Tax Police assured the Council that their employees at the scene would act exceptionally correctly and in compliance with the requirements of the law.

Result achieved:

The Tax Police officers acting already in accordance with the procedure, received the permission from the investigating judge. Only after that they searched the products listed in the order. The Complainant's property was not damaged and once the search was over, it was returned to him. The case was closed successfully.

Complaint in brief:

On August 16, 2018, a Kryvyi Rih metal trading company turned to the Council. The Complainant could not register tax invoices due to inactivity of the SFS.

In late July, the SFS audited the company's activities. According to the audit conclusions, the tax authority initiated freezing of the Complainant's VAT limits – the amount for which it could register tax invoices for counterparties. It appears that the mentioned was introduced as an enforcement measure under the criminal proceeding. According to the company, it stopped its activities and it threatened its reputation among its partners.

Disagreeing with these conclusions, the company appealed the VAT limits arrest in court. The court agreed that there were no grounds for freezing the limits and ordered the SFS to unfreeze them.

However, the fiscal service delayed with unblocking limits as well as the VAT settlement account, while numerous Complainant's appeals to the hotline and the SFS remained unanswered.

Actions taken:

The Council's investigator brought up the complaint for the SFS Working Group consideration on the day of its receipt. She stressed that the court resolution should be promptly implemented and also prepared a corresponding written request to the Head of the SFS.

Result achieved:

With the assistance of the Council, the tax authority unblocked the Complainant's VAT limits right the next day. The company was able to perform its activity again. The case was closed successfully.

#11

**SFS refunds UAH 46k
of overpaid tax
to radio electronics
manufacturer**

Subject of complaint:
Main Department
of the State Fiscal Service
in the City of Kyiv (MD SFS)

Complaint in brief:

On September 26, 2018, a radio electronics manufacturer addressed the Council. The enterprise could not return an excessively paid VAT.

Having paid the VAT, the Complainant realized that he had made mistakes when filling out the declaration and, in fact, had to pay less. According to the Tax Code, the taxpayer may return overpaid funds. To do this, he/she must submit an application to the MD SFS within three years from the date of payment. The Complainant used such a right as well.

However, at the request of the applicant to refund excessively paid funds, the tax authority made a counter-proposal – to conduct a company's inspection. The manufacturer insisted that the inspection to refund an overpayment was not stipulated by law, while the SFS was just looking for reasons not to return funds. The Complainant turned to the Council with this issue.

Actions taken:

The Council's investigator upheld the company's position. Indeed, inspection and audit measures were not required for overpayments refund. In order to establish a dialogue between the parties, the investigator arranged a meeting between the Complainant and the MD SFS top management. Having discussed all controversial points, the parties reached an agreement and agreed on further steps to resolve the complaint.

Result achieved:

In early November, the SFS transferred UAH 46 thousand to the company's electronic account. The case was closed successfully.

CUSTOMS ISSUES

SUBJECT: CUSTOMS CLEARANCE DELAY/REFUSAL

#12

**Customs exempts
a Ukrainian fishing ship
take from taxation**

Subject of complaint:
The State Fiscal Service
of Ukraine (SFS), Odesa
Customs of the SFS

Complaint in brief:

On September 14, 2018, Interflot company, engaged in ocean fishing of Antarctic krill, applied to the Council. The Customs refused to exempt the Complainant's take from the Atlantic Ocean from taxation.

The Ukrainian ship caught crustaceans in the waters near the Antarctic coast and sent them to Ukraine. On August 22, two containers of chilled krill meat arrived in Odesa. According to the Customs Code, products of Ukrainian fishing ships are exempted from taxation.

However, Odesa Customs refused to exempt the goods from customs duties. In particular, the state authority was concerned that containers arrived in Ukraine not directly from a homeport in Cape Town but through the port of Singapore. Accordingly, the Customs questioned the issue of the product origin. In order to confirm the right to apply the preference, the company provided the customs authority with documents confirming catching of krill particularly by the Ukrainian ship.

However, even this did not convince Odesa Customs. As per September 14, a perishable product remained blocked and could not get into free circulation. It was then that the Complainant appealed to the Business Ombudsman Council.

Actions taken:

The Council's investigator supported the Complainant in writing in a letter to Odesa Customs of the SFS. During the investigation of the case, the investigator spoke with representatives of the SFS, Odesa Customs of the SFS and Odesa-Central customs post. In particular, he stressed the necessity to comply with the established procedure for reviewing customs declarations.

Result achieved:

With the Council's facilitation, Odesa Customs accepted the company's declaration and exempted the goods from the duty. The case was successfully resolved.

ACTIONS OF THE PROSECUTOR'S OFFICE

SUBJECT: PROSECUTORS' OFFICE CRIMINAL CASE INITIATED

#13

The Prosecutor's Office stops ungrounded criminal proceedings regarding appropriation of property

Subject of complaint:

Main Investigation
Department
of the General
Directorate of the
National Police in Sumy
Oblast (the National
Police), the Prosecutor's
Office of Sumy Oblast
(Prosecutor's Office)

Complaint in brief:

On June 16, 2018, Motordetal-Konotop, a manufacturer of cylinder liners for automobile and other internal combustion engines addressed the Council. The company complained about a groundlessly opened criminal case concerning appropriation of property.

On January 12, the National Police initiated criminal proceedings against the company. The company was charged with an illegal VAT refund worth UAH 5 mn. Law enforcers stated there were fictitious companies among company's vendors and, consequently, it had no right to a VAT refund.

Actions taken:

The Council expressed its position on the subject of the Complaint in writing. In particular, the investigator stressed that SFS tax inspection certificates confirmed the correctness of the VAT refund.

The Council also appealed to the PGO with a request to check the grounds for criminal proceedings. The parties met with the National Police representatives under the Memorandum on Cooperation.

Result achieved:

The Complainant informed the Council that the criminal proceedings had been closed due to absence of a crime.
The case was successfully resolved.

#14

The Prosecutor who delayed Kryvyi Rih dairy factory's property returning gets reprimanded

Subject of complaint:
Dnipropetrovsk Oblast
Prosecutor's Office
(Prosecutor's Office)

Complaint in brief:

On July 23, 2018 a manufacturer of dairy products from Kryvyi Rih applied to the Council. The enterprise could not return servers, keys and documents seized during the search as a result of the Prosecutor's Office inactivity. According to the Complaint, the Prosecutor delayed with implementation of the court ruling, according to which the property had to be returned to the Complainant. Moreover, the property had also been seized with violations. Law enforcers had no grounds for confiscating servers and keys at all and they had to return the documents immediately after studying them, since they had not been arrested. However, according to the Prosecutor, he kept the documents for "arranging and systematization."

Disagreeing with the Prosecutor's actions, the company filed a complaint to a Qualifications and Disciplinary Commission of Public Prosecutors of Ukraine and turned to the Council for assistance.

Actions taken:

The Council appealed to the Commission and upheld the Complainant's position. The Council's representatives participated in the meeting of the Commission and stressed the delay in complying with the court order and Prosecutor's possible unfair behaviour.

During the meeting the Commission of Public Prosecutors found the said Prosecutor seized DVR servers and a computer without the court order. The order only concerned documents. The Prosecutor also groundlessly sealed a part of the plant's warehouse and took the keys to it. Thus, the Prosecutor violated the requirements of Art. 171 of the Criminal Procedural Code of Ukraine. He neither applied to the investigating judge with a request for the arrest of temporarily seized property, nor duly complied with the decision on return of property. Such actions are treated as a disciplinary offense.

Result achieved:

After examining the case file and hearing positions of all parties to the case, members of the Commission of Prosecutors made a decision. They brought the Prosecutor to justice and took a disciplinary action against him. The Prosecutor, who delayed returning of property, got reprimanded. The full version of the decision can be found [here](#).

ACTIONS OF THE NATIONAL POLICE

SUBJECT: NATIONAL POLICE PROCEDURAL ABUSE

#15

**Law enforcers return
200 tons of fish
to a fishing company**

Subject of complaint:
Investigation Department
of the National Police
in Zaporozhzhia Oblast
(Investigation Department)

Complaint in brief:

On August 6, 2018 a fishing company applied to the Council with a complaint challenging inactivity of the National Police Investigation Department. The law enforcers did not return 200 tons of frozen fish seized during a search to the Complainant.

In early July the district court allowed to conduct a company's search. As a result, law enforcement officers withdrew documents specified in the court ruling. They had also seized 200 tons of frozen fish worth UAH 3 mln. the court did not give its permission for. In addition, transportation of seized fish was carried out with violations – prior to the end of the search and protocols registration.

The Court of Appeal canceled the arrest of property, after that it should have immediately been returned to the company. The Complainant applied to the Investigative Department for the return of products three times but to no avail. The investigator avoided executing a court order in every possible way. As of August 6, the fish hasn't been returned, and the company was unaware of its storage conditions. Hoping to return the product on time and in a saleable condition, the Complainant asked the Council for support.

Actions taken:

The Council's investigator promptly turned to the Prosecutor General's Office of Ukraine and the National Police of Ukraine with a request to check the lawfulness of the investigator's actions. In addition, he stressed the need to comply with the Court of Appeal's decision and immediately return the temporarily seized property.

Result achieved:

Following the involvement of the Prosecutor's Office of Zaporizhzhia Oblast and the Central Investigation Department of the National Police of Ukraine, the Investigation Department returned the product to the Complainant. The case was closed successfully.

#16

Enforcement Service gets through to gas trader's debtor

Subject of complaint:

The Main Department of the State Enforcement Service in the city of Vinnytsia of the Head Territorial Department of Justice in Vinnytsia Oblast (the Enforcement Service)

Complaint in brief:

On August 6, 2018, a wholesale gas trader turned to the Council. The Complainant could not repay the debt due to the Enforcement Service of the Ministry of Justice inactivity.

In August of 2016, the Complainant arranged with the buyer about the supply of gas. However, after the services had been provided, it turned out that the customer was not going to pay. As of the beginning of 2017, the buyer owed the supplier about UAH 100k.

Not having settled the issue of payment with the customer, the gas trader had to go to court. The court ruled in favor of the Complainant and ordered the debtor to pay off the gas trader. Debt collection was entrusted to the Enforcement Service. However, according to the Complainant, it didn't take all the necessary steps to actually comply with the court's decision.

At first the Enforcement Service officers reported that they could not find vehicles belonging to the debtor. Later they laid attachment on debtor's bank accounts, however they proved to be empty.

Actions taken:

The Council's investigator asked the Ministry of Justice to check the effectiveness of enforcement actions in the Complainant's case. He also stressed it was necessary to comply with the court's decision and repay the debt to the company.

Result achieved:

The Enforcement Service finally found a way to get through to the debtor – found him, as well as imposed collection against vehicles and non-residential buildings belonging to the debtor and sent materials to the police to bring the company-debtor's CEO to justice. After that, in early October of 2018, the debtor returned UAH 100k to the company at last. The Complainant thanked the Council for assistance. The case was closed successfully.

ACTIONS OF STATE REGULATORS

SUBJECT: OTHER STATE REGULATORS DABI

#17

**The issue pending
DABI registration
for two years gets
resolved in one day**

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

Complaint in brief:

On July 11, 2018, a developer company from Odesa region turned to the Council. For over two years DABI refused to register a ready-to-use facility.

In 2016, the Complainant built a parking lot for the sale of building materials. He turned to DABI to register the facility. The inspection found errors in the application and refused the registration. The Complainant corrected them and re-submitted the documents. DABI refused a second time.

Considering the refusal to be groundless, the company appealed to Odesa Administrative Court. The Court ruled in favor of the Complainant. However, this did not influence DABI – the state agency still did not register the parking lot.

At the same time the company was suffering losses. One could not reimburse building costs because the facility did not work. In addition, it was necessary to pay for the lease of the territory. When it seemed that it was impossible to defend their legal rights, the company lodged a complaint on the BOC website.

Actions taken:

Having promptly examined the merits of the case, on July 12 the Council's investigator called DABI. In particular, he stressed the importance of the court decision enforcement, which came into force.

Result achieved:

Following the conversation, the facility was registered. The case, which remained unresolved for over two years, was solved by the investigator just in one day.

#18

DABI registers sugar plant documents with the Council's facilitation

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

Complaint in brief:

On October 2, 2018, a leading Ukrainian sugar producer appealed to the Council with a complaint about the inactivity of DABI.

As part of the reconstruction and expansion of production, the company planned on-site construction of two technical facilities: a beet pulp storage area and a concrete production plant. According to urban planning classification, both objects belong to simple ones (CC1, low consequences of responsibility). Besides, to start building such facilities, it was only necessary to inform DABI thereof as the Complainant did. In accordance with the procedure, the construction inspection makes a record in the corresponding Register within one day and then the applicant has the right to begin construction.

However, DABI did not accept the company's documents. With a delay of several weeks it returned them to the Complainant for him to eliminate minor inaccuracies when completing the forms. The enterprise made recommended changes to the document package but the notification hadn't been registered again. Feeling that DABI inactivity impedes the development of his business, the Complainant turned to the Business Ombudsman Council for help.

Actions taken:

The Council's investigator thoroughly studied case materials and upheld the Complainant's position. She addressed a local DABI and DABI of Ukraine in writing twice and stressed it was necessary to immediately enter the record in the Register. During the investigation, the investigator maintained constant communication with DABI departments in charge.

Result achieved:

With the Council's facilitation, on November 30, the company reported that DABI registered the notification of the start of construction. The case was closed.

#19

Glass manufacturer gets clear explanations on reconstruction of premises from the Ministry of Regional Development

Subject of complaint:

The Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine (MinRegion)

Complaint in brief:

On 23 July, 2018, a leading glass containers manufacturer appealed to the Council with a complaint against MinRegion's actions. The company could not receive a comprehensive and substantiated response regarding construction permits.

When planning a workshop reconstruction in May 2018, the Complainant addressed the Ministry of Regional Development with a number of questions. Particularly, he wanted to find out whether he needed to get permits for specific types of re-equipment, premises renovation and floor replacement. In general, the Complainant formulated six specific questions related to his business.

A month later the company was invited to an individual appointment at the Ministry to consider the appeal. However, the Complainant received only partial replies in writing to two questions out of six.

According to the Complainant, this situation was an exception rather than MinRegion's practice, since there were many examples where the Ministry provided the most comprehensive and substantiated replies. In an attempt to establish a constructive dialogue with the Ministry of Regional Development to correctly document planned works execution, the Complainant turned to the Council for help.

Actions taken:

The Council's investigator asked the MinRegion in writing to provide a comprehensive reply to the Complainant's questions. In addition, the investigator met with the Ministry's authorized representative and discussed the company's case.

Result achieved:

In early September, the MinRegion gave clear instructions on each of six questions of the appeal and explained in detail how to submit the documents. On September 10, the manufacturer confirmed that the complaint had been resolved.

The Complainant so described the Council's role in the case: *"An authoritative mediator's participation in solving complex issues for the company allowed to break the ice of bureaucracy and separation of authorities from problems of businesses and open new horizons to solve problematic issues"*. The case was closed successfully.

#20

MEDT finally drops special permit rules against a book factory

Subject of complaint:

The Ministry of Economic Development and Trade (MEDT)

Complaint in brief:

On April 2, 2018, a book factory filed a complaint against MEDT actions. The Ministry failed to comply with a court ruling cancelling special requirements against the Complainant.

In 2015-2016, the factory, which works with leading Ukrainian publishers, exported printed materials abroad. The total value of these shipments was over UAH 50mn. However, a UK buyer delayed payment and some invoices had to be collected through court, which led to a delay in earnings of about GBP 3,000 coming to Ukraine. Because of this, in early 2017 the State Fiscal Service requested that MEDT switched the company to an individual licensing regime for foreign economic activities. This meant that, for each export or import operation, which the book factory handles quite a lot of, it now had to request a separate permission from the government agency.

Arguing that applying such a severe penalty was disproportionate to the supposed violation, that this was the first such instance, and that the company paid its taxes diligently, the company appealed the MEDT decision in court. The court agreed and ordered the Ministry to cancel the individual licensing regime.

However, the MEDT has been dilatory in complying with the court's ruling, which made the Complainant turn to the BOC.

Actions taken:

The Council studied the case materials and supported the Complainant's position. The Council's investigator turned to the MEDT to check the progress of the implementation of the court decision. Having lost the appeal and planning to challenge it, the Ministry was looking for options that would allow it to keep special requirements in place. However, the BOC investigator pointed out that the ruling had already come into force and had to be acted upon. The investigator kept pursuing the case for a month, constantly monitoring its status.

Result achieved:

The MEDT complied with the court decision and dropped the individual licensing requirements against the Complainant. The case was closed successfully.

ACTIONS OF LOCAL COUNCILS

SUBJECT: LOCAL COUNCILS/MUNICIPALITIES OTHER

#21

Raidership against a Cypriot investor halted

Subject of complaint:
Martyniv village council
of Pulynskiy District
of Zhytomyr Oblast
(village council)

Complaint in brief:

On July 13, 2018, a Cypriot investor turned to the Business Ombudsman Council. The state registrar of the village council illegally re-registered business the Complainant's Ukrainian business to another person.

In 2005 a Cyprus company opened its representative office in Ukraine and invested in real estate. However, in July 2018, the owners found out that the company no longer belonged to them. The state registrar of the village council in Zhytomyr Oblast changed information on the director of the company and re-registered the business to the asset management company. The registrar also did not notify the old owners that he was removing them from the register, although this was legally binding.

At the same time, the Complainant insisted that he did not sell business to anyone and provided no power of attorneys for such actions. To protect its legitimate interests the company turned to the Anti-Raidership Commission of the Ministry of Justice and the BOC.

Actions taken:

Having examined case materials, the Council's investigator asked the MinJust for an objective and prompt consideration of the Complainant's application. The Ministry replied that it was studying the documents received on the case of the company.

Result achieved:

The MinJust canceled registration data records and returned business to the legal owner. The case was closed.

ACTIONS OF STATE COMPANIES

SUBJECT: STATE COMPANIES OTHER

#22

**Energoatom SE
finally pays off
for the equipment
supplied**

Subject of complaint:
The National Nuclear
Energy Generating
Company Energoatom
(Energoatom SE)

Complaint in brief:

On August 8, 2018, a large refrigeration and air conditioning equipment supplier approached the Council. Energoatom SE owed UAH 1.7 mn to the Complainant for the equipment supplied.

In January 2018, the State owned enterprises ordered industrial air conditioners worth UAH 1.7 mn. from the supplier. On March 29, the equipment was delivered to the customer and he signed an Acceptance Report in confirmation thereof. Under the contract, the buyer had to pay for the received goods within 30 business days.

However, as of September 14, Energoatom SE delayed paying for the equipment. The Complainant turned to the Business Ombudsman Council with the said issue.

Actions taken:

The Council's investigator studied the case materials and upheld the Complainant's position. He asked the state owned enterprises in writing to fulfill its contractual obligations. Only after the Council's appeal Energoatom's Department informed of the reasons for payment delay. It turned out a tax invoice lacked a calculation adjustment to it.

Result achieved:

The enterprise promptly prepared the necessary calculation. On November 21, a state-owned enterprise finally paid off the supplier in full. The Complainant thanked the Council for facilitation in resolving the case.

LEGISLATION DRAFTS/AMENDMENTS

SUBJECT: DEFICIENCIES IN REGULATORY FRAMEWORK TAX

#23

Tax invoices can now be registered even with a negative balance value

Subject of complaint:
The State Fiscal Service of Ukraine (SFS)

Complaint in brief:

On May 21, 2018, the Ukrainian power supplying company addressed the Council. The enterprise complained about the incorrect functioning of the system of electronic administration of value added tax (SEA VAT) when registering tax invoices.

In December 2016, the Verkhovna Rada of Ukraine adopted amendments to the Tax Code. These changes (p.200-1.9) allowed enterprises to register tax invoices even with a negative balance value. But the SFS and the Ministry of Finance did not provide this opportunity to taxpayers, because they did not develop the corresponding software. This issue was addressed to the BOC by a joint-stock company.

Actions taken:

Within the framework of the Memorandum on Partnership with the SFS, the Council introduced the complaint to the tax Expert Group meeting. Parties met and discussed the status of development and updating of software. The Council stressed the importance of the issue for taxpayers and the need for its prompt resolution.

Result achieved:

Having revised the system, state bodies reported that the mechanism was implemented. From now on taxpayers are able to register tax invoices even with a negative balance value.



3. COOPERATION WITH STAKEHOLDERS

The Business Ombudsman Council possesses unique statistics, systemic concepts and the elaborated vision of how processes should operate in order to improve the Ukrainian business climate. To implement these initiatives and solve specific business problems we encourage state bodies, leading Ukrainian business associations, international organizations, media and other parties to collaborate in a mutually beneficial way. We are convinced that joint efforts and common principles of integrity will result in finding answers to pressing business issues, coordinating domestic policies and elaborating best practices for Ukrainian enterprises.

3.1.Cooperation with state bodies

EXPERT GROUP MEETINGS HELD IN QUARTER IV, 2018:

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

	Number of expert group meetings	Number of cases discussed
State Fiscal Service	11	51
Ministry of Ecology and Natural Resources	1	5
Prosecutor's Office	2	12
National Police	3	26
State Security Service	1	0
Kyiv City State Administration	1	3
Ministry of Justice	1	2
Total	20	99

The BOC has signed 9 Memoranda of Cooperation with: the State Fiscal Service, the Security Service of Ukraine, the Ministry of Ecology and Natural Resources, the State Regulatory Service, the Ministry of Justice, the National Anti-corruption Bureau, Kyiv City State Administration, the National Police and the National Agency on Corruption Prevention.



* Expert groups work on an informal basis

To exemplify our cooperation with state bodies in terms of expert groups, let us pay your attention to the case below:



REPEATED SEARCHES BASED ON ONE COURT ORDER ARE INADMISSIBLE!

Subject of complaint:

Investigation Department
for Financial Investigations
of the General Directorate
of the State Fiscal Service
in Kyiv City (Tax Police)

Complaint in brief:

The company providing visa services addressed the Council.
The company complained about unlawful actions of the Tax Police – law enforcers searched the Complainant twice, whereas they had a court permit only for one search.

Based on a court order, an investigator and other Tax Police officers legally got into the Complainant's office for the first time and started the search. After spending some time there, all the law enforcers left the premises. They returned the next day to renew the search. However, they presented the same court order as the first time.

However, the Complainant objected to it – in his view, the court order allowed only one entry into the office, which had already been completed, as police conducted the search and left the premises.

Actions taken:

The Council's investigator analyzed the case files and relevant legislation and concluded that the Complainant was right. The second entry into the office that took place on another day couldn't be considered authorized by court and, therefore, was illegal. The Council wrote about it to the Tax Police and brought up the Complainant's issue at the Expert Group meeting created based on Memorandum on Partnership and Cooperation between the Council and the SFS of Ukraine.

During the meeting, the government agency expressed an alternative approach to interpretation of the law. The Tax Police responded the Complainant's case was a mixed issue having different practices. Therefore, it did not see any violations in the investigator's actions.

However, being convinced of its legal position correctness, the Council did not give up. The investigator conducted an additional analysis of court judgements on this issue, including both investigating judges and appellate instance courts decisions. Everything pointed towards legitimacy of the Complainant's position.

Therefore, the issue was repeatedly brought under consideration at the Expert Group meeting. At the meeting the Council's representative presented findings of an in-depth research as well as arguments in favor of the company. The Council asked to officially inform all the Tax Police authorities that one mustn't conduct a repeated search based on one court order.

Result achieved:

Having revised the system, state bodies reported that the mechanism was implemented. From now on taxpayers are able to register tax invoices even with a negative balance value.

3.2. Public outreach and communication

The Council's outreach activities are meant to bring knowledge about pains and gains of companies operating in Ukraine to a wide audience. We regularly speak at presentations, public talks and seminars to explain enterprises suffering from state bodies' malpractice how they can resist it by turning to the BOC and sharing our recent developments in this sphere.

To communicate the message to receivers, the Council cooperates with mainstream newspapers, magazines, TV and radio channels solely free of charge. For our part, we share expert opinions, legal analysis, systemic developments and recent statistics on business complaints concerning malpractice of state bodies.

OUTREACH

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

14.10

Horasis China Meeting in Ukraine, organized by Horasis Ukraine, China Federation of Industrial Economics and Horasis Switzerland

18.10

Presentation of the Confederation of Italian Industry in Ukraine, organized by the Chamber of Commerce and Industry

19.10

Meeting with Deputy Minister of Foreign Affairs of Germany, organized by Reanimation



19.10

Seminar: "Application of the Law on LLCs and ALCs: New Opportunities", organized by the Corporate Governance Professional Association

22.10

Meeting with Oleksandr Vlasov, Acting Head of State Fiscal Service of Ukraine



24.10

The VI Annual Legal Forum, organized by Yuridicheskaya Praktika

26.10

Czech-Ukrainian Business Forum in Prague, organized by the Ukrainian law firm «GOLAW» with the support of the Embassy of Ukraine in the Czech Republic and the Chamber of Commerce and Industry of the Czech Republic



29.10

UNIC Members Get-Together: Integrity Connects Business, organized with the support of Arzinger law firm



29.10-01.11

Business Intergity Seminar on SOEs for Central Asia, organized by EBRD and OECD in Kyrgyzstan



31.10

Dialogue between state authorities and business: meeting with the President and government representatives, organized by the European Business Association

02.11

Press Breakfast on "Institutional Reform of the State Fiscal Service and Customs – Mission Is Impossible?", organized by the Reanimation Package of Reforms

08.11

Conference "Corporate Security", organized by Sayenko Kharenko LawFirm



09.11

II Tax Forum "Tax & Business Talks" organized by the Association of Attorneys of Ukraine

12.11

Seminar for students and teachers of the Law Academy in Kharkiv about the Business Ombudsman Council operations



14-15.11

Collective Action Conference: "Evolution to Revolution", organized by the International Centre for Collective Action at the Basel Institute on Governance



16.11

Compliance Week, organized by the UNIC and Ferrexpo in Yerestovo (Poltava Region).



19.11

Presentation of the draft law #RaidershipStop, organized by the Chamber of Commerce in Ukraine, European Business Association, Union of Ukrainian Entrepreneurs, Better Regulation Delivery Office



21.11

LHS Discussion Hub "The Limits of Intervention of Administrative Courts in the Discretion of Executive Bodies"



26.11

IV Real Estate Forum & Project Awards 2018, organized by the Ukrainian Real Estate Club



27.11

Meeting with Oleksandr Kolotilin, Acting Head of the State Service of Ukraine for Geodesy, Cartography and Cadastre, organized by American Chamber of Commerce in Ukraine



28.11

Round table "Customs Work in the Public View", organized by the Institute for Economic Research and Policy Consulting



29.11

Discussion: "Rates Management: how recent changes in tax law might impact business", organized by Yuridicheskaya Praktika and GOLAW



02-07.12

Peer-shadowing at the Swedish Anti-Corruption Institute in Stockholm, Sweden



04.12

Workshop for members of the Ukrainian Confederation of Builders on the work of the Business Ombudsman Council



05.12

Forum "Kyiv region Investment 2018: Competition for Investment Resources", organized by the Bila Tserkva Strategic Development Agency jointly with Kyiv Oblast State Administration and supported by UkraineInvest

07.12

IV Seminar "ID Legal Practice & Talk", organized by legal entity ID Legal Group

07.12

Conference: De-Corruption of Ukraine, organized by the Transparency International Ukraine



08.12

International Summit "Collective Action of the Private Sector for Combating Corruption", organized by the Center for International Private Enterprise

11.12

Conference: "Ukraine 2019: a vision of economic growth. Industry, innovation, finance, export", organized by the Ukrainian Chamber of Commerce and Industry

13.12

Business Seminar: "Instruments to support the small and medium-sized enterprises in order to enhance the EU-Ukraine economic relations", organized by the Embassy of Bulgaria, the Ukrainian Chamber of Commerce and Industry and the EU Delegation to Ukraine

THE MEDIA



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

22 500+
times

99%

mentions being positive and constructive

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

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

Київ Post



ЕКОНОМІЧНА ПРАВДА

журнал | пп.ш
НВ **НОВОЕ время**

ЮРИДИЧЕСКАЯ ПРАКТИКА
ФАКТЫ ЮРИДИЧЕСКОГО КОРРЕКТОРА

We also made a number of TV

УА:ПЕРШИЙ

8 КАНАЛ

ЕСПРЕСО

UA|TV

and radio appearances



Радио Свобода

SOCIAL MEDIA

We also actively use social media to get our message through.



Facebook

(@BusinessOmbudsmanUkraine)

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



YouTube

@Рада бізнес-омбудсмена

We produce useful and emotional videos on submitting complaints, cast success stories of our complainants, provide legislative life hacks. YouTube channel enables us to build trust and authority with our audience.



Instagram

@business_ombudsman_council

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



Twitter

@Bus_Ombudsman

We use this channel to quickly get our message out for the English-speaking audience.

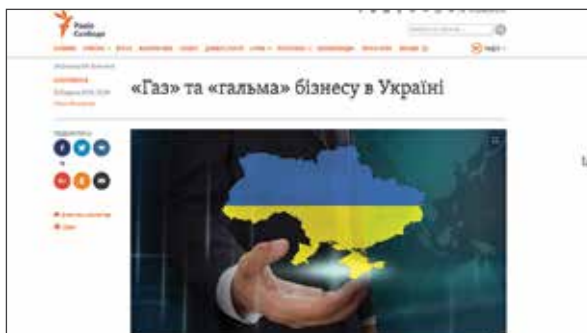


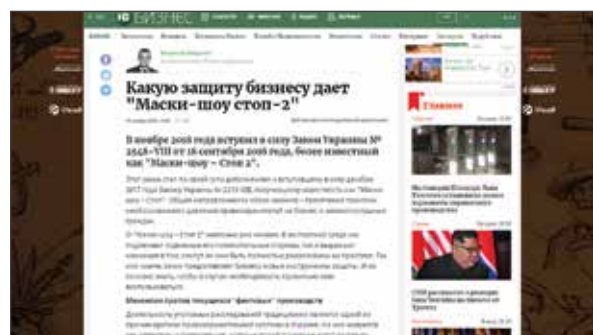
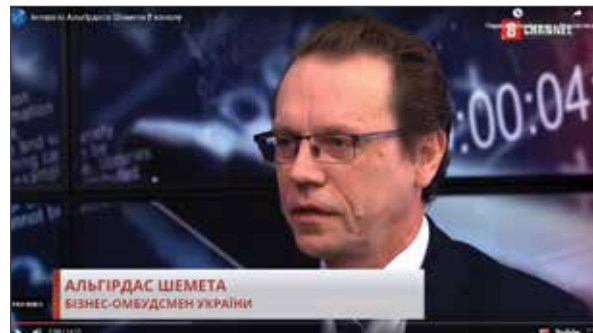
LinkedIn

@Business Ombudsman Council

We constantly keep the business community updated about our recent developments.











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