

01 July – 30 September

QUARTER III 2017

REPORT

ADVOCATING FOR BUSINESS WITH THE GOVERNMENT

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

FOREWORD OF THE BUSINESS OMBUDSMAN

Dear Friends, Colleagues, and Partners,

It is my pleasure to present the Business Ombudsman Council's report for Quarter III 2017.

This has been a successful quarter for the Business Ombudsman Council. Our organization has expanded over the last three months and we have made a number of particularly notable achievements.

The Council received 408 complaints, the biggest quarterly amount since launch of operations. We also undertook the largest number of investigations in the Council's history – 283. We showed the best timeliness of conducting investigations – 67 days, which is 23 days less than envisaged by the Rules of Procedure.

We closed over a half of cases with positive – either financial or non-financial – result for complainants. The direct financial impact of our operations was almost UAH 200 million in this quarter, and the overall economic effect since launch of our operations has exceeded UAH 10.4 billion.

In this quarter, we signed the Memorandum of partnership with the State Security Service of Ukraine. It is the ninth memorandum we

have signed with government agencies. Overall, government agencies implemented 87% of our recommendations.

Eight new employees – highly qualified experts with experience in commercial, corporate, tax, criminal and antimonopoly legislation – joined our team. Now our team has grown to 30 employees enabling us to investigate even a bigger number of claims from Ukrainian entrepreneurs.

We continued to work on setting up the activities of the Ukrainian Network of Integrity and Compliance – a new initiative for responsible business that we initiated in May 2017 with the support of EBRD and OECD. Our effort culminated in the official launch of UNIC's operations at the Founding Meeting held right after the end of the reporting period.

As this report underscores, we strongly commit to serving the legitimate interests of business, delivering positive results and enlisting gamechanging partners to accelerate the pace of change. We will continue to make the most of our mandate and forge ahead to shape more just and corruption-free business environment.

Algirdas Šemeta Business Ombudsman





COMPLAINT TRENDS



In the third quarter of 2017, the Business Ombudsman received



In Quarter III 2017, we received the recordbreaking number of complaints since launch of operations -408. This figure almost doubled in comparison with the previous quarter. Compared to similar reporting period of 2016, this indicator has also increased significantly by 69%.

Total number of complainants received since launch of operations in May 2015: 2362

TOP-10 SUBJECTS OF COMPLAINTS RECEIVED IN QUARTER III 2017



62% of complaints

pertain to tax issues

The dilatory VAT refund, which had been the common issue in all the previous periods, reduced more than by half in comparison with the previous reporting period due to ongoing reforms in VAT tax refund area.

TAX ISSUES

ACTIONS OF STATE REGULATORS

ACTIONS OF LOCAL COUNCILS/MUNICIPALITIES

NATIONAL POLICE ACTIONS

PROSECUTOR'S OFFICE **ACTIONS**

STATE SECURITY SERVICE ACTIONS

CUSTOMS ISSUES

MINISTRY OF JUSTICE ACTIONS

LEGISLATION DRAFTS/ AMENDMENTS



ACTIONS OF STATE COMPANIES

OTHER

40% of complaints

concern tax invoice suspension

This issue emerged soon after the launch of an automatic system for tax invoice registration on July 1, 2017. This fact has entailed a number of noteworthy features in the complainant's profile, which you will find later in the report.

8% of complaints was about the actions

of state regulators

This number has almost doubled in comparison with the similar reporting period of 2016.

Threefold

increase is recorded in the number of complaints concerning actions of local councils in comparison to Q2 2017. Specifically, the business addressed us with issues on allocating land plots and receiving permits/ licenses.





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1.2. Timeliness of the preliminary review of complaints

(Clause 5.3.1 (b) of Rules of Procedure)



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1.3. Number of investigations conducted and grounds for declining complaints

(Clause 5.3.1 (c) of Rules of Procedure)



as of 30.09.2017



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NUMBER OF INITIATED INVESTIGATIONS:

In this reporting quarter, the BOC initiated the record number of investigations since launch of operations – 283, a 77% increase from the previous quarter. In the third quarter of 2017,

the Business Ombudsman initiated







RATIO OF DISMISSED COMPLAINTS:

Even though the number of complaints has grown significantly since the previous quarter, we managed to slightly decrease the ratio of dismissed complaints and performed the lowest ever ratio – just 18% of rejections.

We reduced the rate of rejections by 14 percentage points compared to Q3 2015 and 7 percentage points compared to Q3 2016. This testifies that awareness about our mandate is growing.

MAIN REASONS FOR COMPLAINTS' DISMISSAL IN QUARTER III 2017



1.4. Timeliness of conducting investigations

(Clause 5.3.1 (d) of Rules of Procedure)



AVERAGE TIME FOR CONDUCTING INVESTIGATIONS SINCE 2016:



In the reporting period the Council's team significantly improved timeliness for conducting investigations:

18 days less in comparison with the previous quarter 22 days less in comparison with Quarter 3 2016 RATIO OF CLOSED CASES BY DAYS:

The biggest part of cases – 169, which is 79% of all closed investigations in Quarter III – was conducted within 90 days as the Rules of Procedure envisage. Almost one third of all cases were closed within a month. Only 2% took over 180 days to investigate.



1.5. Government agencies subject to the most complaints **TOP-10** COMPLAINEES





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OTHER COMPLAINEES INCLUDE:

Ministry of Economic Development and Trade of Ukraine	5	
Ministry of Infrastructure of Ukraine	4	
National Bank of Ukraine	3	
State Funds	3	
Antimonopoly Committee of Ukraine	2	
Ministry of Regional Development	1	
Ministry of Internal Affairs of Ukraine	1	
Ministry of Agrarian Policy and Food of Ukraine	1	
State Service of Ukraine on Food Safety		
and Consumer Protection	1	
Ministry of Defence of Ukraine	1	
Ministry of Energy and Coal Industry of Ukraine	1	

In the long trend, we can observe an established TOP set of complainees, namely the SFS, state regulators, local councils/ municipalities, National Police and Prosecutor's Office. After a certain decrease in the first two quarters of 2017, in Q3 the number of complaints against SFS (including the State Tax Inspection and Customs Service) skyrocketed almost twofold. This growth was driven by the implementation of a new automatic system for tax invoices registration (read page 30 for more details on this issue). Local councils and municipalities, which is the second top complainee,

amount to 6% of the total number of complaints. Their share has grown more than twofold in comparison with Q2 2017, when the figures reached almost an all time low.

A growing number of appeals concerning the National Police and Security Service of Ukraine has also been recorded since previous quarter – by 29% and 63% respectively.



1.6. Geographical distribution of complaints received

THE GEOGRAPHY OF COMPLAINTS WIDENED.

This proves that Business Ombudsman's working visits to the regions are taking real effect. While in the previous period a half of complaints originated from Kyiv, only 38% were from the capital in this quarter.

THE MOST ACTIVE REGIONS

remain the city of Kyiv, Dnipro, Kharkiv, Kyiv and Odesa regions. Over 2/3 of complaints came from there.





Quarter 2, 2017



Quarter 3, 2016



The number of complaints from Dnipro, Kharkiv, Cherkasy, Zakarpattya and Vinnytsya regions **has tripled** in comparison with the previous period. The highest – **four-time increase** – in the number of complaints was from Lviv entrepreneurs.

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Quarter 3, 2017



COMPLAINANTS'

Quarter 2, 2017





Manufacturing

Wholesale and Distribution

Agriculture and Mining



Real Estate and Construction



Individual Entrepreneurs



Other





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

In this reporting quarter, the number of complaints from wholesalers and distributors as well as from agriculture market players grew 2.5 times and 3.5 times accordingly. There was also a sharp rise of inquiries from manufacturers – by 73%. Obviously, this was driven by the bulk for complaints regarding tax invoice suspension, since these spheres turned to be the most vulnerable to this issue.

OTHER INDUSTRIES INCLUDE:

Autotransport	16
Retail	9
Repair and Maintenance Services	8
Construction	7
Supply of electricity, gas, hot water, steam and air conditioning	6
Electric installation works	5
Financial Services	5
Health, Pharmaceuticals, and Biotech	5
Physical Person	5
Public Organizations	4
Telecommunications	4
Warehousing	4
Consumer Services	3
Hire, rental and leasing	3
Transportation and Storage	3
Advertising	2
Energy and Utilities	2
Engineering, geology and geodesy areas activity	2

Incurance	2
Insurance	2
IT companies	2
Non-profit	2
Private security firms activity	2
Activities in the field of broadcasting	1
Air Transport	1
Audio recording	1
Business Services	1
Farming	1
Fishing services	1
Manufacturing and distribution	1
Oil and Gaz	1
Printing and reproduction activity	1
Publishing and printing services	1
Scientific research and development	1
Software and Internet	1
State Enterprise	1
Wastewater treatment, sewerage	1

SIZE OF BUSINESS



Structure (share in percent)





In the long run, we observe a growing share of complaints from large businesses, although small and medium companies remain the main source of complaints. The number of complaints from small and medium business skyrocketed in Q3 2017, which was driven by tax invoice suspension complaints we have been receiving mainly (98%) from small and medium business.



82,

3 _{Quarter}

Structure (share in percent)



Local business is most active in seeking the Business Ombudsman's support, although the share of inquiries from foreign companies is gradually increasing. In the long run, a growing share of foreign enterprises is recorded.

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1.8. Feedback



COMPLAINANTS ASSESS OUR WORK BASED ON SEVERAL CRITERIA:



They also indicate what they are satisfied with most in dealing with us and what areas need improvement. 27

Адвокат бізнесу перед державними органами



не рекорникал измания и притиство одержало довтоочисувану кантанцию №2 04 жовтия 2017р. наше підприємство одержало довтоочисувану кантанцію №2 в жої зазначено, що на підставі Рішення Комісії ДФС № 11342/30443831 від-03.10.2017 модатнова наказация №11 заросстрована в сДРПП 04.10.2017р. Дуже цінусмо Вашу оперативність і відповідальність та сподіваємося на податьшу влідну і взасмовнігідну співпращо.

З Повагою



А.В. Жуков

We highly appreciate your efficiency and accountability.

Your experts were able to objectively understand the situation and took all necessary steps to solve it.



SUMMARY OF KEY MATTERS AND FOLLOW-UP OF RECOMMENDATIONS

2.1. Systemic issues identified

Much of the Business Ombudsman's work is still generated by complaints concerning the State Fiscal Service. The figures in the reporting quarter say that **62% of complaints received were tax related.** The most problematic issue of previous periods – dilatory VAT refund – declined almost twice as compared to Q2 2017 and Q3 2016.

In the meantime, **a new** issue of VAT tax invoice suspension appeared on agenda. This was obviously driven by the specifics of entering into force of tax invoices registration. Such a big share of complaints regarding VAT tax invoices (40% in the total number of complaints) left notable sign on the profile of complainant. We can observe this in terms of:

- complainants' industries which were influenced the most – growth for wholesale and distribution, manufacturing, agriculture and mining;
- the size of the business predominantly small and medium-sized;
- origin of investment predominantly local.

There was **a progress in** relationships with the law enforcement agencies in this quarter. The Council signed the memorandum of cooperation with the State Security Service of Ukraine. In addition, right after the end of the reporting period, Yurii Lutsenko, Prosecutor General, signed a Regulation (Letter of Guidance) for his deputies and heads of Regional Prosecutor's Offices on prevention of business entities' rights violations. The Business Ombudsman Council, American Chamber of Commerce, Society of Ukrainian Entrepreneurs and the European Business Association joined the document elaboration. The Regulation aims at regulating and minimizing unmotivated actions of enforcement officers during searches. Prosecutor General bound his subordinates to align the procedure of conducting investigative actions that can limit rights and interests of business entities.

There was almost **a threefold increase in the number of complaints concerning actions of local councils/ municipalities** in comparison to Q2 2017. Specifically, the business addressed us with issues on allocating land plots and receiving permits/ licenses.

Actions of state regulators remain a troublesome area for entrepreneurs. Taken that, the Council's team is currently working on the new systemic report devoted to this issue that is due to be published in January 2018.

Message on tax invoice suspension

The fictitious VAT refund is a major concern for the Ukrainian economics. Millions of hryvnias are laundered from the Ukrainian budget as a result of corruption schemes. To solve this issue, on July 1, 2017, the State Fiscal Service of Ukraine (SFS) launched a new system of tax invoices checkout.

During the first weeks of system operations, it turned out that it had certain bugs. As of October 11, 2017, about 0.34% of the total number of tax invoices were blocked (however, this is three times less in comparison with the first decade of July when this number was 1.1%). Thus, 230k tax invoices out of 68,2 mln registered tax invoices worth UAH 383 bln were blocked, which is a relatively small number.

We have been receiving complaints from the business concerning tax invoices blockage since July. By the end of the reporting period, 166 complainants turned to us with this issue. We have already closed one-third of their claims successfully. The average time of such cases consideration is only 24 days.

If you are facing similar problems and cannot resolve them on your own, feel free to address us.

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2.2. Information on closed cases and recommendations provided





closed with immediate desirable (either financial or non-financial) outcome for complainants.



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TOP-10 SUBJECTS OF CLOSED CASES IN QUARTER III 2017

QUARTER 3, 2017 OUARTER 2, 2017

QUARTER 3, 2016



Local councils/municipalities other issues



14

The second top subject of closed cases, were state regulators' issues, although its total share is quite modest - only 6%.

inspections also decreased - by 14%. Closed cases regarding termination of agreement on electronic reporting, which boomed in the previous quarter, reduced by 37% in comparison with Q2 2017.

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FINANCIAL IMPACT

IN QUARTER III 2017: 197 381 634 UAH

Tax VAT refund	101 596 410
Tax inspections	76 566 571
Other tax issues	12 925 441
Tax VAT invoice suspension	4 537 876
Other customs issues	1 237 741
Overpaid customs duties refund	242 459
ATO budget compensations	275 135

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DIRECT FINANCIAL IMPACT OF BOC'S OPERATIONS **10450832762** UAH

20 May 2015 – 30 September 2017



NON-FINANCIAL IMPACT OF BOC'S **OPERATIONS IN QUARTER III 2017:**



Tax records reconciled, tax reporting accepted



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



Legislation amended/enacted; procedure improved



Permit/license/conclusion/ registration obtained



State official fired/penalized



Claims and penalties against the Complainant revoked/ Sanction lifted



Contract with state body signed/executed



Criminal case initiated against state official/third party



The number of malpractice by officials, which we helped to cease in this guarter, was similar to the previous period and remains the key nonfinancial impact of our work. Acceptance of tax documents has increased 6 times in comparison with the previous quarter and was the second most common non-financial impact in the reporting period. We also observe an increase in the number of closed criminal cases against complainants, while the number of obtained permits has dropped.

QUARTER 3, 2017 QUARTER 2, 2017 QUARTER 3, 2016

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GOVERNMENT AGENCIES WHOM THE BOC ISSUED RECOMMENDATIONS IN 2015-2017 (CASE-BY-CASE BASIS) AND RATIO OF IMPLEMENTATION



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Recommendations issued



By the end of reporting quarter, government agencies implemented 87% of all recommendations issued by the BOC since launch of operations. Although the majority of issues the BOC receives are now successfully resolved on a case-by-case basis, we wish that government agencies put more emphasis on the implementation of systemic recommendations in the reports we publicized.

SYSTEMIC RECOMMENDATIONS IMPLEMENTED IN THE REPORTING QUARTER

REPORT & ISSUE

Systemic report "Reducing the Risk of Corruption and Attracting Investment to the Construction Industry":

issues of state construction rules and standardization in construction.

BOC'S RECOMMENDATION

The Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine to draft a legal act approving the technical regulation of building materials in full compliance with EU Regulation #305/201, passed by the European Parliament and Council on March 9, 2001, to establish harmonized conditions for placing building materials on the market, and repealing the Council's Directive #89/106/EEC, in compliance with Ukraine's commitments to the Association Agreement with FU.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

The Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine developed a draft Law of Ukraine "On Basic **Requirements for Buildings** and Conditions of Placing on the market of Construction Products." On August 18, 2017, the Government approved the above-mentioned draft law. On September 29, 2017, the draft law was submitted to the Verkhovna Rada of Ukraine and registered under #7151 of October 2, 2017. On October 4, 2017, it was presented to the Committee on Construction, Urban Development, Housing and Communal Services for familiarization and is currently being processed by the committee.

REPORT & ISSUE

Systemic report "Natural Monopolies vs. Competitive Business: how to improve relations"

BOC'S RECOMMENDATION

Develop a plan for the switch from cost-plus rate setting to RAB methodology for power and gas companies and implement all the necessary measures to ensure incentivebased rate setting in centralized heating, water and sewage services.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

The Government approved the incentive-based rate setting for thermal energy produced from alternative energy sources. It was announced at the Government meeting by Gennadiy Zubko, Vice Prime Minister – Minister of Regional Development, Construction, Housing and Communal Services of Ukraine, when he commented on the adoption of the resolution on amendments to the Law "On heat supply".

REPORT & ISSUE

Systemic report "Challenges for Government and Business in Dealing with Local Government":

implementation of territorial authorities and local self-government organization reform through decentralization.

BOC'S RECOMMENDATION

Remove legal gaps regarding peculiarities of voluntary unification of territorial communities located in adjacent counties.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

On September 13, 2017, the Government approved an action plan to intensify the reform of local selfgovernment and state support for the process of unification of territorial communities. The project was designed to develop the Government Priority Action Plan for 2017 and the Medium-Term Government Priority Action Plan up to 2020. On August 30, 2017, the Government announced the settlement of mechanism of voluntary unification of territorial communities located in adjacent counties in accordance with worked out long-term plans. Namely, at the Government meeting, the amendments to the Methodology for the formation of capable territorial communities were approved.

REPORT & ISSUE

Systemic report "Challenges and problems in the sphere of competition protection and oversight"

Ensure implementation of the requirements set forth in Section 6 of the Law of Ukraine "On State Aid to Undertakings".

BOC'S RECOMMENDATION

The Cabinet of Ministers of Ukraine to establish procedure for recovery of state aid acknowledged inadmissible for competition.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

On July 4, 2017 the Cabinet of Ministers of Ukraine adopted the Resolution #468, which approved the Procedure for recovery of illicit state aid acknowledged inadmissible for competition.

REPORT & ISSUE

Systemic report "Challenges and problems in the sphere of competition protection and oversight"

Ensure the existence of proper state aid monitoring mechanism in Ukraine.

BOC'S RECOMMENDATION

AMCU to immediately start inventory of existing state aid measures, including, inter alia, by introducing the State Aid Registry.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

In August 2017, the Antimonopoly Committee of Ukraine announced the test mode launch of the "State Aid Portal" (http://pdd. amc.gov.ua/). The "State Aid Portal" is designed to collect information on existing and new state aid, contains state aid register, register of cases, decisions, etc. By using the Portal, one can easily provide information on the state aid.

REPORT & ISSUE

Systemic report "Combatting Raidership: current status and recommendations"

Ensure objective application of the mechanism of monitoring and off sight documentary audits of state registrars; along with proper disclosure of the respective results by the Ministry of Justice of Ukraine.

BOC'S RECOMMENDATION

Disclose the results of all off sight documentary audits of state registrars.

ACTIONS TAKEN BY GOVERNMENT AGENCIES

In August 2017, the Ministry of Justice began to publish on its website those cases when, as a result of the off sight documentary audit, a sanction comprising temporary restriction of access or complete blockage of access was imposed vis-à-vis a state registrar (see https://minjust. gov.ua/spysok-der-reest-tanot). The Ministry of Justice of Ukraine now ought to disclose only those cases when, as a result of the off sight documentary audit no violations were found.

2.3. Summary of important investigations

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

TAX ISSUES

SUBJECT: VAT REFUND



SFS refunds VAT worth over UAH 37 mn to TOV Martin^{*}

Subject of complaint:

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

* Here and further in the report the Complainant has kindly agreed to disclose his name for communication purposes

Complaint in brief:

On April 24, 2017, a construction company with foreign investment TOV Martin turned to the BOC regarding delay by MD of SFS in the City of Kyiv to refund to Complainant VAT for October 2016 in the amount over UAH 37 mn. The Complainant tried to solve the issue, and turned to the SFS of Ukraine and the Ministry of Finance of Ukraine, but to no avail.

Action taken:

The BOC investigator found out that the SFS performed unscheduled on-site tax audit of the Complainant and compiled a certificate stating that the Complainant didn't violate the legislation when declaring budget VAT refund.

Thus the BOC investigator addressed the SFS and the MD of SFS in the City of Kyiv of Ukraine with the request to refund VAT to the Complainant. He also presented the case at the meeting of the BOC-SFS expert group.

Result achieved:

On July 11, the Complainant informed the Council that VAT for October 2016 was repaid to him in full. The case was closed.

SUBJECT: VAT TAX INVOICES SUSPENSION



SFS registers tax invoices worth UAH 2mn

Subject of complaint: State Fiscal Service (SFS)

Complaint in brief:

On August 11, 2017, a Kyiv-based engineering company turned to the BOC with a complaint against the SFS. The recentlyintroduced monitoring system had suspended the registration of the Complainant's tax invoices worth UAH 2mn. Meanwhile, the SFS Commission kept delaying a decision on the registration. The company received no explanations from the SFS regarding the hold-up and options for releasing the tax invoices.

Action taken:

The BOC investigator talked over the specifics of the new system with the Complainant, explaining its working principles and steps that needed to be taken to ensure the timely registration of tax invoices. The investigator also discussed the Complainant's case with members of the SFS working group, sent a written request to support the Complainant's position, and proved that there was no basis for suspending the tax invoices.

Result achieved:

On August 20, the Complainant notified the BOC that the tax invoices had been successfully registered. Thanks to the BOC intervention, the case was closed in a few days.



SFS registers agri-firm's tax invoices

Subject of complaint: State Fiscal Service (SFS)

Complaint in brief:

On August 14, 2017, a Kyiv Oblast enterprise specializing in growing and selling agricultural production turned to the BOC with a complaint against the SFS. Over July and August, the SFS's automatic monitoring system suspended the registration of several of the company's tax invoices. The system did not take into consideration the nature of the company's business, which is that the firm purchases seeds and consumables such as fertilizers and diesel fuel for farm equipment, but supplies finished products to its customers.

The Complainant tried independently to resolve the issue by first providing additional documents confirming the type of business operations to the appropriate SFS Commission. He then submitted a special taxpayer datasheet that explained the characteristics of the Complainant's business activities. Despite all the Complainant's endeavors, the SFS Commission would not register tax invoices, while offering no explanation for its decision. On August 16, the BOC investigator turned to the Secretary of the regional working group under the SFS Commission and discovered that the Complainant's case was in the process of being reviewed by the Commission. The investigator also sent a written request to the SFS and its subordinated units asking them to urgently take a decision regarding the registration of the tax invoices, taking into account files and datasheets, provided by the Complainant.

Result achieved:

Within a month, the SFS registered all tax invoices of the company. The case closed successfully.



Kirovograd Oblast firms are able to properly register tax invoices

Subject of complaint:

State Fiscal Service (SFS), Oleksandriya Joint State Tax Inspection under the Kirovograd Oblast SFS

Complaint in brief:

In July 2017, two enterprises that report to the Oleksandriya tax office turned to the BOC with similar complaints. Both companies had submitted tax invoices in time, but were unable to register them. In one case, the tax invoices simply disappeared from the system after being submitted; in another case, the tax invoices were blocked by the main SFS.

Action taken:

Having studied the case, the BOC investigator turned to the Oleksandriya tax office with a request to assist the Complainants in submitting their tax invoices and not to fine one of them for submitting the tax invoice late. The BOC also involved both the main SFS and the Kirovograd Oblast SFS in resolving the issue.

Result achieved:

Thanks to the BOC's intervention, the Complainants managed to register their tax invoices. Both cases were successfully closed in a few days.

SUBJECT: OTHER TAX ISSUES



SFS refunds "Azovmash" a profit tax overpayment worth UAH 2mn

Subject of complaint:

Mariupol Joint State Tax Inspectorate of the Donetsk Oblast Main Administration of the SFS (Mariupol tax office), Mariupol State Treasury Department (Mariupol treasury)

Complaint in brief:

At the end of June 2017, the BOC received a complaint from "Azovmash", a Mariupol-based manufacturer of railway cars and heavy machinery. The Complainant had been trying to get a profit tax overpayment of UAH 2 million refunded since 2014. The company had addressed the district, appeals and high administrative courts of Ukraine, all of whom had ruled in the Complainant's favor. Still, the Mariupol tax office and Mariupol treasury failed to carry out these rulings and evaded a refund in every possible way.

Action taken:

On June 30, the BOC investigator turned to the SFS and the State Treasury Service of Ukraine, requesting to check the procedures for refunding the Complainant. As a result, the State Treasury confirmed that the overpayment was supposed to be refunded to the Complainant.

Result achieved:

On August 2, the Complainant reported that the overpayment had been refunded in full. Due to BOC intervention, a case that had gone unresolved for over three years was successfully closed in six weeks.

#6

SFS refunds LPG carrier UAH 2mn profit tax overpayment

Complaint in brief:

On July 26, 2017, the BOC received a complaint against the Dolyna tax office and the Ivano-Frankivsk SFS from "Ukrspetstransgaz", an enterprise specializing in transporting liquefied propane gas (LPG). For five months, the Complainant had been appealing to local and regional tax authorities to refund UAH 2 million in profit tax that the firm had overpaid. However, the tax authorities initially rejected the request and then delayed the refund.

Subject of complaint:

Dolyna Joint State Tax Inspectorate of the Main Office of the State Fiscal Service (Dolyna tax office), General Division of the State Fiscal Service of Ukraine in Ivano-Frankivsk Oblast (Ivano-Frankivsk SFS)

Action taken:

On August 3, the BOC investigator sent a written inquiry to the Ivano-Frankivsk SFS, asking for an explanation for the delay and a refund of the overpayment to the Complainant.

Result achieved:

On August 7, the Complainant reported that the overpayment had been refunded in full. The case was successfully closed in less than two weeks.

SUBJECT: TERMINATION OF AGREEMENT ON RECOGNITION OF ELECTRONIC REPORTING

#7

A major Ukrainian rice grower's business operation is unblocked

Subject of complaint:

Pechersk State Tax Inspectorate in Kyiv (Pechersk tax office)

Complaint in brief:

On July 13, 2017, a major Ukrainian rice grower turned to the BOC with a complaint against the Pechersk tax office. The company had changed its name, place of registration and all the registration documents according to the procedure written in law. In addition, the Complainant had signed a new agreement on recognition of electronic documents with the Pechersk tax office. But when the Complainant submitted its very first report, the document was rejected. According to the Pechersk tax office database, the agreement had been terminated. Because the company could no longer submit any electronic documents or tax invoices, its business operation was effectively stopped. The Complainant contacted fiscal agencies more than 10 times, but only received formal letters in response and the problem remained unresolved.

Action taken:

The BOC investigator turned to the leadership of the Complainant's current and previous tax offices, and pointed out that there were no legal grounds for rejecting tax documents and that the agreement on recognizing electronic documents needed to go into effect immediately.

Result achieved:

On August 1, the Complainant reported that its business activity was restored: the agreement and submission of tax invoices had resumed. The case was successfully closed in less than two weeks.

SUBJECT: TAX INSPECTIONS



SFS cancels bulk of UAH 400,000 penalty against building materials maker

Subject of complaint:

Ivano-Frankivsk Oblast Main Department of State Fiscal Service in (IF SFS), State Fiscal Service of Ukraine (SFS)

Complaint in brief:

On May 3, 2017, a manufacturer of building materials registered in Ivano-Frankivsk Oblast addressed the BOC regarding tax notices amounting over UAH 500,000, issued by the Ivano-Frankivsk Oblast SFS, based on a tax audit of the company.

Action taken:

Having studied the matter, the BOC investigator wrote to the main office of the SFS noting the lack of documented evidence that the Complainant had violated tax legislation, including alleged fictitious transactions with fuel suppliers. On June 20, the BOC investigator attended an administrative hearing of complaint at the SFS where he additionally expressed the position of the Council.

Result achieved:

On July 19, the Complainant informed the BOC that the SFS had reduced the penalty by over UAH 400,000 and the case was closed.

NATIONAL POLICE ISSUES

SUBJECT: NATIONAL POLICE PROCEDURAL ABUSE



Solomyanska police department returns seized property to complainants

Complaint in brief:

Complaint in brief: On August 9, 2017, the BOC received three complaints against the failure of a Solomyanska PD detective to act from a Group of Companies specializing in manufacture and distribution of power cables. Over half a year, the Complainants were unable to recover their seized property and their business operations were effectively blocked.

The complainant's story started at the end of 2016, the Main Counterintelligence Administration for the protection of the domestic economy under the Security Service of Ukraine (SSU) received a tip that the Group of Companies was manufacturing counterfeits that did not meet established quality and safety standards. The Complainants suspect that this "tip" came from competitors. Operating on this tip, Subject of complaint:

Solomyanska District Police Department in Kyiv (Solomyanska PD) the Solomyanska PD conducted a search and removed products and documents from the Complainants' premises. The Complainants note that the search and confiscation were conducted with numerous violations and the seized goods were partly handed over to the custody of the Complainants' competitors.

The Complainants were unable to solve the problem on their own, so they turned to the court, which ruled in their favor and obligated the Solomyanska PD detective to return the seized property. However, the detective failed to abide by the judgment.

Action taken:

The BOC investigator sent a written request to the Kyiv Chief of Police Department and to the Solomyanska Chief of Police requesting that the court decision be enforced and the seize property returned to the Complainants. The investigator also provided the Group of Companies with suggestions for followup steps. In particular, he explained, that the court can provide proofs, that the Police Department had received the judgment, or repeatedly send it.

Result achieved:

On September 13, the detective implemented the court decisions and explained the reason of the delay –a part of goods was taken for examination. The Complainants received their property and documents back. The case was successfully closed in a month.

ACTIONS OF STATE REGULATORS

SUBJECT: STATE REGULATORS – OTHER ISSUES

#10

The BOC furthers transparency of tenders

Subject of complaint: State Judiciary Administration (SJA)

Complaint in brief:

On August 22, 2017 an IT company that is the official distributor of US-made computer equipment turned to the BOC with a complaint against actions by the State Judiciary Administration (SJA).

The SJA had announced a tender worth nearly UAH 50 million for the purchase of server equipment to equip territorial administrations and courts throughout Ukraine. According to the Complainant, the tender conditions set by the SJA included requirements that violated the principles of fair competition. Firstly, the state agency set very short timeframes for providing server maintenance and support services: within 6 hours of receiving a request. Secondly, the original manufacturer of the equipment was supposed to personally confirm such support service with a matching letter of warranty. The IT company claimed that none of the top global manufacturers who were represented in Ukraine could offer such a service.

The IT company had turned to the tender committee several times with complaints about the terms and conditions, but the SJA rejected all the Complainant's most substantive recommendations. However, the Complainant did not stop at this and filed a formal complaint with the Anti-Monopoly Committee (AMC) and turned to the BOC with a request to participate in the review of this case.

Action taken:

The BOC investigator looked into administrative practices for resolving similar issues with the AMC. The investigator also brought to the attention of the AMC samples of court rulings in disputes related to public procurements. Based on this analysis, the BOC confirmed that the Complainant was justified in its position and recommended that the AMC satisfy the complaint.

Result achieved:

With the assistance of the Council, on August 31, the AMC issued a ruling in favor of the Complainant, agreeing that the terms and conditions in the tender documents indeed violated the principles of fair competition. The AMC also required that the SJA make the necessary changes to the tender requirements. The case was successfully closed within a week.

STATE SECURITY SERVICE ACTIONS

SUBJECT: STATE SECURITY SERVICE PROCEDURAL ABUSE

#11

Poltava region-based agrocompany gets its seized property and documents back

Subject of complaint:

State Security Service of Ukraine Office in Poltavska Oblast (Poltavska SSU)

Complaint in brief:

On May 19, 2017, an agricultural enterprise, wholesale agrochemicals supplier, turned to the BOC with a complaint against the actions of Poltavska SSU.

According to the Complainant, on April 19 and 21, SSU employees conducted raids at enterprise's warehouses. Security forces seized company's computer hardware, documents, accounting records and agrochemicals.

The reason for the search was suspicion that the company was involved in smuggling poisonous substances and transforming them into counterfeit agrochemicals. However, the enterprise disagreed with this prosecution. It claimed that since the start of operations it had not ever entered into any foreign economic contracts and had not bought any goods from non-residents. The complainant stated that he cooperated with business entities exclusively on the territory of Ukraine, within the limits current legislation requirements. Moreover, the Complainant argued that he proved this during the SSU's searches, but security officials still seized property and documents.

The complainant himself turned to the SSU, the Prosecutor's Office and the district Court in Poltava. The latter decided in his favor and obliged the SSU to return seized property. However, Poltavska SSU delayed the execution of the court decision. Meanwhile, the Complainant suffered losses due to unfulfilled contract agreements. His business activity was completely blocked.

Action taken:

After examining case materials, the BOC Investigator sent an official letter to the Prosecutor General's Office of Ukraine (PGO) asking to check the lawfulness of the inspectors' actions during the searches and return documents and property withdrawn during the search to the Complainant. Additionally, the Investigator brought the Complainant's case to the expert group meeting with the PGO and the SSU.

Result achieved:

On July 27, the First Deputy Prosecutor General informed the BOC that documents, computer hardware and most agrochemicals had been returned to the Complainant. The Company also confirmed this information. The case was successfully closed.

PROSECUTOR'S OFFICE ACTIONS

PROSECUTORS' OFFICE PROCEDURAL ABUSE

#12

Kramatorsk Prosecutor's Office employee incurs disciplinary responsibility for misconduct

Subject of complaint:

Kramatorsk local Prosecutor's Office employee (PO employee)

Complaint in brief:

On May 19, 2017 a medical equipment distributor turned to the BOC with a complaint against a PO employee. According to the Complainant, the latter pressured the company and tried to find a formal reason to initiate a criminal case against it.

As the Complainant reported, this began soon after the enterprise won an open tender on medical goods provision to a local hospital. According to the Complainant, the PO had some doubts regarding the legitimacy of the company's primacy in the competition.

Thus, the mentioned PO employee required the enterprise to provide him with original documents, submitted to the "Prozoro" system, allegedly to check their authenticity. As the Complainant mentioned, all the original documents, as well as signed and sealed copies, were submitted to the tender owner, and the credibility confirmation is outside of the PO responsibility.

Action taken:

On May 31, the BOC Investigator started examining the circumstances of the case and legality of the PO employee actions. He sent two respective requests to the Prosecutor of Donetsk Region. At the beginning of July, the Investigator managed to initiate an internal check, conducted by the Donetsk Region Prosecutor's Office since the PO employee's actions indeed did not meet the legislation.

Result achieved:

On July 31, Donetsk region PO informed the BOC that based on the internal check results the PO employee was imposed to penalties by depriving his financial award. The case was closed.

CUSTOMS ISSUES

SUBJECT: CUSTOMS OVERPAID DUTIES REFUND

#13

Kyiv Customs refunds excess customs duties to pharmaceutical firm

Subject of complaint:

Kyiv Customs of SFS (Kyiv Customs)

Complaint in brief:

On July 11, the BOC received a complaint against Kyiv Customs actions from a major international pharmaceutical company. Kyiv Customs had delayed a refund of UAH 242,000 of excess customs duties paid by the Claimant in the second half of 2016.

The Complainant tried to get the overpayment refunded through the court, and the Administrative Court ruled in the company's favor. Still, Kyiv Customs refused to issue the refund, claiming that the case had not been heard by the Court of Appeal and Cassation.

Action taken:

On August 8, the BOC investigator sent a written inquiry to the Head of Kyiv Customs, asking that the court ruling be enforced and the overpayment refunded to the Complainant. The investigator also raised the importer's case in the course of the Expert's group meeting at the SFS.

Result achieved:

On August 21, the Complainant received a refund of the excess duties in full. The case was closed successfully in less than twomonth period.

SUBJECT: CUSTOMS – OTHER ISSUES



Kyiv Customs agrees that imported goods qualify for zero tax rate

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

Complaint in brief:

On August 4, 2017, a company turned to the BOC with a complaint against the Kyiv Customs office. The Complainant had been importing goods to Ukraine at the zero tax rate for many years, but in March Customs decided to change the product's import code, which increased duty on the goods to 6.5%.

The Complainant tried independently to convince the SFS that the decision was unsubstantiated, but without success.

Action taken:

On August 11, the BOC investigator organized a meeting with Kyiv Customs. During the meeting, the two sides thoroughly studied all the evidence in the case, including lab test results that failed to provide a clear answer about the customs classification of the products. As a result, Kyiv Customs acknowledged that the chemical formula and physical properties confirmed by the manufacturer should be decisive in determining the classification. The parties agreed that the Complainant would prepare additional documents to prove the chemical and physical properties of the imported goods. The Complainant provided experts at Kyiv Customs with the formula for the food supplements, which proved that they did belong to the zero tax group.

Result achieved:

On August 29, the Complainant reported that the company's goods had been set at the zero tax rate. This allowed the company to save UAH 1.2 mn.

MINISTRY OF JUSTICE ACTIONS

SUBJECT: REGISTRATION SERVICE

#15

Major Ukrainian automobile holding has its ownership of land restored

Subject of complaint:

Ministry of Justice (MoJ), State Service for Geodesy, Cartography and Cadastre (GeoCadastre)

Complaint in brief:

In June 2017, a major Ukrainian automobile holding turned to the BOC with a complaint against the MoJ and GeoCadastre. The Complainant stated that the State Registrar had modified information regarding the ownership of land plots that belong to the Complainant. Eventually, the State Registrar corrected its mistake in the State Register of Ownership Rights. However, the changes were not automatically reflected in the State Land Cadastre. The Complainant had approached MoJ over this issue without success.

Action taken:

On July 4, Deputy Business Ombudsman Iaroslav Gregirchak held a top-level meeting with MoJ. BOC experts understood that regulatory acts of the Cabinet of Ministers needed to be amended for data in the State Register of Rights and the State Land Cadastre to be properly synchronized.

Result achieved:

As a result of the meeting, MoJ drafted the necessary legislative amendments. On July 12, the Cabinet of Ministers of Ukraine adopted Resolution #509 "Approving the Procedure for access to the state registrars of rights to immovable property and the use of data from the State Land Cadastre." The Complainant's issue was solved in less than a month.

SUBJECT: ENFORCEMENT SERVICE



State Enforcement Service lifts freeze on pharma corporation subsidiary's bank accounts

Subject of complaint:

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

Complaint in brief:

On July 6, 2017, the Kyiv-based Ukrainian division of world famous pharmaceutical corporation turned to the BOC regarding the freezing of its bank accounts by the State Enforcement Service in the course of enforcing a case in which the Complainant was debtor.

Action taken:

The Business Ombudsman decided to investigate the complaint, despite the fact that current legislation does not give debtors the right to challenge SES actions that are part of an enforcement procedure.

On the day the complaint was received, the BOC investigator discussed the possibility of lifting the freeze on the Complainant's bank accounts with SES officials and wrote about the complaint to the Ministry of Justice.

Result achieved:

On July 13, the Complainant informed the Council that the entire freeze on the firm's bank accounts was lifted. The case was closed within a week.

ACTIONS OF LOCAL COUNCILS/ MUNICIPALITIES

SUBJECT: ALLOCATING LANDPLOTS

#17

Boryspil Council signs off on land use docs after continued delay

Subject of complaint: Allocating land plots

Complaint in brief:

On August 11, 2017, an agricultural enterprise from Kyiv Oblast turned to the BOC with a complaint regarding the inaction on the part of the Boryspil City Council. The Council had been delaying the registration of technical documentation and a land lease agreement for the Complainant's land parcel for a couple of months.

In June 2016, the company had acquired a grain elevator in Boryspil and began registering the land on which it was located. Without the land parcel agreement, the enterprise could not use the elevator properly: hook it up to power and gas, renovate the elevator, and start any new construction. For various reasons, however, the process of getting approvals and registering technical documentation proved very drawn out for the company.

At first, the land use purpose had been incorrectly formulated. After this mistake was corrected, which took over two months, the company faced other problems: for a long time, the City Council did not even consider the Complainant's request. The company turned to the BOC at the point when all the technical documentation had been finalized on its side, but the registration kept being delayed by Boryspil City Council.

Action taken:

The BOC investigator studied the details of the case and held a number of conference calls with members of the Boryspil City Council. During these discussions, the BOC supported the Complainant's position and explained the consequences of disrupting the timeframes for registering technical documentation to the City Council officials. The investigator advised the chair of the Land Use Commission to raise the Complainant's case at the next session.

Result achieved:

On September 9, Boryspil City Council finally registered the Complainant's land use documentation. Thanks to the BOC intervention and constructive actions by Boryspil City Council officials, the case, which had dragged on for a long time, was successfully closed in less than a month.

COOPERATION WITH STAKEHOLDERS

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

3.1. Cooperation with government agencies

On September 11, 2017, The Business Ombudsman Algirdas Šemeta and the Head of the Security Service of Ukraine (SSU) Vasyl Hrytsak signed the Memorandum of partnership. Its purpose is to improve the cooperation between the Business Ombudsman Council and the SSU when dealing with complaints from the business.

The Memorandum presumes the establishment of an expert group headed by the Deputy Head of SSU and Deputy Business Ombudsman. The expert group will consider specific complaints against the SSU actions and its regional divisions, collaborate in legislation improvement, track and counter violations of the officials.



The Head of SSU Vasyl Hrytsak noted: "We would like this mechanism not to be just a formal document, but a real working tool. From our side we are ready to facilitate the BOC in fulfilment of its rights by all means". "Our goal is to make this memorandum work. Experience has shown that as soon as memos with government agencies are signed, the number of implemented recommendations increases significantly. I am convinced that the memo we signed today will allow us to solve issues between the business and the SSU in a more effective way", **emphasized the Business Ombudsman Algirdas Šemeta.**



Expert group meetings held in Quarter III, 2017

State Fiscal Service	6
Ministry of Ecology and Natural Resources	2
Prosecutor's Office	1
National Police	1
State Security Service	1
Ministry of Justice	1

17

3.2. Communication

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

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



01-07

VI Ukrainian Law School on Alternative Dispute Resolution, organized by the Institute for Political, Legal and Religious Studies



06-07 I

Lecture at the KSE on "Changes and Challenges in the Business Environment"

10-08

Discussion regarding the problems of Turkish investors with Stepan Kubiv, the First Vice Prime Minister of Ukraine – Minister of Economic Development and Trade of Ukraine



Third Tax Forum "Reforms, Innovations and International Trends" in Odesa, organized by the Federation of Employers of Ukraine

together with the Ukrainian Society of Economic Freedoms

05-09

German Business Evening organized by German Embassy



International Conference "Protection of the Rights if Financial Services Consumers 2017. Ways to Build Trust"

15-09

Presentation of the First Package of business proposals on simplification on subsoil use by the Ministry of the Environment and Natural Resources

15-09 🗖

First meeting of the Interdepartmental Commission for the Protection of Investors' Rights, Counteraction to Illegal Acquisition and Takeover of Enterprises, established by the Cabinet of Ministers of Ukraine



19-09 Straight Talk "Made in Ukraine – Does it attract investments?" organized by KyivPost



20-09

II International Compliance Forum, organized by "Yuridicheskaya Praktika" Publishing House

27-09

Round table on protection of entrepreneurs' rights from manifestations of administrative pressure, unmotivated claims from the controlling state authorities, interference with intracorporate affairs, increased fiscal pressures and increased penalties for business, organized by Ukrainian League of Industrialists and Entrepreneurs (ULIE)



VI Judicial Forum "Justice System of Tomorrow: Perspectives, Innovations and Challenges" organized by Ukrainian Bar Association



VI Tax Forum, organized by Ukrainian Bar Association



















On July 1-3 I

the BOC's Chief Communications Officer Olga Pikulska and Investigator Tetiana Kheruvimova visited Vilnus, Lithuania, where they adopted the experience of Lithuanian colleagues in fighting corruption and implanting compliance into their business operations. They had a range of useful meetings with Clear Wave, the initiative uniting transparent companies, Transparency International, business associations and government institutions. The new experience will help us in growing the Ukrainian Network of Integrity and Compliance launched by the BOC this May together with EBRD and OECD.



On September 22

jointly with the American Chamber of Commerce in Ukraine the BOC organized a meeting devoted to combatting raidership with Olena Sukmanova, Deputy Minister of Justice of Ukraine for State Registration, and laroslav Gregirchak, Deputy Business Ombudsman. Participants discussed the recommendations developed by the Business Ombudsman Council in view of prevention and combatting raider attacks.

Developing the Ukrainian Network of Integrity and Compliance



The Business Ombudsman Council worked on developing the Ukrainian Network of Integrity and Compliance launched in May 2017 with the support of EBRD and OECD.



A range of events took place during July-September:

17-07

working meeting at KPMG office, where the guests learned about the results of the global compliance survey and the unique experience of Lithuania in promoting Clear Wave initiative.

07-09

working meeting with business associations to define their role in UNIC.

06-09

working meeting where the British Council in Ukraine and Mott McDonald shared their experience of implanting integrity into their business core.

19-09

working meeting with experts to discuss the Network strategy and its sustainable development.

New team members

new employees joined our team

8

30

As a result of appointments our team has grown to

employees

with experience in law, strategic management, economics, audit, and risk management

The media

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

Результати II кварталу 2017 року



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

14 000+

99% mentions being positive and constructive. We organize roundtables on a quarterly basis and invite journalists to see and feel how the Business Ombudsman works.

A SPECIAL PROJECT

Jointly with the "Focus" magazine we continued a special project "Business against the system". We have introduced stories of real entrepreneurs, who faced corruption and arbitrariness in Ukrainian state agencies. Stories of businessmen, who were not afraid to challenge the system and stand upon their rights.





Our interviews were published in the leading Ukrainian media:

Ukrainian News (Ukrajinski Novyny) news portal; legal newspaper "Yuridicheskaya Praktika"; Hubs.ua; Delo.UA; Finance.ua; "Novoye Vremya Biznes"; Business.ua; KyivPost, and Business Ukraine editions.

















We also made a number of TV (UA:Pershyy, 112 Ukraine, Espreso TV) and **radio appearances** (Hromadske Radio, Radio Golos Stolytsi) to mention a few.









3 200+ followers

joined the Business Ombudsman Council's Facebook page (@BusinessOmbudsmanUkraine) created in June 2015.

> The BOC does not resort to any advertising campaigns and focuses on qualitative content in social media.

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We use Facebook to share information about our Office, our work, and news of interest in the oversight field.

We are also expanding our social media presence

You Tube

channel in YouTube



account in LinkedIn

account in Twitter



The BOC's Communication team is also working on strengthening communications of the Ukrainian Network of Integrity and Compliance.

You may find more details about the initiative on the recently launched website **www.unic.org.ua** and Facebook page **@UNIC2017**.

UNIC

Join the Ukrainian Network of Integrity and Compliance

www.unic.org.ua

THE BOC IS FUNDED



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