

WHY DO WE NEED A LAW

ON THE BUSINESS OMBUDSMAN INSTITUTION?



1

Stabilizes the institution operation basis, important for fighting against corruption and malpractice of state bodies

2

Expands business protection opportunities

3

Gives a positive signal for Ukrainian and international investors

4

Strengthens constitutional rights of business on property rights protection and freedom of entrepreneurship activities

WHO WE ARE



The Business Ombudsman Board (BOC) it is an independent advisory body established in 2014 based on the [CMU Resolution No. 691 dated November 26, 2014](#) with the participation of the Government, leading Ukrainian business associations, the EBRD and OECD.



The BOC receives complaints from entrepreneurs on malpractice of state bodies.

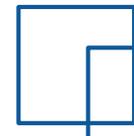
For example, if an entrepreneur is asked to give a bribe “in exchange” for a certain service, is not given a construction permit, has his tax invoices suspended, suddenly visited with searches, he/she may ask the Business Ombudsman to look into the situation.

The BOC includes:



The Business Ombudsman and his two Deputies
+ 20 Ukrainian lawyers
+ 8 employees

The Business Ombudsman Council is financed from the Ukraine Stabilisation and Sustainable Growth Multi-Donor Account (MDA) managed by the EBRD. **Contributors to the MDA are Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Sweden, Switzerland, the United Kingdom, the United States and the European Union, the largest donor.**



UAH 19 billion

were saved or refunded to companies
due to the BOC help

9000+

complaints received

6000+

cases closed

17

systemic reports
published

33%

systemic recommendations
implemented

84%

local companies

72%

complaints from SMEs

89%

individual recommendations
implemented

97%

complainants who replied to the
feedback request were satisfied
with the cooperation with the BOC

TOP 5 active regions:

Kyiv (38%), Dnipropetrovsk region (8%), Kiev region (8%),
Kharkiv region (8%) and Odesa region (6%)

Over 6 years of its operations the BOC has studied a number of systemic problems in various business spheres and presented analysis results in 17 reports in which it issued 350 systemic recommendations. For example, in accordance with the recommendations of the Council:

- Laws known as “**MaskShowStop-1 and 2**” came into force, which provide for mandatory audio and video recording of investigative actions and court trials, and expand law enforcement officers prosecution mechanisms.
- The **Law “On Currency and Currency Transactions”** entered into force, which lifted export-import special sanctions.
- To prevent carrying out registration actions in violation of territoriality principle, the Verkhovna Rada introduced the law known as “**Anti-Raidership Law-2**”, which actually reinstated territoriality as one of the principles of state registration of rights.
- A threshold amount of actual taxes, fees and single social contribution due to be paid to the budget triggering such action as a criminal offence was increased. Thus, termination of cases of **groundless opening of criminal proceedings** under Article 212 of the Criminal Code of Ukraine should significantly reduce pressure on business.
- The State Architectural and Construction Inspectorate launched online tools containing all **documented information about construction**, thereby increasing customer usability and eliminating risks of abuse of state agencies.
- 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.

VENICE PRINCIPLES, adopted by the Council of Europe

Certain recommendations of the [Principles of Protection and Promotion of the Ombudsman Institute approved by the Council of Europe on 02.05.2020](#) implemented in the draft law “On the Business Ombudsman Institution”

- Ombudsman institution including its powers shall be based on a **firm legal foundation** (*principle 2*)
- **Institutional competence of the Ombudsman** shall cover public administration at all levels (*principle 13*)
- **The Ombudsman shall not be given nor follow any instruction** from any authorities (*principle 14*)
- The Ombudsman **right to unrestricted access to all relevant documents, databases and materials**, including those which might otherwise be legally privileged or confidential (*principle 16*)
- **The power to address individual recommendations** to any bodies or institutions within the competence of the Institution (*principle 17*)
- The Ombudsman shall **report** to Parliament on the activities of the Institution at least once a year (*principle 20*)
- **The immunity from legal process** in respect of activities and words, spoken or written, carried out in their official capacity for the Institution (functional immunity). It is planned to cancel this provision (*principle 23*)
- **Strong recommendation to states to undertake all necessary actions [...] to provide proper conditions that strengthen and develop the Ombudsman Institutions** (*principle 25*)

Apart from that, under the [Istanbul Anti-Corruption Action Plan the OECD](#) recommended the Government of Ukraine to strengthen the BOC by adopting the law that give powers for its effective operation.

What the CMU Resolution and a new Draft Law have in common

The Draft Law “On the Business Ombudsman Institution” includes many provisions, from the CMU Resolution No. 691 of 2014 based on which the Business Ombudsman Council has been working for 6 years.

- The Council considers **business complaints against government agencies**, local self-government bodies and state enterprises. However, the Council does not consider complaints arising out of business to business relations.
- The Council is **not an executive body**, it does not give orders to government agencies, but only issues its own recommendations.
- Twice a year, the Council prepares reports on the most topical **systemic business problems and gives recommendations for their solution**.
- The Council does not investigate complaints, being the **subject of court proceedings**. However, we help enforce court decisions that have entered into force if the state body does not do so.
- The Council is **an independent body** and reviews each complaint independently from political forces, but only in accordance with laws adopted by the Verkhovna Rada.
- The Council’s services for businesses are delivered **free of charge**.

(1) Change of a legal status

Current basis of operations –
Resolution of the Cabinet of Ministers of Ukraine:

From an “advisory body to the Cabinet of Ministers of Ukraine”, the Business Ombudsman Council (BOC) is transformed into a non-governmental non-profit organization: Business Ombudsman Institution (BOI).

Key novelties of the Draft Law

“On the Business Ombudsman Institution” (1)

Required basis of operations – Draft Law on the Business Ombudsman Institution:

- The status of the Institution - a non-governmental non-profit organization – is to preserve the guarantee of its independence from any public authorities interfering with its activities.
- Territorial offices of the BOI can be formed in regions and the Autonomous Republic of Crimea.

(2) Introduction of mechanisms for implementing systemic recommendations

Resolution of the Cabinet of Ministers of Ukraine:

One of the BOC key tasks is the development of recommendations to state bodies in order to improve conditions for conducting business in Ukraine as well as prevent corruption and other malpractice of state bodies. To this end, the BOC submits proposals and recommendations to the Cabinet of Ministers of Ukraine and other authorities on how to solve systemic business issues. However, the Resolution lacks mechanisms by which the Council could influence the implementation of its systemic recommendations

“On the Business Ombudsman Institution” (2)

Draft Law “On the Business Ombudsman Institution”

Provides the BO with the following additional rights:

- to meet with all officials of all state bodies, local government authorities, etc.;
- to be received by the Prime Minister of Ukraine on a quarterly basis to discuss the most pressing obstacles for doing business from the BO perspective;
- to attend and speak at the meetings of the VRU, the Cabinet of Ministers of Ukraine, governmental committees, accordingly to the Rules of Procedure of these institutions.

(3) Establishing a procedure for complaints review at the legislative level

Resolution of the Cabinet of Ministers of Ukraine:

The procedure for submission, processing and consideration of complaints from businesses is determined by the BOC Rules of Procedure. This document is approved by the Supervisory Board and may be amended by its decision at any time.

□ Key novelties of the Draft Law “On the Business Ombudsman Institution” (3)

Draft Law “On the Business Ombudsman Institution”:

- Establishes mandatory eligibility criteria for the complaints review, an exclusive list of grounds for termination of the complaint and the types of decisions that the BOI may adopt;
- Ensures that the procedure of complaints review is more stable, unified and well-defined, so that complainants will have realistic expectations of the BOI intervention;
- Creates a legal duty for the BOI to deal with individual complaints, the non-compliance of which may be challenged by interested parties in court

(4) Regulating the obligation to cooperate with the Business Ombudsman Council

Resolution of the Cabinet of Ministers of Ukraine:

State authorities and local self-government bodies, their officials are obliged to act only on the basis and in the manner provided by the Constitution and laws of Ukraine. Therefore, for example, BOC has to use general act on access to public information to get documents needed for investigations.

Key novelties of the Draft Law

“On the Business Ombudsman Institution” (4)

Draft Law “On the Business Ombudsman Institution”:

- Establishes a duty to cooperate with the BOI;
- Also obliges bodies outside of the Cabinet of Ministers of Ukraine (in particular, prosecutors, security service, local self-government bodies) to cooperate with the BOI;
- Clarifies access of the BOC investigators to secret and confidential information within investigated cases and underlines their responsibility for unlawful dissemination of such information.

(5) BO's upgraded tools of response to malpractice

Resolution of the Cabinet of Ministers of Ukraine:

- does not impose strong obligations to respond to recommendations of the BOC, so the proper response of the authority so far is mostly the result of its “good will”;
- does not provide the BOC with the right to participate in administrative appeal procedures;
- The Council sometimes faces situations when state bodies do not allow it to attend personal receptions with public officials or refuse to arrange working meetings. Such refusals are motivated by the fact that the BOC employees are not authorized representatives of the business.

Key novelties of the Draft Law

“On the Business Ombudsman Institution” (5)

Draft Law “On the Business Ombudsman Institution”:

- provides that the appeal of the BOI is a document for mandatory consideration and requires a reasoned answer;
- requires state bodies to respond to the BOI recommendation by providing it with information describing measures or actions taken to remedy malpractice or reasoned explanation why such actions were not taken;
- enables a BOI representative to participate in the administrative procedure;
- should solve this problem, because it establishes the right of Business Ombudsman to freely visit public authorities, government authorities and state-owned companies, as well as court hearings.

(6) The Supervisory Board

Resolution of the Cabinet of Ministers of Ukraine:

- The Supervisory Board of the BOC consists of the representatives of the Government (block 1); EBRD and OECD (block 2); and 5 Ukrainian business associations (block 3). The Supervisory Board provides a general review without a right to intervene in investigations and recommendations of the BOC.
- Block 3 consists of the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Employers of Ukraine, the Ukrainian Chamber of Commerce and Industry and Ukrainian League of Industrialists and Entrepreneurs.
- The Resolution does not foresee inclusion of other organizations in the Supervisory Board and is limited to the participants who signed the Memorandum of Understanding for the Ukrainian Anti-Corruption initiative dated [May 12, 2014](#)

Key novelties of the Draft Law

“On the Business Ombudsman Institution” (6)

Draft Law “On the Business Ombudsman Institution”:

- Defines the criteria and mechanism for other business associations to join the BOC Supervisory Board.
- Provides the possibility of voluntary withdrawal of business associations from the BOC Supervisory



Marcin Świąćicki

‘Adoption of the Law “On the Business Ombudsman Institution in Ukraine” will be a **good signal for Ukrainian and international investors**, it will reassure that **Ukraine is guided by the rule of law and uses all the tools to protect business interests against possible government agencies malpractice.**’

- Selected among **100+ candidates**, as established by the Draft Law procedure.
- On July 30, 2019, the BOC Supervisory Board **made a decision** to appoint Marcin Świąćicki the Business Ombudsman of Ukraine
- On August 21, 2019, the Cabinet of Ministers of Ukraine **approved** the BOC’s Supervisory Board’s **decision**.
- On October 12, 2019, Marcin Świąćicki **took over the position from Algirdas Semeta**, the first Business Ombudsman of Ukraine

- 2011-2019 – MP of Polish Sejm. A deputy chair of Ukrainian Parliamentary Group.

- 2014-2015 – consulted the Ukrainian government on decentralization reforms

- 2007-11 – Chaired the EU-UNDP “Blue Ribbon” project in Kyiv

- 1999-2000 – member of government negotiating team for Poland's accession to the EU

- 1994-1999 – mayor of Warsaw



You can submit a complaint to the Business Ombudsman Council:

 Via the website : boi.org.ua

 By mail: info@boi.org.ua

 Personally in the office:
Podil Plaza Business Centre
30A Spaska Str., Kyiv.

