



SYSTEMIC REPORT

**CONTROL OVER CONTROLLERS:
STATUS OF CONTROL BODIES
REFORM IMPLEMENTATION**

JANUARY 2018

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LIST OF ABBREVIATIONS:

BOC	Business Ombudsman Council
OECD	Organization for Economic Co-operation and Development
SRS	State Regulatory Service
MEDT	Ministry of Economic Development and Trade
CMU	Cabinet of Ministers of Ukraine
CAO	Code of Administrative Offenses of Ukraine
VRU	Verkhovna Rada of Ukraine
Control measures	Measures of state supervision (control)
Control bodies	Bodies of state supervision (control)
IAS	Integrated Automated System of State Supervision (Control)

1 FOREWORD

Ensuring effective state supervision and control over observance of rules of doing business is an important factor in creating well-functioning society and ensuring trust in the government. On the one hand, it is **a key element of healthcare, protection of environment and employees' rights, and achievement of other important social goals**. On the other hand, streamlining control activities to alleviate pressure on business and giving it opportunities for development contributes to creating an investment-friendly climate.

In 2014, the Government of Ukraine announced **the control system reform** aimed at eliminating overregulation of relations between the state and the business. Thus, in 2016 the VRU **adopted a number of legislative amendments, which in their entirety may be viewed as the control bodies reform**. It is expected that these amendments would result in reducing the number of control bodies, simplifying procedures and decreasing frequency of inspections, sorting out control procedures, canceling unnecessary licenses and permits, etc. **The core goal of the systemic report is to analyze the ongoing control bodies system reform, to identify main "bottlenecks" in the implementation of the legislative amendments and to prepare recommendations to the Ukrainian Government on how to fill the identified gaps.**

The report starts with the **analysis of the implementation of the Good Governance principles in the national legislation**. During the recent control bodies reform, the VR has adopted a number of legislative amendments aimed at reducing the quantity and improving

the quality of control. These legislative amendments **created legal rules that allow a more comprehensive implementation of the principles**, such as the rule of law, equality, transparency, and responsibility of all participants of the process, which are described in detail in Section 1 of the Report.

Thereafter, the Report focuses on defining and examining key elements, which are required for a successful control bodies reform. One of such elements is **the need to create an exhaustive list of control bodies**, because the vast majority of companies (especially small and medium-sized) are unable to understand the specifics of every control body. It is proposed to amend the Law of Ukraine "On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" so as to make the list of control bodies exclusive and mandatory. Moreover, it is proposed to provide that if a body is not on the list, business entities shall have the right to deny access to representatives of such body for carrying out an inspection, as well as to envisage that in the course of the legislative process any changes in the relevant list of control bodies would only be possible after corresponding changes in the relevant laws on control bodies.

A full-fledged implementation of a risk-oriented approach to inspections is another important element. According to official data, more than half of the identified control bodies have not implemented a risk-oriented approach to their controlling activities. In particular, there is an urgent need to:

- develop or align the criteria for assessing the risk level of specific business activities and determining the frequency of scheduled control measures;

- amend the legislation so as to prevent the possibility of entering of information into the integrated inspections database and, accordingly, carrying out inspections by control bodies that have not implemented the risk-oriented approach;
- establish disciplinary responsibility for heads of control bodies for the failure to comply with the legislative requirements related to the introduction of the risk-oriented approach;
- draw up for each control body a checklist with issues that can be checked during scheduled inspections.

An important innovative tool for ensuring transparency and predictability of control measures is **the creation and maintenance of an Integrated Automated System (IAS)**. The creation of the respective database is ongoing. However only a pilot module of it was launched in the test mode.

Moreover, making entries in the IAS is currently not mandatory. Therefore the Ministry of Economic Development and Trade and the State Regulatory Service were recommended continuing development of IAS and ensure installation and commissioning in accordance with the current legislation by the end of 2018; defining the powers of officials of the control bodies as regards entering information into the IAS and their personal liability for entering false information in the IAS or not entering it on time.

Perhaps, the most crucial factor that would determine the success of control bodies reform is the responsibility of their officials.

It is important to establish effective mechanisms for practical implementation of legal acts stipulating responsibility

of such officials and to improve the existing legislation relating to **personal, including disciplinary, responsibility of officers and officials of the control bodies**. This would prevent the violations of the legislation currently committed by these entities in the discharge of their duties. Such changes would help to prevent future violations of the rights of business entities, thus creating appropriate conditions for entrepreneurial activity and improving the relationship between businesses and control bodies.

The BOC finds it necessary not only to improve the procedure for taking disciplinary actions against control bodies officials but also to prepare amendments to legislation on improving the procedure for bringing to disciplinary responsibility, in particular to give business entities whose rights have been violated the right to directly initiate the procedure for bringing control bodies' officials to disciplinary responsibility. The National Agency of Ukraine on Civil Service is recommended to draft amendments to laws that enhance personal disciplinary liability of officials of the control bodies, as well as introduce an effective mechanism for recovering damages caused to business entities by illegal actions/decisions of the said bodies.

The ability of the State Regulatory Service to monitor the reform of control bodies depends on its institutional capacity.

The analysis made in this systemic report demonstrated the need for providing SRS with additional capacity to use existing legal instruments more effectively, as well as to keep a proper momentum in the reform of control bodies. In particular, it concerns the introduction of deadlines and mandatory execution of decisions of the SRS' Expert Appeal

Council, as well as expanding the definition of the "permitting document" in Article 1 of the Law of Ukraine "On Permit System in the Sphere of Economic Activity " by adding declarations this definition. It should also be stipulated that permits may be issued not only in electronic but also in another (e.g. written) form. Of particular

importance are the recommendations to Article 166-10 of the Code of Administrative Offenses of Ukraine regarding the establishment of liability of the management of control bodies for violations during the implementation of the control measures defined by the SRS.

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We would like to express our gratitude for the important professional comments from the experts of the State Regulatory Service and the Ministry of Economic Development and Trade.

The BOC has consulted the Federation of Ukrainian Employers, the American Chamber of Commerce in Ukraine (ACC), the European Business Association (EBA), the Ukrainian League of Industrialists and Entrepreneurs, and other business associations.

Separately, we would like to mention the significant personal input of Ms. Kseniya Lyapina and Ms. Natalya Gosteva.

SECTION 1. CONTROL BODIES REFORM IDEOLOGY AND PRIMARY LEGISLATION

1.1. Primary legislation on control bodies reform

The reform of control bodies became one of the key reforms of the Ukrainian Government after the Revolution of Dignity. This reform aims at eliminating government overregulation of relations between the state and business as well as excessive pressure from control bodies. It is expected that the reform would **address the following issues:**

- undefined scope of supervisory functions of control bodies concerning carrying out control measures of certain types of economic activity, what leads to duplication of such powers and dual burden on business;
- focus on identifying and imposing sanctions, rather than preventing offences;
- inconsistency of legislation norms on control of economic activity with sector-specific law;
- no system for effectiveness assessment of state control measures;
- absence of technical and institutional mechanisms for implementation of changes made to the system (no inspections database, lack of skilled personnel, lack of appropriate subordinate legal acts, e. g., the list of risks for each area/sector, etc.);
- incompleteness of the control bodies institutional framework (the number of control bodies is reduced at the national level; some powers have been delegated to local self-government authorities level, but without establishing relevant procedures; liquidation of certain control bodies but

preserving their powers at the legislative level, e.g. the system of public health services).

In November 2016 a series of laws were adopted, which set legal framework for the control bodies reform. The adopted legal amendments aim at a significant improvement of the control system efficiency, reduction of abuses by officials of these bodies and, accordingly, improvement of business protection. Let us consider them in detail.

I The Law of Ukraine “On Amendments to the Law of Ukraine “On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity Regarding Liberalization of Public Supervision”¹ (Control Liberalization Law), provides for the following changes:

- *the law extends to* control measures that were previously removed from its scope (control measures of the *State Fiscal Service, in the sphere of civil aviation, architecture and construction oversight, labour law and employment*) alongside with special laws peculiarities;
- *elimination of duplication of powers* to implement state policy in the sphere of control between *the MEDT and the State Regulatory Service (“SRS”)* by conferring these powers on the SRS. Hence, now complaints from entrepreneurs challenging control bodies’ actions can be directly handed over to the SRS which acquires the power to inspect these bodies;

¹ The Law of Ukraine “On Amendments to the Law of Ukraine “On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity Regarding Liberalization of the State Supervision System” dated 03 November 2016 No. 1726-VIII.

- *increasing* the responsibility of supervisory authorities officials;
- *establishing* basic principles of the creation of an IAS with open information on all control measures, which will help to protect businesses from unnecessary interference of control bodies' officials;
- *establishing requirements for publication of regulations* on control bodies' official websites;
- *establishing a single procedure for the application of economic and administrative sanctions* imposed by control bodies based on facts of violation;
- *expanding the list of basic control principles* (interpretation of legislation in favour of the business in case of ambiguous (multiple) interpretation of its rights and obligations);
- *extending rights of the business in the course of exercising control (including the right of business not to allow control bodies officials to carry out inspections)*;
- *extension of clauses on the advisory support* of the business by control bodies, including exemption from liability for business entities that have implemented the body's recommendations.

II. The Law "On Amendments to Some Legislative Acts of Ukraine Regarding Improvement of Legislation in the Sphere of State Supervision (Control)"² (SRS Authority Law) introduced changes in legislative acts, including the Code of Ukraine on Administrative Offences, which clearly establish exclusive SRS powers for drawing up administrative offence protocols in cases

of violation of the legislation on licensing and permits. Previously, there had been no clear delineation of these between the MEDT and the SRS.

As confirmed by the best European practice, ensuring accountability and responsibility of persons involved in management processes is key to safeguarding proper use of power in accordance with public interests. Many OECD countries enhance responsibility of managers by improving qualitative, rather than quantitative, indicators of control bodies' decisions (substantiality and effectiveness).

In order to give the control bodies enough time to prepare themselves for the new control approach, a moratorium on the restriction of control measures was introduced until 31 December 2018.

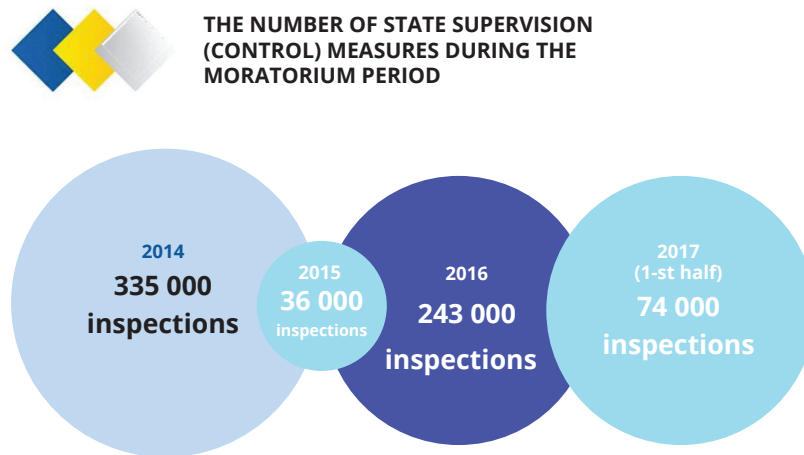
III. The Law of Ukraine "On Temporary Peculiarities of State Supervision (Control) in the Sphere of Economic Activity" dated 11 March 2016 No. 1728- VIII (Moratorium Law) introduced restrictions (moratorium) on scheduled control measures until 31 December 2018.

In accordance with Article 6 of the Law, the relations arising during the relevant supervisory measures conducted by a control body are subject to the decision of the CMU.

As can be seen from the statistics provided by the State Regulatory Service of Ukraine, the number of state control measures under moratorium has significantly decreased since 2014 (from 335 thousand inspections in 2014 to only 74 thousand in the first half of 2017).

² The Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Regarding Improvement of Legislation in the Sphere of State Supervision" dated 11 March 2016 No. 1727

SRS businesses inspection statistics in Ukraine during 2014-2017



At the same time, as one can see from the statistics, the number of inspections of business entities by control authorities is still excessive, which does not facilitate business growth and investment attractiveness of Ukraine.

Pursuant to the requirements of the legislation aimed at reforming control bodies, all by laws providing a detailed description of common approaches and rules for performing control functions have been adopted³:

- ³ 1. The Procedure for IAS functioning, entering information into it and deadlines of placement of this information (CMU Resolution dated 24 May 2017 No. 387);
2. Procedure for Comprehensive Scheduled Supervision (Control) Measures (CMU Resolution dated 24 May 2017 No. 350);
3. Methodology of developing criteria for assessing the risk of economic activities (CMU Resolution dated 24 May 2017 No. 362);
4. Methodology of developing unified acts forms drawn up based on the results of the scheduled (unscheduled) measures of state supervision (control) (CMU Resolution dated 24 May 2017 No. 362);
5. Procedure for carrying out inspections of state supervisory (control) authorities' compliance with the Law of Ukraine "On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" in the part of state supervision (control) of economic activity (CMU Resolution dated 24 May 2017 No. 361);
6. Procedure for the SRS participation in the state supervision (control) measures conducted by other central executive authorities and their territorial bodies, state collegial bodies, executive bodies of the Autonomous Republic of Crimea, local self-government authorities (CMU Resolution dated 24 May 2017 No. 388);
7. Procedure for consulting the public on NGOs initiatives (CMU Resolution dated 24 May 2017 No. 398)
8. Requirements for drawing up annual and comprehensive control measures plans, amending and reporting on their implementation (joint MEDT and SRS order dated 07 August 2017 No. 1170/81)

For reference:

By its Order No.25 dated 28 February 2017, the SRS established the Council on Public Supervision (Control) and approved the list of its members. Following the Council recommendations, in 2017 the SRS considered 2,133 requests of control bodies for approval of unscheduled inspections based on

substantiated individuals' complaints on abuse of legal rights.

As of 06 October 2017, 1,532 requests were approved, 520 requests were rejected, and 81 requests were left without consideration by the SRS.

Furthermore, in the course of the ongoing control bodies reform process, the control bodies' toolkit must be detailed and agreed among themselves, while the protection of business community from possible abuse by authorities must be strengthened.

To this end, on 18 December 2017 the Cabinet of Ministers of Ukraine approved the Resolution "On Approval of the Strategy for Reform of State Supervision (Control)" which aims at transforming the control system into a risk management one.

The strategy is aimed, among other things, at:

Stage I – shifting the system's focus from being predominantly punitive-repressive (as is the case now) to being preventive and risk-oriented; defining basic principles of modernization and improvement of the state control system.

Stage II – ensuring the establishment of a state control system that would contribute to the development of a favourable environment for carrying out economic activities, development of small and medium-sized businesses, investment, etc.

Apart from that, the Strategy envisages improvement of the risk-oriented approach, shifting the focus of the inspection system on prevention of violations, minimizing corruption risks by increasing responsibility and competence of the officials authorized to exercise state control.

1.2. Implementation of the Good Governance principles

The Good Governance principles are directly connected with fundamental principles of public administration and control. In accordance with Article 2 of the Law “On State Supervision (Control)”, the principles of implementation of state control measures effectively coincide with

the principles laid down in the UN Program. The cross-cutting idea is the implementation of supervision (control) under conditions of **mutual responsibility** of the parties of public-private relations.

For reference:

The basic principles of Good Governance in the United Nations Development Program (UNDP) are:

- participation;
 - consensus orientation in decision-making;
 - strategic vision;
 - feedback;
- transparency;
 - equality;
 - rule of law;
 - effectiveness and efficiency in carrying out state policy;
 - responsibility of all the participants of the process.

The Good Governance principles are implemented into national legislation in the following manner:

1. The rule of law principle. The Law ultimately and exclusively determines the sphere, procedure and the criteria of being classified as control bodies.

2. The principle of equality. The rights and obligations of control bodies fully correspond to rights and obligations of business entities.

3. The principle of transparency. The Law lays down the rules that oblige control bodies to publish legal acts defining the areas of state supervision (control), annual inspection plans, list of issues and unified report forms of scheduled inspection measures on their own websites. If these documents are not

properly disclosed, the business entity may deny carrying out the control measures. This principle is implemented through the creation of the Integrated Automated System of State Supervision (Control) (“IAS”) designed to provide business entities, as well as central and local authorities, with open data on control measures.

4. The principle of responsibility of all participants. The Law increased the liability of state control bodies’ officials, in particular for not entering or entering false or incomplete information on control measures into the IAS.

Thus, we can acknowledge that the reform of control bodies in Ukraine is progressing in accordance with the good governance standards.

⁴ O. Vorobyova. Modern management models: New Public Management and Good Governance and their application in Ukraine. [New Public Management and Good Governance modern management models and their implementation in Ukraine] / O. Vorobyova // Effectiveness of state governance [The efficiency of public administration]. - 2015. - Vol. 42. - P. 230-234. - Access: http://nbuv.gov.ua/UJRN/efdu_2015_42_28

SECTION 2. KEY FACTORS LEADING TO SUCCESSFUL IMPLEMENTATION OF THE CONTROL BODIES REFORM

2.1. The list of control bodies

The current legislation does not provide for an exhaustive list of supervisory authorities. It means that today there is no single source of information that would officially provide at least the name of a supervisory authority, its status, grounds and subject of control.

At the same time, the creation of such a list would comply with the principles of openness, transparency, planning, and systemic nature of control stipulated by Article 3 of the Law of Ukraine "On Basic Principles of the State Supervision (Control) in the Sphere of Economic Activity." The absence of such single list, given the complexity of the regulation and breadth of the regulatory framework, creates preconditions for abuse since a large proportion of businesses (especially small and medium-sized) cannot afford keeping in-house lawyers. Without staff counsel, they simply cannot understand all the operating peculiarities and specifics of each control authority.

As an example, the Federation of Employers of Ukraine counted 70 control bodies as of 01 April 2013. Since then, their list has changed, but not significantly. Such a list would also be a convenient tool to identify any duplication of functions of the control bodies.

Creating a single list of control bodies would also be in line with the OECD recommendations. Clause 7.2 of the Annex to the OECD Recommendation of the Council on Regulatory Policy and Governance suggests that states develop and maintain a register of all institutions empowered with regulatory functions for the purpose of inclusion of control bodies into the regulatory system. According to the Recommendation, such register should contain information about the purpose of activity of such institutions, as well as a list of their regulatory tools (functions). The OECD views such list as a means to ensure public control over activities of control bodies.

Clause 4 of Article 3 of the Law of Ukraine "On Basic Principles of the State Supervision (Control) in the Sphere of Economic Activity" stipulates that only the law may establish bodies authorized to exercise types of economic activities subject to state control, as well as ways and forms of exercise of control measures. Assuming that the names or powers of control bodies would not change frequently, there will be no need to review the list too often.

⁵ <http://fru.ua/ua/>

⁶ Recommendation of the Council on Regulatory Policy and Governance adopted on 22 March 2012

Recommendations:

The MEDT and the SRS are recommended:

1. To propose amendments to the Law “On State Supervision (Control)” that would envisage having an exhaustive and mandatory list of control bodies. The amendments should stipulate that in dealing with a body not included on the list, a business entity would have the right not to

allow representatives of such body to carry out any inspections.

2. To ensure that any changes in this list would only be possible in the course of the legislative process if corresponding changes are made in the relevant laws on control bodies.

2.2. Risk-oriented approach when carrying out inspections

Given that Ukraine is a country with a large number of supervisory bodies carrying out control measures, proper regulation of their work is a prerequisite for an effective reform of these bodies.

Key aspects of such measures are set forth in the updated Law “On State Supervision (Control)”. The law also establishes main aspects of protection of entrepreneurs’ rights. Particularly, it clearly defines the procedure for scheduling and carrying out of inspections and introduces a risk-oriented approach to planning of inspections.

According to the law, inspections can be scheduled and unscheduled ad hoc depending on the reason for carrying them out.

Scheduled inspections are carried out according to a schedule, developed by the supervisory authority. The law establishes the following restrictions on the frequency of inspections:

- no more than once in two years – for high-risk business entities;

- no more than once in three years – for medium-risk business entities;
- no more than once in five years – for low-risk business entities.

An ad hoc inspection of a company may be carried out based on the grounds defined in the legislation on inspections, namely:

- the entrepreneur’s own request for inspection;
- identification and confirmation of unreliable data in the entrepreneur’s reporting documents;
- an audit of the entrepreneur’s compliance with recommendations to remedy violations that were identified during previous scheduled inspections;
- a complaint against an entrepreneur on his/her violation of legislation;
- failure to submit or untimely submission of reporting documents without a reasonable excuse.

Under the law, each control body should develop criteria for dividing entities into separate risk groups with separate frequencies of inspections for each group.

In May 2017, the Government adopted the CMU Resolution that improved the approach to the approval of procedures for the development of criteria for assessing the risk of economic activities and determining the frequency of scheduled inspections. Standard forms of reports to be drawn up following scheduled (unscheduled) inspections were also adopted. This work is monitored by the SRS.

Some progress has been made by supervisory authorities in establishing criteria for assessing the risk degree of economic activities and determining the frequency of scheduled inspections.

However, the risk-oriented approach has not been introduced yet in many areas of state control and neither the criteria for assessing the risk degree of economic activity, nor the frequency of scheduled control measures has been determined.⁸

For reference⁹:

- Criteria meeting the law have been approved in 17 areas;
- Criteria that do not fully meet the legal requirements and need to be revised have been approved in 47 areas;
- Criteria have not been approved at all and, therefore, the frequency of scheduled inspections has not been established in 23 areas of supervision.

⁷ CMU Resolution dated 28 August 2013 No. 752.

⁸ The list of state control areas without a risk-oriented approach to conducting of control measures:

- 1) advertising;
- 2) biological and genetic safety of crops during creation, research and practical use of genetically modified organisms
- 3) research and industrial or industrial commissioning of oil and gas fields
- 4) research and implementation of industrial or industrial oil and gas field development projects;
- 5) state technical inspection of motor vehicles;
- 6) publishing;
- 7) manufacturing, processing, labeling, transportation, storage, sale and circulation of organic products (raw materials);
- 8) use of state and municipal property;
- 9) business entities' activities in the securities market;
- 10) business entities' activities in the financial services market;
- 11) state supervision (control) of compliance with the radio frequency resource legislation of Ukraine;
- 12) state supervision (control) in the cinematography area;
- 13) import of pharmaceuticals;
- 14) state supervision over compliance with the space safety requirements

⁹ According to the SRS, as of 10 February 2017.

Even worse is the situation with the introduction of unified reports, which should be prepared following scheduled (unscheduled) control

measures. Such documents must contain comprehensive checklists of inspections depending on the identified risk level.

For reference¹⁰:

- Unified report forms were approved but do not meet the law requirements on control and CMU Resolution No. 752 and need to be aligned with the law in 49 areas of state control;
- There are no unified report forms in 36 areas of state supervision (control);
- Unified report forms meeting the requirements of CMU Resolution No. 752 were approved in 3 areas of state control.

Recommendations:

- 1) **The CMU should set a clear timetable for control bodies** to introduce a risk-oriented approach to the exercise of control, namely:
 - To develop or to align the criteria for assessing the risk of business activity and determining the frequency of scheduled inspections;
 - To develop or to align the standard forms of reports to be prepared following scheduled (unscheduled) control measures, which would include comprehensive checklists depending on the risk level.
- 2) **The CMU:** To set clear deadlines for the alignment of regulations of the control bodies with the Law of Ukraine "On Basic Principles of the State Supervision (Control) in the Sphere of Economic Activity" and the CMU Resolution No. 752
 - To propose amendments to legislation that would not allow the control bodies that have not implemented the risk-oriented approach to enter the information into the IAS and, accordingly, to conduct inspections;
 - To enhance disciplinary liability for heads of control bodies for non-compliance with the law, in particular the failure to implement the risk-oriented approach;
 - To ensure the development of checklists for each supervisory authority with issues which can be checked during scheduled inspections
- 3) **The SRS** should continue monitoring the progress made by the state control bodies in bringing their legal acts in compliance with the Law "On State Supervision (Control)" and the CMU Resolution No. 752.

¹⁰ According to the SRS, as of 02 October 2017.

2.3. The Integrated Automated System of State Supervision (Control)

Pursuant to the Law¹¹, the Government shall, within a year from the date of its enactment, ensure creation and implementation of the Integrated Automated System of state supervision (control).

The Ukrainian Government Priority Action Plan for 2017¹² on liberalization of the system of state supervision (control) in the sphere of economic activity provides for the development and commissioning in the fourth quarter of 2017 of the Integrated Automated System of state supervision (control) with information on all state control activities. The IAS is designed to provide business entities, as well as central and local authorities, with information on control (including inspection) measures.

In October 2017 a pilot (on-line) module for the planning of control measures and data collection (hereinafter the IAS pilot module for control measures¹³), which allowed the control bodies to comply with the law and to plan control measures for 2018, as well as to

collect necessary information for the further development of IAS, was launched. The creation of the pilot module allowed:

- to develop the first automated plan for implementing complex control measures;
- to start gathering and systematizing information about unscheduled control measures;
- to start collecting and processing information on the results of planned and unscheduled control measures which is necessary for the further development of IAS;
- to start the preparation of control bodies for their further work with IAS.

The launch and deployment of the IAS is ongoing. Once created, the system should be compatible with other information systems and networks being part of state information resources.

¹¹ The Law of Ukraine "On Amendments to the Law of Ukraine" On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" regarding liberalization of the system of state supervision (control) in the sphere of economic activity that became effective on 01 January 2017

¹² The Ukrainian Government Priority Action Plan for 2017 approved by the Order of the Cabinet of Ministers of Ukraine dated 03 April 2017 No. 275-P

¹³ <http://ias.brdo.com.ua>

For reference:

The following information shall be entered into IAS:

- Legal details of business entities (legal entities and individual entrepreneurs);
 - name of state supervisory authorities;
 - economic activities subject to state supervision (control);
 - a list of legal acts, compliance with which is checked during the carrying out of state control measures together with links to the official web pages of the relevant state control bodies;
 - comprehensive annual plans of control measures;
 - reports on the execution of the plans for the previous year;
- date and number of an order (decision, regulation), place of execution, deadlines, type, reason and subject of the measure, the name of the state control body shown on the state control statement (certificate);
 - results of conducted control measures;
 - a short summary of an administrative document on elimination of violations identified during the conducted control measures;
 - administrative and economic sanctions applied to the entity based on results of the conducted control measures;
 - results of appeal of state bodies' administrative documents as well as administrative and economic sanctions applied to business entities.

Recommendations:

- 1) **The MEDT and the SRS** are recommended to continue the development of the IAS and to ensure its installation and commissioning in accordance with the current legislation by the end of 2018.
- 2) **The MEDT and the SRS** should propose amendments to applicable laws which would:
 - Define the powers of control body officials to enter data into the IAS;
- 3) **The SRS** should ensure the population of the IAS with information and its full operation.
 - Enhance personal liability of officials for entering false and/or untimely entry of information into the IAS.

2.4. Responsibility of the control bodies' officials

For reference:

In 2016 the SRS carried out 23 inspections of control bodies (17 scheduled and 6 unscheduled ones), which resulted in 17 protocols on administrative violations. Major violations involved the failure of control bodies to comply with the deadlines for making decisions, issuing and renewing licenses. As a result, 5 orders to eliminate violations of the licensing legislation and 8 protocols on administrative offences under Article 166-12 of the Code of Ukraine on Administrative Offenses (identified during the inspection of the Ministry of Internal Affairs) were issued and drawn up. On top of that, 10 orders to eliminate violations of the permit issuance legislation and 9 administrative offense protocols under Article 166-10 of

the Code of Ukraine on Administrative Offenses (for the offences that were identified during the inspection of the Kyiv City State Administration) were given and drawn up.

In 9 months of 2017, the SRS conducted 22 scheduled and unscheduled inspections resulting in two protocols on administrative offences under Part 1 of Article 166-12 and Part 1 of Article 166-10 of the CAO (violation of deadlines for issuing licenses and permits).

These facts demonstrate that the laws adopted in the sphere of control helped to improve the compliance of control bodies with the legislation and procedures and to reduce the number of violations.

The aforementioned Law¹⁴ came into force on 1 January 2017 and introduced, *inter alia*, an enhanced responsibility of control authorities' officials

Specifically, Article 9 of the Law "On State Supervision (Control)", establishes that:

"Damages to an individual or a legal entity caused by unlawful actions or inactivity of state supervisory authorities' officials or officers shall be compensated from the respective budgets provided for the funding of the authority regardless of the fault of such an official or officer."

An official or officer of a state supervisory authority shall be held liable by way of recourse for compensation amount having to reimburse the amount paid from the corresponding budget in connection with unlawful decisions, actions or inactivity of such an official or officer."

However, it is difficult for business entities to claim damages caused by officials of control bodies. In accordance with Article 56 of the Constitution of Ukraine, everyone shall have the right to compensation, at the expense of the state authorities or local self-government bodies, for pecuniary and moral damage caused by unlawful decisions, actions, or inactivity of state authorities, local self-government bodies, officials, or officers while exercising their

¹⁴ The Law of Ukraine #1726-VIII

powers. At the same time, the actual practical implementation of these rules usually can take place only after the court decision on the compensation of the damage becomes effective.

The actual cases of bringing officials of control bodies to justice and recovering damages caused by unlawful decisions, actions or inactivity of such persons are quite rare. This situation is also explained by the fact that in many cases the heads of corresponding control bodies avoid taking actions against their subordinates or even protect them, even if the violations of rights of the business are clearly established.

The SRS as an executive body implementing the state policy in the sphere of regulation and control of economic activities is also tasked with deregulation of economic activities and has the authority to check the compliance of control bodies with the legislation, as well as to draw up reports on administrative violations in the cases provided by law.

However, even when facts of violations and unlawful actions by officials of control bodies have been proved by the SRS, the actual bringing of certain officials of the control bodies to justice depends on further actions of the management of these bodies and the existing procedures for taking disciplinary actions. Thus, even when a violation of rights of a business entity is detected as a legal fact, the actual liability may not arise due to the absence of an effective mechanism and procedures for bringing such officials to justice.

Taking these things into consideration, as well as the fact that control bodies often do not usually apply the presumption of legitimacy of business entities¹⁵, **it is important to establish effective mechanisms for the practical implementation of the legal acts envisaging the liability for officials of control bodies** and to improve the current legislation on **personal (including disciplinary) liability of officials and officers** so as to prevent violations of the law committed by them in the discharge of their duties.

For this purpose, the Council proposes to establish personal disciplinary responsibility of the heads of control bodies for *systematic violations* of rights of business entities by their subordinates.

For instance, in the case of a systematic violation (more than 3 times during a calendar year), the head of the control body may be given a **warning of professional misconduct** which might be **the grounds for his or her removal from office** in the future.

Furthermore, it is necessary to give the entities whose rights have been violated **the right to file a motion for taking disciplinary actions against the head of the supervisory authority in question**. It is also necessary to make it possible for business entities to complain against omissions (inactivity) of control bodies, in particular their refusal to consider the said motions and initiate a disciplinary proceeding.

Such changes would deter and prevent potential violations of rights of business entities in the future.

¹⁵ According to part 7 of Article 4 of the Law of Ukraine "On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity": "If the norm of law or other legal act issued pursuant to law, or if norms of different laws or different regulations allow ambiguous (multiple) interpretation of rights and obligations of the entity or of state supervision (control) authority, this norm is interpreted in favor of a business entity."

Recommendations:

- 1) **The MEDT** and the SRS should consider standardization of documents that the SRS issues in cases of violations by control bodies, licensing and permitting authorities.
- 2) **The MEDT** and the SRS should prepare amendments to the legislation on the licensing and permit system to eliminate conflicting provisions regarding the liability of officials of such authorities (including heads of control bodies) for failure to execute the SRS orders. In particular, these amendments should focus on eliminating violations in the following areas:
 - revocation of licenses;
 - registration of declarations of conformity of material and technical facilities with the law;
 - deadlines for submission of conclusions and results of examinations, surveys, and other scientific and technical assessments required for the issuance of a permit.
- 3) **The National Civil Service Agency of Ukraine** should prepare amendments to the legislation that will enhance personal disciplinary liability of control bodies' officials by expanding the range of subjects authorized to initiate disciplinary proceedings (part 1 of Article 68 of the Law of Ukraine "On Civil Service"), including by giving business entities the right to directly initiate this procedure against officials of control bodies.

SECTION 3. STRENGTHENING INSTITUTIONAL CAPACITY OF THE STATE REGULATORY SERVICE

On 2 March 2015, the Law of Ukraine "On Licensing of Certain Types of Economic Activity" No. 222-VIII ("Licensing Law") was enacted, which establishes the exclusive list of the types of economic activities that are subject to licensing and regulates certain social relations in the field of licensing.

According to the statistical and analytical information provided by the SRS, there is a conflict between certain provisions of the law. As a result, in some cases the rights of licensees are violated and they have to seek protection of their rights in courts. In order to create a

possibility of pre-trial dispute resolution in the field of licensing, a Licensing Expert Appeal Council (the "Council") was established at the SRS. The composition of this Council was approved by the SRS Decree No.42 dated 17 July 2015. The purpose of the Council is to consider complaints of business entities regarding unlawful actions of licensing bodies.

Among the complaints handled by the Business Ombudsman Council, which had been previously reviewed by the Expert Appeal Council, the most common issues in the area of licensing are as follows.

3.1. Violation of the enforcement terms of SRS orders

According to the eighth part of Article 16 of the above law, the decision of control body to revoke the license shall come into force within thirty days upon its adoption. The ninth part of Article 16 of the law stipulates that if a licensee files a complaint (appeal) to the Licensing Expert Appeal Council, the effectiveness of the decision is suspended until the SRS issues a decision based on the results of the appeal consideration by the Council. The second part of Article 4 of the law stipulates that SRS orders are binding for executive authorities, local self-government, and legal entities of all forms of ownership and private entrepreneurs.

The SRS decision shall become effective from the date of its issuing an order on the satisfaction or rejection of the appeal. Failure by the licensing authority (within the statutory timeframe stipulated by law) to perform the SRS order constitutes a violation of the law and entails the liability set forth by Article 166-12 of the Code of Ukraine on Administrative Offenses.

At the same time, the Law does not envisage any deadlines for the execution of SRS's orders. This lack of statutory deadlines actually impedes prosecution. In order to fill this legislative gap, appropriate changes should be made in the Law on Licensing.

3.2. Limitations of the SRS powers when reviewing alleged abuses in issuing permits

As can be seen from systemic analysis of the Law of Ukraine "On Permit System in the Sphere of Economic Activity" ("Law on Permit System"), a permitting document and a Declaration of Conformity of material and technical facilities with the legislation (the "Declaration") are the documents without which an entity actually has no right to carry out its economic activities. Article 4 of the Law establishes that the entity shall have the right to conduct economic activities upon **submission of the declaration without obtaining a permit**, except for certain types of economic activities which are listed by the CMU.

The Law also stipulates basic requirements for the permit issuance, renewal and revocation procedures and simultaneously establishes the procedure and requirements for applications for obtaining (renewal, revocation) of the permitting document.

Herewith, the CAO only provides for an administrative liability for violations in permits issue (Article 166-10). Therefore, **in the case of violation of the law on permit issue by officials within submitting the Declaration, the SRS would be unable to apply sanctions established by Article 166-10 of the COA.**

The analysis of complaints received from business entities revealed some issues in the process of obtaining approvals, conclusions and other documents preceding the issuance of permits.

Article 1 of the Law on the Permit System stipulates that the permitting (approval) procedure is a set of actions to be performed by administrators and permit authorities within the approval (consideration) prior to obtaining permits

Permit authorities conduct actions pertaining to obtaining approvals, conclusions and other documents required for issuing permits without

engaging a business entity within the statutory period for its issue.

Therefore, the procedure of obtaining approvals, conclusions etc. is a permit (approval) regulatory procedure preceding permit issue, e.g. for outdoor advertising, yet does not comprise the final result of permit issuance.

Inasmuch as a permit approval procedure is absent on the List of permits in the sphere of economic activity (hereinafter the "List"), it cannot be regarded as a permitting document.

That means that the establishment of new types of approvals in fact leads to presence of the so-called "quasi permits" of authorities issuing them. This is especially true for local self-government authorities (for permits on advertising, approval of office hours of trade and service facilities, etc.)

In such cases permit authorities must wait for conclusions of the results of conducted analysis, examinations or other assessments required for issuing a permit. As a result, according to Article 166-10 of the COA (violation of the requirements of the legislation on issues of permits) only authorities issuing a permit are responsible for violation.

Herewith, according to Clause 14 of the Procedure for Control over Compliance with permits issuing legislation¹⁶, in the established list of issues that are subject to study during the inspection of permit authority the SRS cannot identify violations of permits approval procedure since that question is not on the list of matters that could be examined within the inspection by the SRS of the permitting authority.

Accordingly, in case of such procedural violation the SRS has no grounds for conducting an unscheduled inspection and taking action against the officials responsible for permit approval procedure.

¹⁶ List of permit documents approved by Law of Ukraine # 3392.

3.3. Documenting the results of the SRS activity

One of the issues identified by the Business Ombudsman Council with the enforcement of the Law on Licensing is adoption by the SRS on the basis of the results of discovered violations in the area of licensing different in form, but identical in the content documents. In particular:

- (i) In the case of violations by a licensing body, the SRS issues an order on elimination of violations;
- (ii) in the case of violation by a controlling body the SRS issues a submission on elimination of violations;
- (iii) in the case of violation by a permitting authority the SRS issues an order on elimination of violations with indication of its execution deadline;

Inasmuch as part of the state agencies could be at the same time licensing-, permitting - and controlling bodies (e. g. the State Architectural and Construction Inspection of Ukraine, State Emergency Service of Ukraine), it is expedient to carry out SRS's planned inspections in compliance with legislation simultaneously on all directions of the controlling bodies activities. Therefore, it is appropriate to use the terminological consistency of the above types of documents (regulations, orders, and submissions), for which it is necessary to amend number of core laws and COA.

Recommendations:

It is recommended that the MEDT and the SRS draft amendments to the current legislation, particularly:

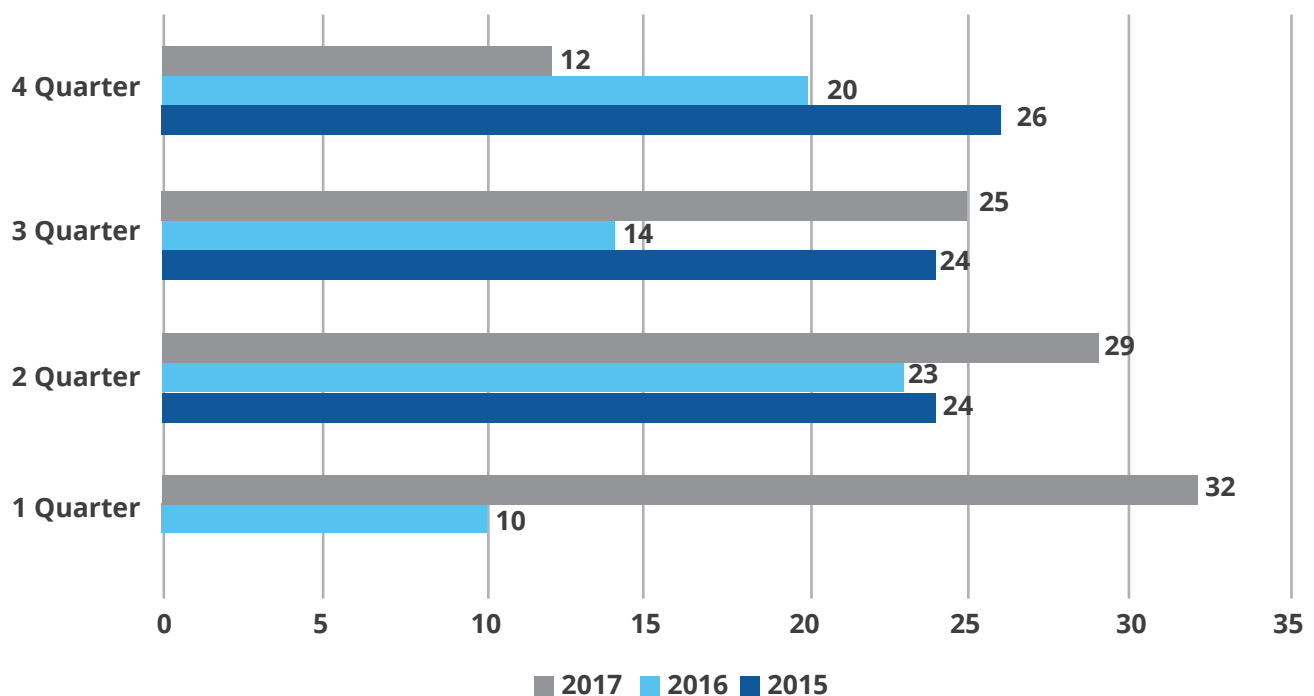
- Article 5 of the Law of Ukraine "On the Licensing of Certain Types of Economic Activities" should be amended by introduction of legally binding deadlines for implementation of SRS's orders based on decisions of Expert Appeal Council.
- In Article 1 of the Law of Ukraine "On the Permit System in the Sphere of Economic Activity" a broader definition of the "permitting document" should be added, including declarations; it should also be allowed to issue permits in other than electronic form (i.e. on paper).
- Amend Article 166-10 of the CAO regarding the establishment of liability of heads of control bodies for violations identified by the SRS when conducting control measures.

APPENDIX 1

1. Typical violations in the area of supervision and control (from the Business Ombudsman Council experience)

Since the start of its operations in May 2015, as of the date of this systemic report the BOC has received 239¹⁷ complaints against actions of regulatory authorities, which make up 9%

of the total number of received complaints. The number of such complaints is increasing (74 in 2015, 67 in 2016 and 98 in 2017).



In total, the BOC has considered 163 complaints and provided 126 recommendations, out of which 113 (90%) have been successfully implemented. The implementation of another

13 recommendations is being monitored. As of 01 November 2017¹⁸ the BOC was investigating 12 complaints, while 7 more complaints were under preliminary review.

¹⁷ As of 1 November 2017

¹⁸ Statistical data will be updated

Analysis of the complaints shows that the major common violations in the context of actions of supervisory authorities as of the date of writing this systemic report are as follows:



2. Unlawful refusals is issuing permits

Case No. 1

On 17 October 2017 the BOC received a complaint from a port operator providing handling, forwarding, expediting and clearance services for export freights in the port of Mykolaiv. The complaint concerned a prohibition to release a freight by officials of the ecological inspection and Mykola City customs. The Complainant's loaded vessel could not leave the port because of a negative stamp on the radiological control manifest.

Three days before complaining to the BOC, the Complainant had to release a ship with export corn. The shipment was ready, the phytosanitary certificates and other permits had been received, all necessary procedures and verifications had been conducted. In addition, the cargo had successfully passed radiological control in a special stationary system. Despite this, officials of the environmental inspection did not allow to export the goods

due to their alleged environmental hazard. The Complainant's perishable cargo was locked in Mykolaiv port for an indefinite period of time.

Having reviewed the permits of the port operator, the BOC investigator contacted the management of the local ecological inspection and the central office of the State Ecological Inspection of Ukraine. The investigator recommended to re-check the grounds for

the cargo export prohibition and to release the ship to the port of destination. The inspector emphasized the urgency of the shipment due to its short storage life.

On 20 October 2017 officials of the Ecological Inspection corrected the cargo's radiological control results in the shipment documents and allowed the departure of the vessel. The case was successfully closed.

Case No. 2

On 21 April 2017 a representative of a furniture manufacturer from Rivne Region complained to the BOC regarding the refusal of the State Architectural and Construction Inspection (SACI) to grant a construction permit to the Complainant to begin construction on its facilities. The SACI office claimed that the Complainant had submitted an incomplete package of documents, yet it did not specify which documents were missing.

After a thorough investigation of the complaint, the Deputy Business Ombudsman and a BOC investigator made daily contact with SACI officials during 24-26 April regarding the matter of the complaint.

As a result, the SACI explained to the Complainant what documents were missing, and it re-submitted the document package. On 28 April, the Complainant informed the BOC that the SACI had granted the construction permit. The case was successfully closed.

Case No. 3

The Complainant, a company specializing in the design and construction of wind farms, turned to the BOC regarding numerous groundless refusals of the Main Department of the State Geological Cadastre to grant an approval for drawing up a land management plan for the allocation of a land plot for lease. The problem continued for over a year.

The BOC investigator requested the Main Department of the State Geological Cadastre in Zaporizhzhia Region to resolve the issue. Having received no adequate response, the BOC

investigator sent a letter to the Head of the State Geological Cadastre and the relevant Vice Prime Minister with the request to ensure an objective consideration of the Complainant's application. The Business Ombudsman also discussed the land allocation issue with the Head of Zaporizhzhia Regional State Administration during a visit to the region on 03 October 2016.

On 10 October 2016 the Complainant informed the BOC that the problem had been solved. The case was successfully closed.

Case No. 4

On 25 May 2016 a company, specializing in fish breeding in Kharkiv complained to the BOC regarding the unlawful refusal of the State Agency of Fisheries of Ukraine (SAFU) to approve a water reservoir-operating mode.

The Complainant had made several attempts to get the approval from SAFU, none of which had proved successful. Every time the SAFU demanded some additional information from the Complainant.

On 9 June 2016 the Complainant and a BOC investigator met with the Head of SAFU to discuss the complaint. During the meeting, the BOC investigator recommended the Agency to verify the grounds for the refusal and to issue the approval in case of their absence.

On 1 August 2016, the Complainant informed the BOC that the SAFU had issued the approval. The case was successfully closed.

3. Procedural violations; non-compliance with the permit issuance deadlines

Case No. 5

The Complainant, a company specializing in the production of cardboard and packaging materials, turned to the BOC with regard to a delay in the registration of its declaration of the start of construction works, which were necessary to reconstruct the Complainant's production facility. On 20 January 2016, the Complainant submitted this declaration to the State Architectural and Construction Inspection of Ukraine (SACI) in Kyiv Region for registration. However, 10 days later the SACI rejected the declaration citing the alleged non-compliance of the type of construction with the exhaustive list of works in the legislation. Over January-May 2016, the SACI refused to register the Complainant's declaration five times, each time making new demands to it. The last rejection from the SACI was because of the alleged non-compliance of the declared category of complexity of construction that obliged the Complainant to apply for the building permit.

In the beginning of June 2016, the BOC asked the SACI to explain the reasons for the delay in the registration of the declaration. On June 16, the BOC experts initiated a meeting with the Director of SACI of Ukraine, in the course of which they discussed the issue of systematic delays in the issuing of permitting documents for construction. The specific case of this Complainant was brought up as an example of delays in the registration of declarations. Shortly after this meeting, the SACI in Kyiv Region advised that it was ready for having a constructive dialogue with the Complainant and solving the issue on its substance.

As a result of the established cooperation with the SACI in Kyiv Region, on 20 June 2016 the Complainant submitted its declaration again, and the SACI registered it within three days. The category of complexity of the construction was not changed. The case was successfully closed.

Case No. 6

The Complainant, a subsidiary of a French group of companies specializing in the production of kaolin-based fire-resistant construction materials, turned to the BOC because it was having problems getting a special subsoil usage permit No. 557 for extracting kaolin. The initial application to the State Geology and Mineral Resources Service was considered for 5 months, although the internal provisions for issuing special permits for subsoil exploitation state that such decisions were to be made within 60 days. When a response finally came from the Service, it stated that the submitted package of documents did not meet the requirements of the procedure, without providing any further details. The Complainant resubmitted the application, facing the risk of idling the production.

The BOC requested the State Geology Service to provide reasons for the dilatory handling of the application. The Service responded that the review of the second submission of the package of documents was being postponed until the adoption of the Ministry of Environment's Decree on the issuance of special subsoil use permits by the Service.

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

On 12 July 2016, the Complainant informed the BOC about obtaining the permit. The case was successfully closed.

4. Procedural violations while exercising control measures.

Case No. 7

A complaint was filed against the State Ecological Inspection (SEI) in Kharkiv Region regarding an inspection of a company by the supervisory authority and the revocation of a special mineral resource use permit by the State Geology and Mineral Resources Service of Ukraine (SGMRSU) as a result of this inspection.

According to the Complaint's materials, a report was drawn up and an order to eliminate violations of environmental legislation was issued. The Complainant provided the supervisory authority with remarks to the Inspection Report and the Order. However, as can be seen from the materials of the Complaint, the remarks were not properly considered and taken into account.

The SEI, without giving the Complainant any reasonable deadlines to eliminate violations identified in the Inspection Report, filed a claim to Kharkiv District Administrative Court to apply responsive measures in the sphere of state supervision to the Complainant in the form of a full termination of giving out coke from the coke batteries No. 1, 2, 3 by sealing their doors, which was actually intended to completely shutdown the Complainant's activity.

Several requirements in the Order, as well as the deadlines for elimination of the violations of environmental legislation referred to therein, were largely neither grounded nor consistent with "the common sense" principles. The Complainant's arguments stated in the Objections to the Inspection Report/

regulations, as well as the letters from the EIA (Environmental Impact Assessment) developers and the documents that substantiate the air emissions volumes were not taken into account by the SEI.

In order to prevent the termination of the Complainant's activity, the BOC turned to the Ministry of Ecology and Natural Resources of Ukraine with a request to take a number of measures, in particular to carry out an official investigation of the legality of the requirements related to the alleged violations of the environmental legislation in the Order issued by the SEI. In the letter of BOC and supporting

documents thereto evidence opposing application of these responsive measures to the Complainant as well as requirements implementation status for the date of the Order were presented to the Ministry of Ecology and Natural resources of Ukraine.

The Complainant meanwhile challenged the actions of the supervisory authority in court. On 25 October 2017 the SEI Order was cancelled by an judgment of Kharkiv County Administrative Court of Appeal. The unlawfulness of the supervisory authority's requirements was confirmed by the court judgment.

5. Lack of cooperation in the area of state control over business entities' activity

Case No. 8.

In May 2016, a company specializing in technical audits of hazardous facilities lodged a complaint with the BOC. The Complainant claimed that its commercial activity was obstructed by the Labor Department in Kharkiv Region, and that, after the company relocated from the Crimea, it had been unable to obtain the approval to conduct engineering works in Kharkiv Region on the basis of the "tacit consent" principle established by the Labor Department itself.

On 23 May, the BOC filed a request with the Main Department of the State Service of Ukraine for Labor Issues (SSULI) to officially investigate the presented evidence that officials at the Labor Department in Kharkiv Region were obstructing the Complainant's normal commercial activity. The BOC also requested the SSULI to explain the principle of "tacit consent" to the BOC, the Labor Department in Kharkiv

Region and the Complainant, in particular whether it was possible to conduct an expert audit of hazardous facilities on that basis.

Later the BOC received a letter clarifying to the BOC, the labor department in Kharkiv Region, and the Complainant the applicability of the tacit consent principle to expert audits of hazardous facilities.

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

However, since the BOC had received the same complaint repeatedly from the Complainant, the Council decided to continue monitoring officials' abuses towards the Complainant in order to take more serious measures if another abuse happens in the future.

Case No. 9

On 23 May 2017 the BOC received a complaint regarding actions of officials of the Head Office of the State Service for Food Safety and Consumer Protection in Kyiv City (SSFSCP), namely early passing of resolutions on the imposition of penalties to State Enforcement Service of Kyiv of the Main Territorial Department of Justice in the City of Kyiv for enforcement.

In the course of the investigation, the BOC found out that in August 2016 the SSFSCP in the City of Kyiv carried out a scheduled inspection of the Complainant's compliance with the legislation on the protection of consumer rights. In February 2017, as a result of the inspection, resolutions on penalties for violation of the legislation were issued.

Disagreeing with the resolutions, the Complainant turned to Kyiv City District Administrative Court within 15 days of their receipt with a request to invalidate and to cancel the resolutions.

Despite the appeal of the resolutions in court by the Complainant and the fact that the SSFSCP's Head Office in the City of Kyiv was informed about the appeal, it sent them for enforcement (collection of payments) to Pechersk District Department of the State Enforcement Service in the Kyiv City.

Given the above, the BOC requested the SSFSCP and the SSFSCP Head Office in the City of Kyiv to check the case circumstances, particularly the possibility that the resolutions had been sent for enforcement ahead of time.

However, the BOC was advised that there was no violation in the actions of the SSFSCP Head Office in the City of Kyiv since according to Article 12 of the Law of Ukraine "On Enforcement Proceedings" enforcement documents in a case where the state or state authority is the enforcing party may be presented for enforcement within next 3 months.

In BOC's opinion, the absence in the Procedure for Imposing and Charging Fines for Violation of the Legislation on the Protection of Consumer Rights approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1177 dated 17 August 2002 of exact and explicit rules regarding coming into force of resolutions on the imposition of fines allows the SSFSCP to pass such resolutions to the enforcement authorities early, thus depriving the business entity in question of the possibility to appeal them in court.

Recognizing the relevance of the complaint, the BOC recommended the Ministry of Economic Development and Trade of Ukraine to ensure drafting of a resolution of the Cabinet of Ministers of Ukraine that would amend the Procedure for the Imposition of Fines for Violations of the Legislation on the Protection Rights by establishing that such resolutions on fines shall come into force (a) on the day of their adoption; (b) on the day when the SSFSCP makes the decision on leaving the complaint unsatisfied (in case of business entity addressing the SSFSCP with the complaint) (c) on the day of coming into legal force by the court (in case of business entity addressing the court).

The BOC is currently monitoring the implementation of the above recommendations.



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