



QUARTERLY REPORT

01 April – 30 June 2021

REPORT FOCUS:

**NON-ENFORCEMENT OF COURT
DECISIONS ON TAX INVOICE
REGISTRATION**



THE BOC IS FUNDED

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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



Business Ombudsman
Marcin Świąćicki

Marcin Świąćicki

DEAR FRIENDS, COLLEAGUES AND PARTNERS,

In Q2 2021, the Business Ombudsman Council received 531 complaints on malpractice of state officials, which is 106 more than in Q1 2021 and 146 more than in Q2 2020. This is the largest number of appeals since Q1 2018, when the SMKOR's operation was being fine-tuned.

The key driver of increase in Q2 2021 were complaints regarding non-enforcement of court decisions on tax invoices registration. We received 115 such appeals from businesses, which was 58 more as compared to Q1 2021 and 93 more than in Q2 2020. That is why we devoted a separate section of the report to the analysis of the problem and again brought attention to the BOC recommendations to solve it as set forth in systemic reports *"Administering Taxes Paid by Business"* (2020) and *"How Business Can Seek Execution of Court Decisions in Ukraine"* (2021).

In comparison with the previous quarter, entrepreneurs also complained more about suspension of tax invoices, inclusion in "risky" taxpayers' lists and unreasonably initiated tax criminal cases. In addition to tax issues, businesses reported on violations of law enforcers: the number of complaints on the National Police (32), the Prosecutor's Office (16) and the State Security Service (9) of Ukraine remained almost unchanged as compared to Q1 2021. The number of appeals on customs issues decreased by half (from 26 to 13), yet tripled as for the Ministry of Justice of Ukraine (from 4 to 12).

In the reporting quarter, the BOC initiated 321 investigations and closed 287 cases, 120 of which

were completed with a successful outcome for the business, 122 – without success and another 45 – with a recommendation to a state body. Of over half a thousand business appeals received 26% was rejected, since they did not meet the BOC's Rules of Procedure eligibility criteria.

The majority of the BOC complainants are traditionally small and medium-sized (75%) local Ukrainian (87%) businesses. According to responses from 104 feedback forms, 98% of applicants were satisfied with cooperation with the BOC.

Among systemic recommendations issued since the BOC inception, the following were implemented in the reporting quarter:

- The Verkhovna Rada adopted amendments to the Land Code aimed at resolving territorial disputes between local governments;
- The Antimonopoly Committee and Energy and Utilities Regulation Commission strengthened cooperation under the Memorandum for natural monopolists to improve service of complaints handling as recommended by the BOC.

During the reporting quarter, the Council attended several working meetings on systemic changes – organized under auspices of respective parliamentary committees – aimed at facilitating prompt consideration of draft laws on administrative procedure and competition reform. The BOC provided about 60 systemic recommendations in the abovementioned areas.

We continued holding practical webinars on sharing the BOC experience with business community. In Q2, 8 webinars devoted to customs and labor issues, interaction with law enforcers, architecture and construction control were organised jointly with the Ministry of Economy, the American Chamber of Commerce in Ukraine, the Ukrainian League of Industrialists and Entrepreneurs and the Ukrainian National Bar Association. We launched the distribution of the BOC monthly newsletter – the first issue focused on the news and key developments of the organization in May 2021. One can subscribe to the newsletter at the BOC website.

A new step was done in the developments regarding the Draft Law "On the Business Ombudsman Institution in Ukraine". The updated version of the document, taking into account remarks of some deputies and lawyers, received support of the Verkhovna Rada Committee on Economic Development and is pending consideration at the plenary session. Ambassadors of the EU and 13 donor countries financing the BOC signed a collective letter in support of the Draft Law to the The Chairman of the Verkhovna Rada Dmytro Razumkov.

In early July, a collective vaccination against COVID-19 took place at the BOC office. During this campaign 70% of employees received at least the first dose of vaccine.

Being cautiously optimistic, we are moving along the post-crisis recovery path helping businesses to deal with state bodies malpractice.

Q2 2021 AT A GLANCE

+25%
as compared
to Q1 2021

+38%
as compared
to Q2 2020

531
**COMPLAINTS
RECEIVED**

287
**CASES
CLOSED**

-11%
as compared
to Q1 2021

-3%
as compared
to Q2 2020



UAH

**DIRECT
FINANCIAL
IMPACT:**

94
MN



88%

**OF CASE-BY-CASE
RECOMMENDATIONS
WERE IMPLEMENTED
BY STATE BODIES**



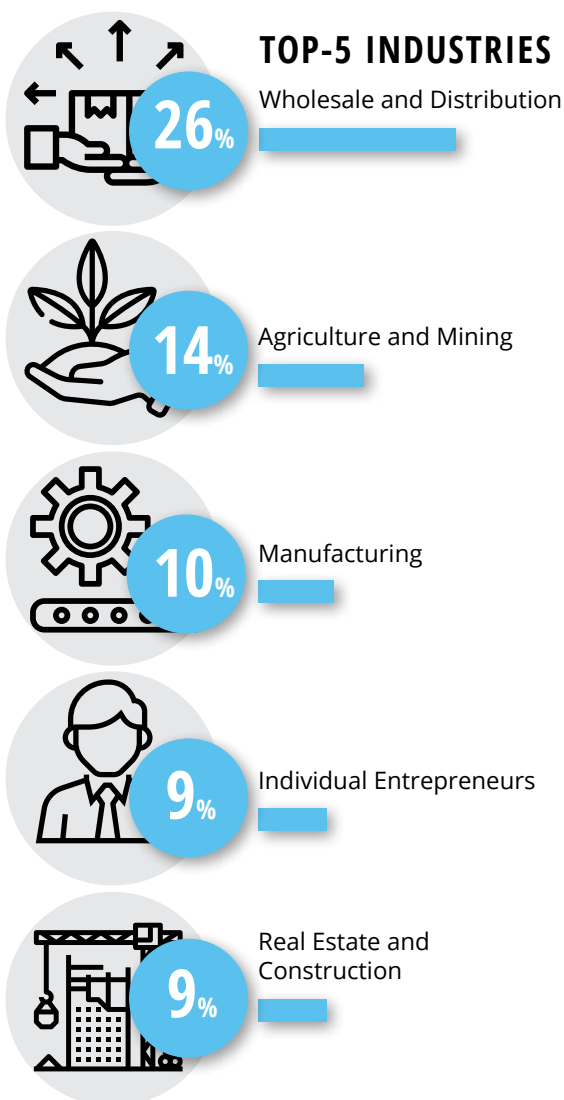
98%

**OF COMPLAINANTS WHO
PROVIDED FEEDBACK
WERE SATISFIED WITH
WORKING WITH THE BOC**

TOP-5 BLOCKS OF COMPLAINTS



TOP-5 INDUSTRIES



TOP-5 MOST ACTIVE REGIONS



SIZE OF BUSINESS

Small and medium enterprises

75%

Large companies

25%

ORIGIN OF INVESTMENT

Local business

87%

Foreign business

13%

1.COMPLAINTS TRENDS

1.1. VOLUME AND NATURE OF COMPLAINTS RECEIVED

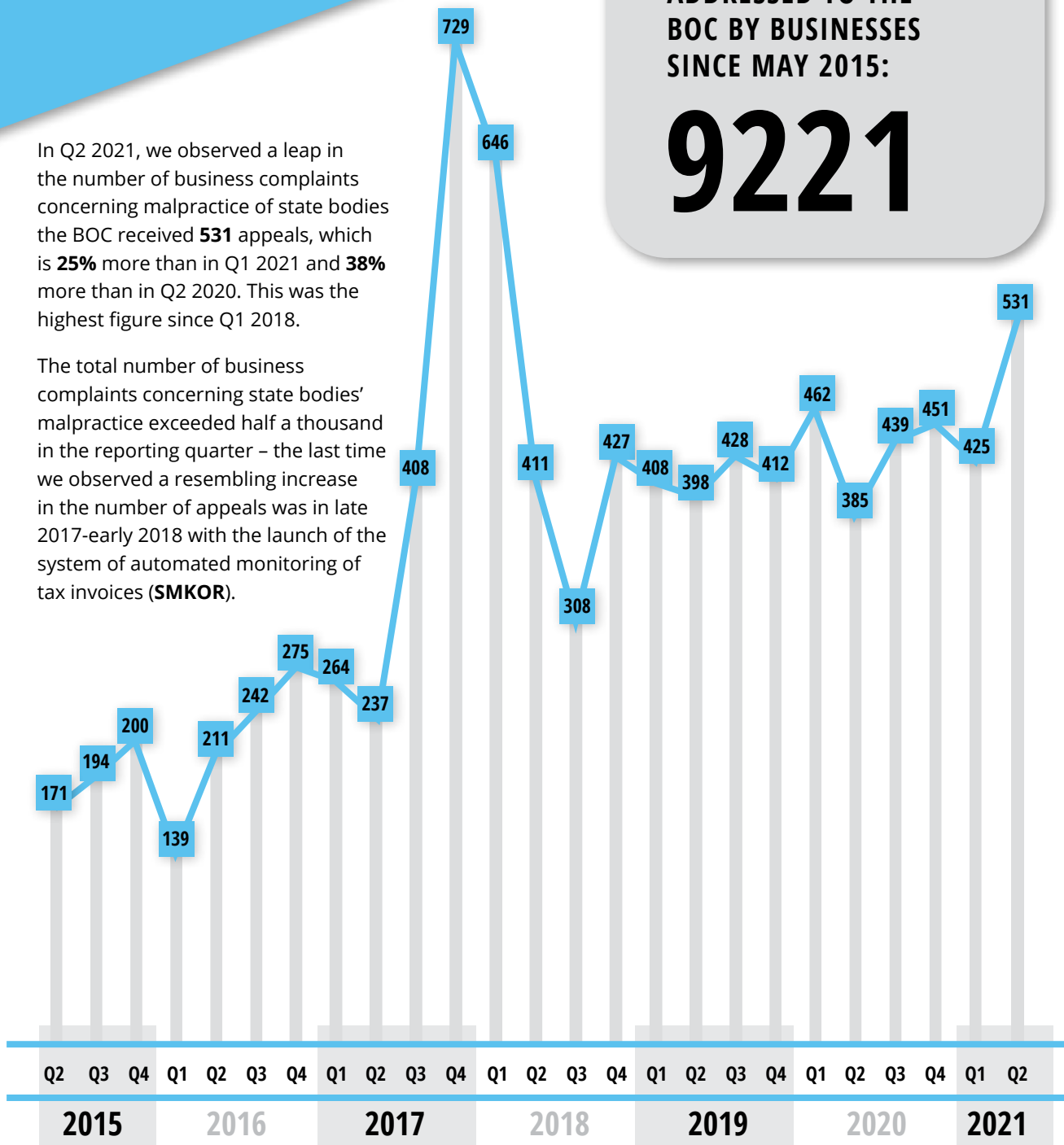
(Clause 5.3.1 (a) of Rules of Procedure)

THE TOTAL NUMBER OF COMPLAINTS ADDRESSED TO THE BOC BY BUSINESSES SINCE MAY 2015:

9221

In Q2 2021, we observed a leap in the number of business complaints concerning malpractice of state bodies the BOC received **531** appeals, which is **25%** more than in Q1 2021 and **38%** more than in Q2 2020. This was the highest figure since Q1 2018.

The total number of business complaints concerning state bodies' malpractice exceeded half a thousand in the reporting quarter – the last time we observed a resembling increase in the number of appeals was in late 2017-early 2018 with the launch of the system of automated monitoring of tax invoices (**SMKOR**).



TOP-10

SUBJECTS OF COMPLAINTS

	Number of complaints received in		
	Q2 2021	Q1 2021	Q2 2020
TAX ISSUES	347	249	261
VAT invoice court decision	115	57	22
VAT invoice suspension	71	45	52
Tax inspections	46	48	55
VAT risky taxpayer	41	26	65
Tax criminal cases	20	16	7
VAT electronic administration	4	7	17
VAT refund	3	4	1
Tax termination/renewal/refusal of VAT payers registration	1	1	2
Tax other	46	45	40
NATIONAL POLICE ACTIONS	32	35	30
National Police procedural abuse	16	24	16
National Police inactivity	14	8	11
National Police other	2	2	3
National Police criminal case initiated	0	1	0
ACTIONS OF STATE REGULATORS	26	38	18
State Architectural and Construction Inspectorate (DABI)	2	6	4
Antimonopoly Committee of Ukraine (AMCU)	2	2	4
StateGeoCadastre	1	5	0
National regulatory agencies NBU licensing	1	0	0
National regulatory agencies NERCUS other	1	0	0
Other state regulators	19	25	10
ACTIONS OF LOCAL GOVERNMENT AUTHORITIES	21	10	8
Local government authorities — rules and permits	6	1	0
Local government authorities — land plots	4	1	2
Local government authorities other	11	8	6

	Number of complaints received in		
	Q2 2021	Q1 2021	Q2 2020
PROSECUTOR'S OFFICE ACTIONS	16	17	11
Prosecutor's Office procedural abuse	10	11	5
Prosecutor's Office inactivity	4	4	2
Prosecutor's Office corruption allegations	1	0	1
Prosecutor's Office criminal case initiated	0	1	3
Prosecutor's Office other	1	1	
CUSTOMS ISSUES	13	26	13
Customs clearance delay/refusal	6	6	4
Customs valuation	2	7	7
Customs administrative proceedings	1	0	0
Customs other	4	12	2
MINISTRY OF JUSTICE ACTIONS	12	4	8
MinJustice Enforcement Service	8	3	2
MinJustice Registration Department	4	1	6
LEGISLATION DRAFTS/AMENDMENTS	9	5	5
Deficiencies in regulatory framework state regulators	4	0	2
Deficiencies in regulatory framework tax	3	0	1
Deficiencies in regulatory framework other	2	5	2
ACTIONS OF STATE COMPANIES	9	13	7
State companies abuse of authority	2	3	3
State companies investment/commercial disputes	1	1	4
State companies other	6	9	0
STATE SECURITY SERVICE ACTIONS	9	8	7
State Security Service procedural abuse	7	6	5
State Security Service inactivity	1	2	0
State Security Service corruption allegations	0	0	1
State Security Service other	1	0	1

TAX ISSUES

The key driver of the total number of complaints' increase were tax related issues. The number of tax problems described in the appeals amounted to almost two thirds (**65%**) of all complaints – this is **39%** more than in Q1 2021 and 33% more than in Q2 2020.

Within the tax group, the largest number of complaints concerned **non-enforcement of court decisions on registration of tax invoices** – **115** per quarter, which is a record figure for the BOC since launch of its operations. That is why we have chosen this issue as a special topic of the report, which we will describe in detail on pages 20-29.

Suspension of tax invoices was the second most common business issue addressed to us in the reporting quarter. In this respect, we observe an increase in the number of appeals compared to Q1 2021 (**+58%**, from **45** to **71**) and Q2 2020 (**+37%**, from **52** to **71**). Entrepreneurs

also complained more about the **inclusion in risky taxpayers lists** in comparison with Q1 2021 (**+58%**).

The number of complaints regarding **ungrounded criminal cases on tax evasion** has increased by a quarter as compared to Q1 2021 (from **16** to **20**) and almost three times as compared to Q2 2020 (from **7** to **20**).

At the same time, when compared to Q1 2021, the downward trend of appeals was observed with respect to **tax inspections** (from **48** to **46** complaints), **electronic VAT administration** (from **7** to **4**) and **VAT refund** (from **4** to **3**).

ACTIONS OF LAW ENFORCEMENT BODIES

The number of business appeals concerning malpractice of the National Police has decreased as compared to Q1 2021 (**-9%**, from **35** to **32**), but increased as compared to Q2 2020 (**+7%**, from **30** to **32**). While companies complained less on procedural abuses, inactivity of law enforcers were in the focus of a larger number of complaints.

In comparison with Q1 2021, the number of appeals featuring the Prosecutor's Office

remained virtually unchanged (**-6%**, from **17** to **16**), while compared to Q2 2020, it increased by **45%** (from **11** to **16**). Most often, businesses reported procedural violations in the actions of prosecutors. The number of business appeals concerning the State Security Service of Ukraine increased both against Q1 2021 (**+13%**, from **8** to **9**) and Q2 2020 (**+29%**, from **7** to **9**). In particular, entrepreneurs communicated episodes of procedural violations during the SSU's investigative actions.

ACTIONS OF STATE REGULATORS

The total number of complaints concerning state regulators went up **(+44%, from 18 to 26)** as compared to Q2 2020. At the same time, the number of complaints related to malpractice of state regulators has significantly decreased as compared to Q1 2021 **(+32%, from 38 to 26)**. In particular, the number of complaints concerning the DAB, which has been reforming for more than a year, has decreased threefold. With respect to the State Geocadastr we received only one complaint, while in the previous quarter there were **5** appeals on this subject.

ACTIONS OF LOCAL GOVERNMENT AUTHORITIES

The number of complaints concerning malpractice of local government authorities has increased significantly: doubled against Q1 2021 (from **10** to **21**) and almost tripled against Q2 2020 (from **8** to **21**). In particular, episodes of malpractice regarded issuance of permits and the allocation of land plots, which is the area of responsibility of local government authorities.

CUSTOMS ISSUES

Entrepreneurs filed **13** complaints concerning malpractice at customs, which equals to the number of appeals received in Q2 2020, but is twice less than in Q1 2021. These appeals were related to, inter alia, delays in customs clearance and adjustment of customs value.

ACTIONS OF THE MINISTRY OF JUSTICE

The number of business complaints concerning malpractice of the Ministry of Justice has tripled as compared to Q1 2021 (from **4** to **12**) and increased one and a half times as compared to Q2 2020 (from **8** to **12**). Entrepreneurs complained more about actions of both the Enforcement Service and the State Registration Department.

OTHER ISSUES

In comparison with Q1 2021, the number of business appeals requesting amendments to legislation increased by **80%** (from **5** to **9**), but the number of complaints about the actions of state-owned companies, on the contrary, went down by **31%** (from **13** to **9**).



1.2. TIMELINES OF THE PRELIMINARY REVIEW OF COMPLAINTS

(Clause 5.3.1 (b) of Rules of Procedure)

In Q2 2021, the average time for preliminary review of a complaint was

7 WORKING DAYS.

It means that the BOC perfectly fits the Rules of Procedure's target of 10 working days.



1.3. NUMBER OF INVESTIGATIONS CONDUCTED AND GROUNDS FOR DISMISSING COMPLAINTS

(Clause 5.3.1 (c) of Rules of Procedure)

In Q2 2021, out of **531** complaints received, the BOC undertook **312** investigations, which is **35%** more than in Q1 2021, and amounts to **59%** of complaints received. The rest of appeals remained at the stage of preliminary assessment (**16%**) or was dismissed as not fitting the Council's eligibility criteria (**26%**) as of June 30, 2021.

312 INVESTIGATIONS

Number of initiated investigations:

Q2 2021	Q1 2021	Q2 2020
312	231	245

82

COMPLAINTS IN PRELIMINARY ASSESSMENT

139 DISMISSED COMPLAINTS

Ratio of dismissed complaints:

Q2 2021	Q1 2021	Q2 2020
26%	29%	23%

MAIN REASONS FOR COMPLAINTS DISMISSAL IN Q2 2021

	Q2 2021	Q1 2021	Q2 2020
Complaints outside Business Ombudsman's competence	91	74	59
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	14	26	17
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	10	14	13
The complaint had no substance, or other agencies or institutions were already investigating such matter	6	8	6
A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration	4	10	4
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	4	7	3
An investigation by the Business Ombudsman in a similar case is pending or otherwise on-going; and	2	3	0
Complaints arising in the context of private-to-private business relations	2	0	1
If a complainant requests to withdraw the complaint, the Business Ombudsman shall cease pursuing the investigation unless he/she decides to pursue the matter in accordance with clause 6.1.2 of these Rules.	1	6	1

The most widespread reason (**65%**) for complaints dismissal – they were outside the Business Ombudsman's competence. Active court proceedings (**10%**) and lack of cooperation from the complainant side (**7%**) were also common in Q2 2021.

1.4. TIMELINES OF CONDUCTING INVESTIGATIONS

(Clause 5.3.1 (d) of Rules of Procedure)

In the reporting quarter, the BOC closed **287** cases. The average duration of the investigation was **79** days, which is **11** days less than standard envisaged in our Rules of Procedure.

AVERAGE TIME FOR CONDUCTING INVESTIGATIONS:

Q2 2021

79
DAYS

Q1 2021

84
DAYS

Q2 2020

75
DAYS



AVERAGE TIME FOR CONDUCTING INVESTIGATIONS:



The majority of cases – **238**, which is **83%** of all closed cases in Q2 2021, were investigated within **90** days, as standardly envisaged in our Rules of Procedure.

1.5. GOVERNMENT AGENCIES SUBJECT TO THE MOST COMPLAINTS

TOP-11 COMPLAINNEES

	Number of complaints received in		
	Q2 2021	Q1 2021	Q2 2020
State Tax Service	328	234	255
State Customs Service	13	25	13
Tax Police	20	15	7
National Police of Ukraine	32	36	30
Local government authorities	21	10	8
Prosecutor's Office of Ukraine	16	17	11
Ministry of Justice	13	4	8
Parliament, the Cabinet of Ministers, the President of Ukraine	10	7	6
State Enterprises	10	12	7
Ministry of Economic Development and Trade of Ukraine	10	9	
State Security Service	9	8	7

OTHER COMPLAINNEES INCLUDE:

OTHER STATE BODIES	Number of complaints received in		
	Q2 2021	Q1 2021	Q2 2020
Commercial and other courts	5	1	1
National Bureau of Investigation of Ukraine	4	1	3
Ministry of Infrastructure of Ukraine	3	0	2
Ministry of Regional Development	3	7	2
Ministry of Finance of Ukraine	3	2	1
Ministry of Social Policy and Labour of Ukraine	3	5	4
National Bank of Ukraine (NABU)	3	8	5
Antimonopoly Committee of Ukraine	2	1	0
Ministry of Ecology and Natural Resources of Ukraine	2	2	4
Ministry of Health of Ukraine	2	0	1
Communal Services of Ukraine	1	1	1
State Funds	1		2
Ministry of Education and Science of Ukraine	1	2	2
Ministry of Energy and Coal Industry of Ukraine	1	2	1
National Bank of Ukraine	1	0	0
Ministry of Defense of Ukraine	1	0	0
National Commission for State Regulation of Energy and Public Utilities	1	1	0
Other	12	9	1

In Q2 2021, entrepreneurs lodged with the BOC **328** complaints about actions or inaction of the State Tax Service. The number of appeals concerning tax issues of business went up by **40%** QOQ and by **29%** YOY. In April-June 2021, companies addressed 20 appeals concerning violations of the Tax Police that is **+33%** and **+186%** respectively.

The Council received **32** complaints about violations of the National Police: **-11%** versus Q1 2021, but **+7%** versus Q2 2020.

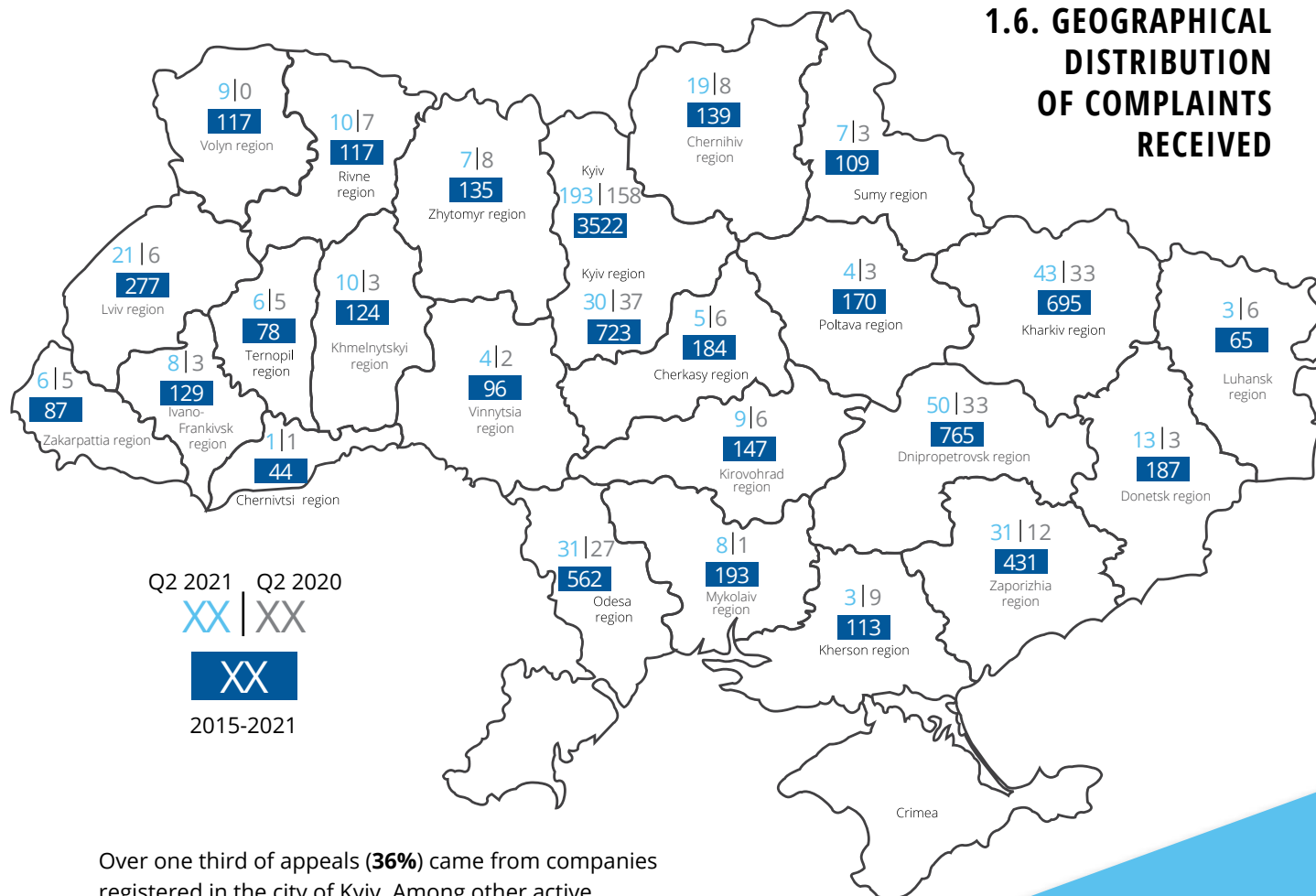
At the same time, in the reporting quarter, we observed an increase in the number of appeals featuring malpractice of local government authorities. Businesses filed **21 complaints** in this regard: **+110%** compared to Q1 2021 and **+163%** compared to Q2 2020.

The volume of appeals concerning the Ministry of Justice went up compared to the previous quarter (**+225%**) and the respective period in 2020 (**+63%**).

As for the other state bodies in the ranking, as compared to Q1 2021, entrepreneurs complained more about the Parliament, the Cabinet of Ministers and the President of Ukraine (**+43%**), the Ministry of Economy (**+11%**) and the State Security Service (**+13%**). Since complaints against the SSS went up in the reporting quarter, it was eleventh in the list of business complainees.

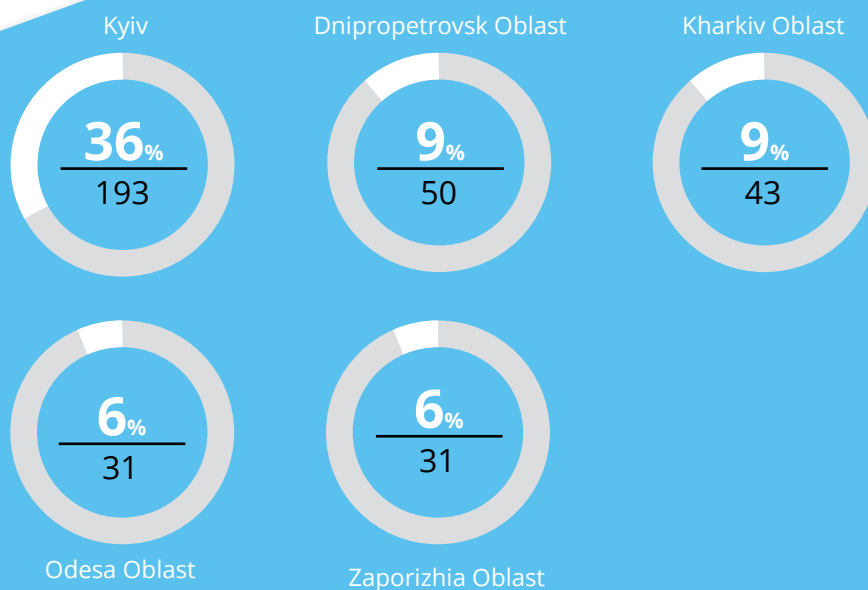
We received less appeals with respect to the State Customs Service (**-48%**), state enterprises (**-17%**) and the Prosecutor's Office (**-6%**).

1.6. GEOGRAPHICAL DISTRIBUTION OF COMPLAINTS RECEIVED



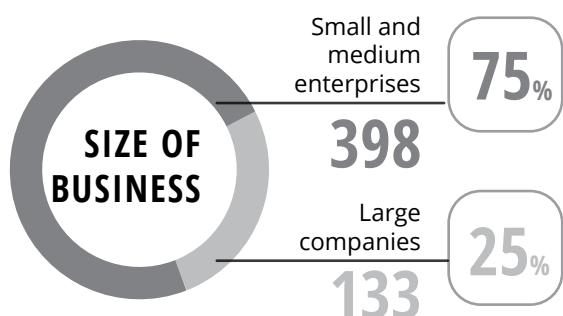
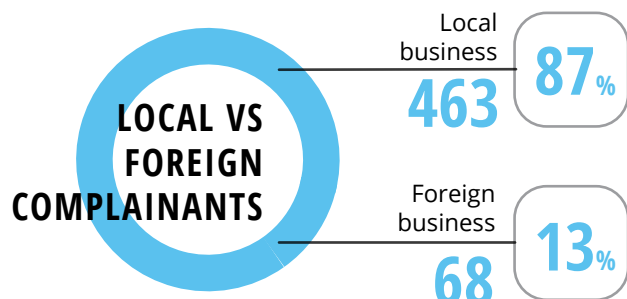
Over one third of appeals (**36%**) came from companies registered in the city of Kyiv. Among other active Oblasts are Dnipropetrovsk and Kharkiv — with **9%** share each, Odesa and Zaporizhia — **6%** share each. The number of appeals concerning state bodies' malpractice from all TOP-regions went up as compared to both Q1 2021 and Q2 2020.

TOP-5 MOST ACTIVE REGIONS





The BOC equally treats all the complainants appealing to the institution for help. Despite the common belief that the BOC mainly helps large foreign business, the prevailing majority of the BOC complainants are Ukrainian enterprises. In the reporting quarter, the share of local business among the BOC complainants amounted to 87%.



Every three of four appeals were lodged with the BOC by small and medium enterprises. As compared to Q1 2021, BOC received 21% more appeals from SMEs and 26% more appeals from large companies.

TOP-5 COMPLAINANTS' INDUSTRIES

	Q2 2021	Q1 2021	Q2 2020
Wholesale and Distribution	134	104	88
Agriculture and Mining	73	50	47
Manufacturing	53	44	55
Individual Entrepreneur	47	56	40
Real Estate and Construction	44	44	41
All other	180	127	114

As compared to Q1 2021, the growth in the number of appeals was recorded with respect to almost all industries from TOP-5 except for individual entrepreneurs. Traditionally, most appeals came from wholesalers and distributors – **26%** of total appeals, followed by agribusiness (**14%**) and manufacturers (**10%**). The fourth position was occupied by representatives of microbusiness – individual entrepreneurs (**9%**), which are firmly entrenched in TOP-5 for many quarter already. Representatives of real estate and construction close the TOP-5 with a **9%** share.

OTHER INDUSTRIES IN Q2 2021 INCLUDE:

Physical Person	27	Technical testing and research	2
Retail	23	IT companies	2
Auto transport	19	Advertising	2
Repair and Maintenance Services	10	Delivery services	2
Information and Telecommunications	8	Ground and pipeline transport	2
Energy and Utilities	7	Consulting	2
Supply of electricity, gas, hot water, steam and air conditioning	6	Freight maritime transport	2
Public Organizations	6	Maintenance of buildings and territories	2
Forestry and logging	6	Publishing and printing services	1
Warehousing	5	Activity of telephone centers	1
Processing Industry	4	Restaurant business	1
Farming	4	Activities in the field of culture and sports, recreation and entertainment	1
Scientific research and development	4	Air transport	1
Cleaning services	4	Banks	1
Health, Pharmaceuticals, and Biotech	4	Activity in the field of law	1
Financial Services	3	Accommodation services	1
Electric installation works	3	Software and Internet	1
Hire, rental and leasing	3	Insurance	1
Education	2	Printing and reproduction activity	1
Activity of holding companies	2	Other	3

1.8. REPORT FOCUS: NON-ENFORCEMENT OF COURT DECISIONS ON TAX INVOICE REGISTRATION

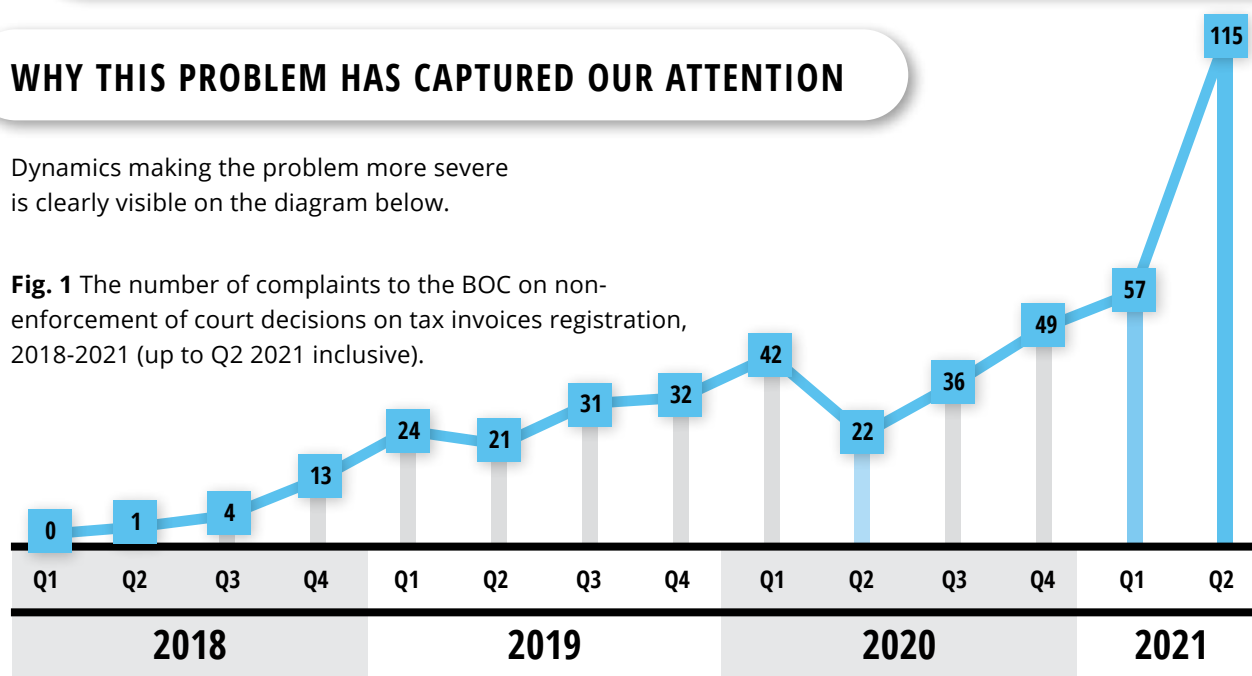
Non-enforcement of court decisions by state bodies is not a new problem in Ukraine. Its relevance is also testified by the fact separate chapters of the Council's systemic reports *"How Business Can Seek Execution of Court Decisions in Ukraine"* published in February 2021 and *"Administering Taxes Paid by Business"* published in August 2020 were devoted to this phenomenon.

However, the second quarter of this year raised this issue (in terms of one of court decision types – on registration of tax invoices, which had been previously suspended) to a quantitatively new level. Therefore, it was decided to dedicate a special section of the quarterly report to this issue.

WHY THIS PROBLEM HAS CAPTURED OUR ATTENTION

Dynamics making the problem more severe is clearly visible on the diagram below.

Fig. 1 The number of complaints to the BOC on non-enforcement of court decisions on tax invoices registration, 2018-2021 (up to Q2 2021 inclusive).

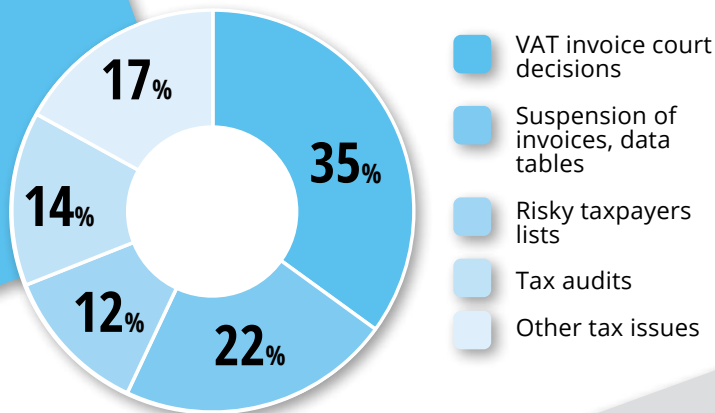


No other type of complaint has shown such dynamics in the current quarter, while the total number of complaints received by the Council increased as compared to the previous quarter, although significantly, but not so dramatically – by a quarter.

OVER **5** TIMES
more than in
Q2 last year

2 TIMES
more complaints on
non-enforcement
of court decisions
than in the previous
quarter

The number of this type of complaints not only reached an all-time high – they occupied a prominent place in the structure of appeals received by the Council this quarter, accounting for **35%** of tax complaints (excluding complaints to the Tax Police, which are assigned by the Council in this analysis to another collective category – “Actions of law enforcement bodies”) and **22%** of all types of complaints.



The problem of non-implementation of this type of court decisions has already been the subject of the Council's careful analysis at a time when it has not become so pressing. It is covered in the systemic report “Administering Taxes Paid by Business” published in August 2020. However a new scale of this problem causing a growing concern of business in Ukraine, makes us look into it in detail again.

BACKGROUND

To understand the origins of the problem, it is necessary to rewind and recall that since summer of 2017 an automated tax invoices monitoring system known as **SMKOR** has been operating in Ukraine.



An outstanding feature of this system is that it not only monitors, but is also able to preventively “block” tax invoices that goods or service suppliers draw up for their customers. Such blocking occurs in case of detection of certain risk signs. A suspended invoice does not give the buyer the right to include the VAT amount it paid as part of the price of purchased goods or services in the tax credit. The supplier may unblock a tax invoice by submitting explanations and documents relating to the nature of the transaction to be considered by the respective commission under the tax authority.

THEORY

The system was set up to counteract the VAT fraud schemes spread in the country by means of which non-compliant taxpayers evaded payment of this tax and sometimes groundlessly refunded it from the budget. When it was introduced, it was foreseen that the system would bring certain “dividends” to bona fide businesses. So, rogues are going to have more trouble while the state will quicker refund VAT for abiding payers and tax authorities will be finding less fault in the course of tax audits. The Tax Code of Ukraine (“TCU”) was even amended introducing a rule that allegedly guaranteed every buyer that in case if a tax invoice issued by its supplier successfully passes the SMKOR, a VAT tax credit formed against it will no longer be disputed by tax authorities.

REALITY

- Buyers have indeed breathed a sigh of relief at simplification of VAT refunds, but noticed that the principle of “indisputability” of a tax credit does not work in practice –it still can be challenged in the framework of an audit.
- Suppliers began to complain to the Council that SMKOR suspends a large number of invoices for real transactions, while respective commissions under tax authorities refuse unblocking them despite availability of documents. Another common complaint was that commissions unreasonably put taxpayers on “risky” lists, thus causing a massive suspension of their tax invoices. Business also started complaining that commissions refused to accept the so-called “data tables” – a document giving suppliers “immunity” to blocking tax invoices drawn up by them for supply of certain goods or services their business manufactures and/or delivers on a regular basis.
- Some representatives of business and expert community began voicing concerns that a significant number of commissions’ decisions were illegal. Many payers began challenging these decisions in court.

WHY SO MANY COURT DECISIONS

Ukraine's administrative courts have never complained about a lack of work. However, since 2018, they were covered by a real “tsunami” of lawsuits in which taxpayers demanded to oblige authorities to register suspended tax invoices. It quickly became apparent that a new type of a tax dispute was emerging in Ukraine. A little later it became clear in whose favour the scales of Themis were leaning.

Based on official court statistics, in 2019, out of 2,143 cases of this category considered by courts of first instance, claims were satisfied in 1978 cases (i.e. taxpayers won **92.3%** of cases). This share remained the same in 2020 (the plaintiffs won 3,107 out of 3,365 cases considered on the merits, which constituted the same share – **92.3%**)¹.

In the courts of appeal, the situation has not changed significantly: in 2019, out of 458 reviewed decisions, only 58 (12.7%) were cancelled; in 2020 – out of 1611 reviewed, 171 were canceled (10.6%). The

cassation instance did not create any surprises either: out of 1336 cassation appeals considered in 2019, decisions were cancelled only in 15 cases (1.1%); in 2020, 28 decisions (1.2%) were canceled out of 2,320 considered complaints.

Thus, the vast majority of cases in which decisions of commissions under tax authorities on refusal to register suspended invoices were appealed, were won by taxpayers. In such cases, courts ruled that the State Tax Service of Ukraine (“**STS**”) was obliged to register tax invoices.

From the beginning of 2021, the STS began publishing statistics on support of this category of cases, based on which the scale of the problem and its dynamics became clear:

INDICATOR	31.12 2020	01.02 2021	05.03 2021	06.04 2021	01.05 2021	01.06 2021
cases under support, of which:	12 500	13 095	14 254	11 644	12 316	12 651
considered by courts of first instance	4 588	4 716	4 539	4 729	4 901	4 609
reviewed by courts of appeal	2 949	3 342	3 752	3 627	3 553	3 284
court decisions came into force (BOC note; i.e. decisions are in progress of enforcement)	4 857	4 834	5 773	3 021	3 662	4 740

Based on the above information, throughout the first half of the year 3 to 5.8 thousand cases on tax invoices registration were constantly under support of the STS, decisions in which had already entered into force (and, therefore, in which the STS was obliged to register tax invoices). Apart from that, from 7.5 to 8.5k cases were pending before the courts.

¹ The statistics of administrative courts of first and appellate instance can be found in the original source - in statistical reporting forms posted on the “Judiciary” official web portal in the section “Other” – “Judicial Statistics” – “Reporting” (link: https://court.gov.ua/inshe/sudova_statystyka/). See Form. No. 1-a (Chapter 1, line 79, columns 17-18) and Form. No. 2 (Chapter 2, line 79, columns 1 and 4) for 2019 and 2020.

² The statistics of the administrative court of cassation can be found in the original source - in the statistical reporting forms posted on the Supreme Court official website in the section “Activities” – “Judicial practice and Statistics” – “Judicial Statistics” – “Reports on the Administration of Justice by the Supreme Court” – “Report on the Administration of Justice by the Administrative Court of Cassation of the Supreme Court” (link: https://supreme.court.gov.ua/supreme/pokazniki-diyalnosti/sud_statistika/). See Form No. 3-BC (Chapter 4, line 102, columns 5, 10, 11) for 2019 and 2020.

³ The above STS statistics can be found in the original source - on the STS official website in the section “Activities” – “Performance” – “Settlement of Tax Disputes” – “Information on Appeals” (link: <https://tax.gov.ua/diyalnist/-pokazniki-roboti/vregulyuvannya-podatkovih/informatsiya-schodo-oskarjen-rishen/>)

ARE DECISIONS REALLY THAT HARD TO ENFORCE?

At first glance, the phenomenon of complaints on non-enforcement of court decisions on tax invoices registration seems difficult to explain. After all, court decisions of this type, unlike some others, are easy to enforce.

Registration of a tax invoice, even based a court decision, is a virtually automated process in Ukraine. The role of a man in this process can be reduced, to put it simply, to two steps: “make sure there is a court decision really obliging us to do so” and “push the proper button”.

Apparently, it is for these reasons that the respective bylaw⁴ sets a fairly strict term during which a tax

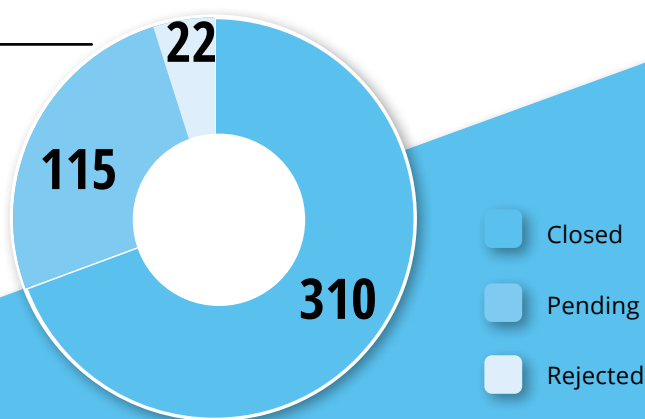
invoice must be registered: on the day of court decision entry into force (subject to its receipt by the STS). That, in fact, means the day of its receipt.

However, real practice showed that court decisions of this type, although enforced after all, yet not as fast as required by law.

Thus, during 2018-2021 (by the end of Q2 inclusive), the Council received a total of **447** complaints on non-enforcement of decisions on tax invoices registration, of which the vast majority (**95%**) were taken up.

Out of cases under investigation by the Council, **310 (73%)** have already been closed, the rest **115** are pending at one stage or another (from a preliminary assessment to monitoring implementation of recommendations provided by the Council).

Fig.3. Statuses of complaints to the BOC regarding non-enforcement of court decisions on tax invoices registration (up to Q2 2021 inclusive)



92%

of cases was with a successful outcome for the complainants, i.e. court decisions were enforced and tax invoices registered.

⁴ The Procedure for Maintaining the Unified Register of Tax Invoices, approved by the Decree of the Cabinet of Ministers of Ukraine dated 29.12.2010 No. 1246 as further amended. (“Procedure No.1165”).

The Council was usually unable to identify any objective reasons for delays in executing court decisions. In cases where objective reasons still existed, they were usually summarized as follows:

1

Mistakes in the operative part of the court decision (in particular, in the number or date of the tax invoice or in the date on which it should be registered)

2

Ongoing attempts by tax authorities to re-file (with delay) appeals against court decisions that had already entered into force

3

Improper defendant (e.g., situations when the court obliged the tax invoice to be registered by a regional level tax authority rather than a central level one)

4

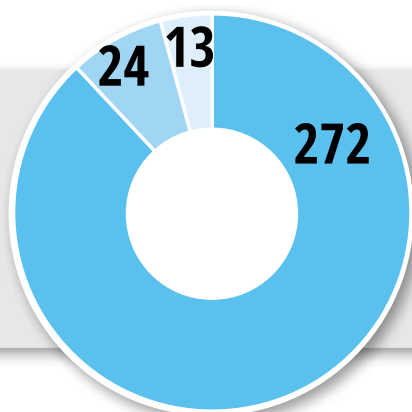
No direct indication the operative part of the court decision for the tax authority's obligation to register the tax invoice (these are "half" court decisions that only cancel the contested decision of the commission that refused registering the invoice, but did not decide the fate of it)

5

Insufficient registration limit in SEA VAT (this refers to both cases when the system erroneously did not register tax invoices using an "Exceedance" special amount and cases when the registration limit was actually used by the payer for submitting new tax invoices for registration during the time interval between tax invoice registration suspension and submission of the tax return for the respective reporting period).

The vast majority of the above-mentioned reasons were subject to be addressed and had been addressed in the Council's interaction with complainants and tax authorities.

Fig. 4. Statuses of closed cases on non-enforcement of decisions on tax invoices registration during 2018-2021 (up to Q2 2021 inclusive)



In 272 cases on which a successful outcome was achieved with the Council's facilitation, a total financial effect (the VAT amount in tax invoices registered based on court decisions) amounted to over

**UAH
146,4
MN**

- Closed with success (with the Council's intervention)
- Discontinued with success (irrespective of the Council's actions)
- Discontinued without success or dismissed

It should be borne in mind that the Council is involved in resolving only a small share of the total number of such cases. Thus, according to the "Unified Legal Aid Service" information agency, which received the respective information from the STS of Ukraine, as of the end of Q1 2020, i.e. more than a year ago, over 15k of tax invoices and adjustment calculations were registered in execution of court decisions with a tax amount of over UAH 1.36 bn. It is information

only about tax invoices already registered at that time, without taking into account those ones which registration was pending.

Thus, businesses usually manage to register tax invoices suspended by SMKOR, if not out of court, then based on court decisions.

The question whether we can treat this state of affairs as a success for business remains controversial.

IS BUSINESS SATISFIED WITH WON CASES?

It is important to understand that the period during which a taxpayer seeks execution of a court decision (usually preceded by an even longer trial and pre-trial period) is a waste of time, yet losses from its loss are not borne by the state.

The moment is shifted to the point when the buyer can get a VAT tax credit and "input" registration limit in the electronic tax administration system. Thus, an entity suffering damage as a result of such delay is the buyer, unless otherwise follows from the terms of its contract with the supplier.

Today, it is a common practice to include reservations in commercial contracts, based on which the buyer has the right not to pay the supplier for purchased goods or services at least a part of the VAT amount included in their price until the supplier registers a tax invoice. Provided such a reservation, losses are passed on to the supplier.

The case described below can give a rough idea of the damages amount that a taxpayer suffers as a result of such cases.

CASE. TAX INVOICE REGISTRATION WITH 2.5 YEARS DELAY

In October 2017, a small company operating in the field of architecture and construction entered into a contractor agreement, under which it undertook to perform works to hook up the biological treatment station to the electrical grid at a construction site in Zhytomyr Oblast.

On November 6, 2017, the customer paid an advance payment for performance of works in the amount of about **UAH 142.4k**. The VAT amount included in the price of works was **UAH 23,731.30**. Going a little forward – the work was fully completed by December 20, 2017.

On November 29, 2017, the construction company submitted a tax invoice to be registered for the said amount. However, the latter was blocked by SMKOR due to the discrepancy between volumes of purchase and sale of works (services) corresponding the respective state classifier code, and failure of the company to submit a taxpayer's data table in advance explaining its business activities.

The company immediately submitted explanations and copies of documents for this business transaction to be considered by the respective commission (there was only one commission at the State Fiscal Service of Ukraine level at that time). However, by the decision of this commission of December 19, 2017, registration of the tax invoice was denied. The construction company had to go to court.

Only on October 2, 2018, the district administrative court finally ruled on the case by satisfying the company's claim, cancelled

the decision of the commission and ordered the tax authority to register the tax invoice.

However, the tax authority did not put up with this result and filed an appeal. However, no court fee was paid when it was filed. The Court of Appeal set a deadline for the tax authority to eliminate this shortcoming. On January 9, 2019, taking into account that the tax authority failed to pay the court fee before the set deadline, the court returned the appeal without consideration. From that day the court decision came into force.

On March 4, 2020, (over a year later) the company's lawyer lodged a complaint with the Council, saying the court decision had not been executed yet, and the tax invoice hadn't been registered either.

During the period from March 6, 2020 to June 3, 2020, the Council approached the tax authority five times with a request to execute the court decision immediately.

On June 4, 2020 the STS of Ukraine informed the Council that the court decision had been complied with, and the complainant confirmed this by reporting that the tax invoice had finally been registered.

As a result, the tax invoice, which was to be registered on November 29, 2017, was registered only on June 4, 2020, with a delay of 2 years, 6 months and 6 days.

Only the court can establish the actual amount of damages suffered by the taxpayer (buyer or supplier) due to such a delay, based on the

economic expert examination findings and/or other relevant and admissible evidence. In Ukraine, no person is deprived of the right to sue, although it is not very common for many reasons (including quite long-lasting proceedings in general courts, as well as difficulty of proving the fact of causing damage and its extent).

However, everyone can judge about an approximate level of losses that an entity could incur without claiming it to be an absolute truth by employing such economic indicators as, for example, the consumer price index (inflation index), calculated in Ukraine by statistics authorities, or a discount rate, for which, for example, you can take a discount rate set by the National Bank of Ukraine (NBU).

Based on a consumer price index in Ukraine in the period of debt, inflationary losses because of late

receipt of **UAH 23,731.30** amount the tax invoice was drawn up for, accounted for **UAH 4,142.56**. In other words, during this time money depreciated approximately by **17.46%** because of the increase in consumer prices.

If one tries, as is customary in financial and management accounting, to calculate the real change in the value of money over time (because working capital available to business is not lying still, but works), it is more appropriate to take the discount rate as a basis, established in the respective periods by the NBU. Having made a rough calculation based on this rate, we can conclude that **UAH 23,731.30** received on June 4, 2020 is equal to about **UAH 14,289.52** in monetary terms on November 29, 2017, i.e., they cost **39.79%** less.

SO, WHAT TO DO?

“Just follow court decisions” is a too simple answer for the Council to limit itself to in its analysis.



In section 2.4.3 of the systemic report “Administering Taxes Paid by Business” published in August 2020, the Council provided a number of recommendations to respective public authorities.

Thus, the STS, the Ministry of Finance of Ukraine (“**MinFin**”) and the Cabinet of Ministers of Ukraine (“**CMU**”) – each of them within their competence – were recommended to approve draft amendments to respective bylaws⁵ to prevent systematic delays in enforcing court decisions obliging tax authorities to register tax invoices. Amendments should set a **deadline within which a tax invoice must be registered to enforce the court decision**. Such a period should be realistic and should not exceed **15 days** from the date of the court decision entry into force. After such amendments entered

⁵ Procedure No. 1165 and/or the Procedure for maintaining the Unified Register of Tax Invoices, approved by the Resolution of the Cabinet of Ministers of December 29, 2010 No. 1246.

into force, all episodes of missing the specified deadline shall be the basis for carrying out official internal investigations by the STS and bringing guilty persons to liability.

In addition, the Council recommended that the above bodies develop and to submit to the Verkhovna Rada of Ukraine the Draft Law of Ukraine introducing amendments to the TCU, which will vest the taxpayer with the right to receive from the State Budget of Ukraine interests at a rate equal to 120% of the NBU discount rate for the entire period during which such a taxpayer was unlawfully deprived of a right to form a VAT tax credit and to have the amount of its registration limit increased in SEA VAT due to illicit refusal to register suspended tax invoices.

The STS was recommended to **analyze the Supreme Court case law** in the said category of cases and prepare its own summary highlighting the grounds on which the relevant decisions on refusal

to register tax invoices are often considered illegal and cancelled by courts.

This body was also recommended to develop and publish the Action Plan to address widespread (systemic) grounds on which numerous illegal decisions are made by regional level commissions subsequently cancelled by courts.

Such action plan may include:

- measures aimed at improving regional and central level commissions effectiveness (more substantiated reasoning of decisions, etc.);
- measures aimed at improving the quality of representation of tax authorities in courts in such cases;
- initiating amendments to legislative provisions, which are vague, inconsistent, or ambiguous.



Section 3.3. of the systemic report “How Business Can Seek Execution of Court Decisions in Ukraine” published in February 2021, draws attention to organization of support, monitoring and enforcement of court decisions in tax (and customs) bodies.

The STS and the SCS are recommended **to amend internal regulations and to take appropriate organizational steps in order to identify a responsible department** with functions of: (1) monitoring court decisions to be executed, (2) monitoring the process of such decisions execution and (3) preparation of regular public reports on the implementation, as well as on problematic issues creating obstacles to proper court decisions execution.

Some of the above recommendations have been accepted by the addressees. Others (particularly the recommendation on introduction of interests payable to taxpayers for delay of tax invoice registration) were perceived less optimistically due to risks to the state budget.

1.9. FEEDBACK

Feedback is an important form of communication with clients as it gives an opportunity for the Business Ombudsman Council to understand its complainants' sentiments, assess effectiveness of service rendered and define areas requiring improvement.

After closing the investigation (either with or without success) we send a request for feedback to every complainant. We ask companies to assess our work based on following criteria:

- ☐ client care and attention to the matter
- ☐ understanding the nature of the complaint
- ☐ quality of work product

Complainants always indicate the level of satisfaction with the BOC assistance in solving their cases.

In the reporting quarter we received back

104

**COMPLETED
FEEDBACK
FORMS**

from complainants.

In **102** of them, applicants said they were satisfied with working with us – **98%**
in such a way the client satisfaction level reached

WE THANK THE BUSINESS OMBUDSMAN COUNCIL FOR ITS CONSTRUCTIVE AND PROMPT RESPONSE TO OUR REQUEST. PERMITS FOR CONSTRUCTION WORKS PERFORMANCE WERE OBTAINED FROM DABI.

SERHII IVANOV, CEO OF RESOL 1 LLC

GIVEN THE QUALITY OF THE WORK AND THE RESULTS, THE BUSINESS OMBUDSMAN'S TEAM DEMONSTRATED NOT ONLY HIGH EFFICIENCY, BUT ALSO AN EXAMPLE OF HOW INVESTIGATORS AND PROSECUTORS IN UKRAINE SHOULD WORK IN INVESTIGATING RAIDERSHIP EPISODES AND CORRUPTION ONSITE. THEREFORE, ON BEHALF OF THE VICTIMS AND UPON THEIR REQUEST, I WOULD LIKE TO THANK YOU AND YOUR TEAM FOR YOUR WORK AND HIGH RESULTS, WHICH RESTORE HONEST CITIZENS AND TAXPAYERS' FAITH IN JUSTICE.

DMYTRO IAGUNOV, ATTORNEY

**IN THE REPORTING QUARTER WE RECEIVED
THE FOLLOWING FEEDBACKS FROM
COMPLAINANTS:**

**THANKS TO THE BUSINESS
OMBUDSMAN COUNCIL'S
PROMPT AND PROFESSIONAL
ASSISTANCE IN RESOLVING OUR
ISSUE, THE MINISTRY OF JUSTICE
OF UKRAINE MADE CORRECT
AND, MOST IMPORTANTLY,
LEGAL CONCLUSIONS ABOUT
THE SITUATION AND CANCELLED
ILLEGAL REGISTRATION ACTIONS
THAT CAUSED TAKEOVER OF THE
COMPANY.**

**TETIANA IAKOVENKO,
REPRESENTATIVE
OF IVCJ JAPAN LLC**

**WE EXPRESS OUR SINCERE
APPRECIATION AND DEEP
GRATITUDE TO THE BUSINESS
OMBUDSMAN COUNCIL'S TEAM
FOR TIMELY FACILITATION AND
ASSISTANCE IN THE CASE AND ITS
RESOLUTION.**

**WE WISH YOU STRENGTH, CREATIVE
INSPIRATION AND SUCCESS IN
YOUR WORK BEING VITAL FOR THE
UKRAINIAN SOCIETY.**

**ADMINISTRATION AND STAFF OF
RAUF ABLYAZOV EAST EUROPEAN
UNIVERSITY PRIVATE HIGHER
EDUCATION INSTITUTION**

**FOR 18 YEARS, ZEELANDIA HAS BEEN WORKING IN UKRAINE, PAYING
TAXES AND CREATING JOBS. INDEED, WE HAVE FACED A LOT OF
CHALLENGES IN THIS COUNTRY - BOTH COMMERCIAL AND OTHERS, BUT
THANKS TO THE INVOLVEMENT OF THE BUSINESS OMBUDSMAN, WE
HAVE MANAGED TO RESTORE JUSTICE AND DEFEND THE LEGAL RIGHTS
OF BUSINESS THAT OPERATES IN UKRAINE AND PAYS TAXES. WE ARE
EXTREMELY HAPPY THAT IN THIS WAY WE HAVE BEEN ABLE TO SPEND
LESS OF OUR RESOURCES AND SEEK JUSTICE IN MATTERS THAT WERE
IMPORTANT FOR OUR FUTURE DEVELOPMENT.**

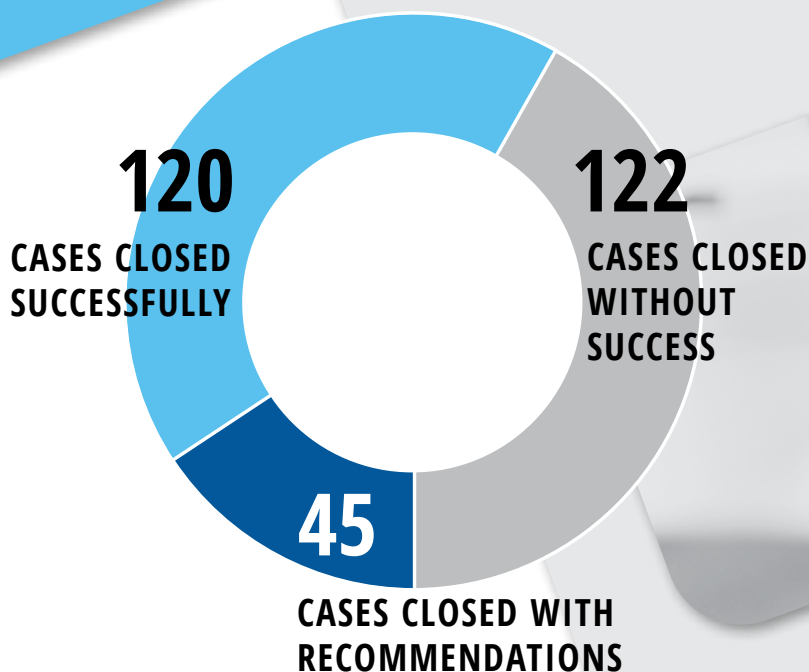
**ANDRIY VASYLENKO /
DIRECTOR OF ZEELANDIA SUBSIDIARY COMPANY**

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

The Business Ombudsman is entitled to examine entrepreneurs' issues in their relations with state bodies on the case-by-case basis, provide respective recommendations to state bodies in case business rights were violated, and to draw attention to pressing business issues that became systemic by suggesting their possible solutions.

Hence, in this section we will report on closed investigations and their results, recommendations issued to state bodies and status of their implementation, identified and solved systemic business issues.

2.1. INFORMATION ON CLOSED CASES AND RECOMMENDATIONS PROVIDED



TOTAL NUMBER OF CLOSED CASES SINCE LAUNCH OF OPERATIONS:

6104

Closed cases

Q2 2021	Q1 2021	Q2 2020
287	321	297

TOP-10

SUBJECTS OF CLOSED CASES:

	Q2 2021	Q1 2021	Q2 2020
Tax issues	193	233	207
Actions of State Regulators	22	26	12
National Police actions	19	17	26
Customs issues	14	15	12
Prosecutor's Office actions	11	7	1
Actions of state-owned enterprises	6	4	2
Actions of local self-government authorities	4	8	15
Ministry of Justice actions	4	7	6
Actions of State Security Service	4	4	1
Other	8	3	11
TOTAL CLOSED CASES	287	321	297

In the reporting quarter, we finalized investigation of **287** cases. Over two thirds (**67%**) of closed cases were tax-related.

Actions of state regulators were in the spotlight of **22** closed cases.

As regards law enforcement bodies – we closed **34** cases in total. 19 cases related to actions of the National Police, **11** cases – to the Prosecutor's Office and **4** – to the State Security Service.

Customs issues composed **5%** of all closed cases, while episodes concerning malpractice of local government authorities, state-owned enterprises and the Ministry of Justice – only **1%** each.

**FINANCIAL IMPACT
IN Q2 2021:**

**UAH
94
MN**

Under financial effect of the BOC, we understand the amount of money that entrepreneurs have managed to return or save due to successful resolution of disputes with state bodies. We take into account only those amounts that appeared in cases, after appropriate agreement with a complainant. We do not include the monetary value of saved investment or financial equivalent of the returned property in the financial result, for instance. Nevertheless, since May 2015, financial effect of the BOC activities for businesses operating in Ukraine exceeds UAH 19 billion.

**TOTAL FINANCIAL IMPACT OF BOC'S
OPERATIONS MAY 20, 2015 – JUNE 30, 2021**

UAH 19 BN

In the reporting quarter, UAH 49 mn of the financial impact resulted from the revision of tax inspections results in favour of business. UAH 19 mn was saved following the registration of tax invoices, previously suspended. Closing ungrounded criminal cases resulted in UAH 11 mn saved for companies. Apart from that, UAH 8 mn of financial impact regarded VAT refund and UAH 5 mn more – successful resolution of issues concerning VAT electronic administration.

	Q2 2021	TOTAL UAH, 2015-2021
Tax inspections	49,013,501	7,711,601,010
Tax VAT invoice suspension	19,475,684	392,967,432
Tax criminal cases	11,402,741	42,061,066
Tax VAT refund	8,468,120	6,213,011,375
Tax VAT electronic administration	5,433,398	498,827,647
Tax other	474,348	1,001,515,687
Total	94,267,792	18,992,406,612

NON-FINANCIAL IMPACT OF BOC'S OPERATIONS:	Q2 2021	Q1 2021	Q2 2020	TOTAL, 2015-2021
Malpractice ceased by complaine	49	47	45	819
Criminal case against the Complainant closed; property/accounts released from under arrest	6	18	4	156
Legislation amended/enacted; procedure improved	5	6	3	91
Permit/license/conclusion/registration obtained	3	5	4	118
Claims and penalties against the Complainant revoked Sanction lifted	1	0	1	26
State official fired/penalized	1	0	1	37
Contract with state body signed/executed	1	1	1	54
Tax records reconciled, tax reporting accepted	1	7	3	211
Criminal case initiated against state official/3rd party	0	1	2	27
Other issues	33	40	30	619

In Q2 2021, the BOC ceased 49 episodes of state bodies malpractice (mainly various procedural abuses), helped companies to close 6 ungrounded criminal cases, improve 5 procedures, obtain 3 licenses and permits.

RECOMMENDATIONS PROVIDED

**RECOMMENDATIONS
ISSUED IN Q2, 2021:**

152

**TOTAL NUMBER
OF RECOMMENDATIONS
ISSUED SINCE LAUNCH
OF OPERATIONS:**

3940

3484

**NUMBER OF RECOMMENDATIONS
IMPLEMENTED**

184

**NUMBER OF RECOMMENDATIONS
SUBJECT TO MONITORING**

272

**NUMBER OF RECOMMENDATIONS
NOT IMPLEMENTED**

STATE BODIES WHOM THE BOC ISSUED RECOMMENDATIONS IN 2015-2021 (CASE-BY-CASE BASIS) AND RATIO OF IMPLEMENTATION

	Issued recommendations	Implemented recommendations	Cumulative status of implemented recommendations as of Q2 2021
State Fiscal Service	2745	2510	91%
National Police of Ukraine	231	175	76%
Prosecutor's Office of Ukraine	159	125	79%
Local government authorities	151	108	72%
Ministry of Justice	126	115	91%
Ministry of Economic Development and Trade of Ukraine	108	94	87%
State Security Service	60	58	97%
Ministry of Ecology and Natural Resources of Ukraine	63	57	90%
State Enterprises	41	35	85%
Ministry of Regional Development	34	32	94%
Ministry of Social Policy and Labour of Ukraine	35	30	86%
Parliament, the Cabinet of Ministers, the Office of the President of Ukraine	33	28	85%
Ministry of Infrastructure of Ukraine	26	18	69%
Ministry of Finance of Ukraine	25	18	72%
Ministry of Health of Ukraine	16	14	88%
Ministry of Internal Affairs	14	11	79%
National Commission for State Regulation of Energy and Public Utilities	11	10	91%
Antimonopoly Committee of Ukraine	12	8	67%
Commercial and other courts	7	7	100%
NABU	6	4	67%
State Funds	6	3	50%
Ministry of Education and Science of Ukraine	3	3	100%
National Bureau of Investigation of Ukraine	4	3	75%
National Bank of Ukraine	5	2	40%

	Issued recommendations	Implemented recommendations	Cumulative status of implemented recommendations as of Q2 2021
National Council of Ukraine on Television and Radio Broadcasting	1	1	100%
Ministry of Defense of Ukraine	2	1	50%
State Regulatory Service of Ukraine	1		0%
State Border Guard Service of Ukraine	1	1	100%
Ministry of Digital Transformation	1	1	100%
State Emergency Service of Ukraine	1	1	100%
Communal Services of Ukraine	1	1	100%
Other	11	10	91%
TOTAL	3940	3484	88%

In Q2 2021, the BOC issued 152 new recommendations, while state bodies implemented **141** individual recommendations from those issued since launch of operations. In such a way, the cumulative number of implemented cases-by-case recommendations by state bodies reached **3484**, that is **88%** as of the end of Q2 2021. This reflects state bodies' commitment to improve their performance and cooperate in solving disputed issues of business.

Out of **2745** of the Council's individual recommendations that traditionally addressed the block of the State Tax Service, the State Customs Service and the State Fiscal Service, **91%** were fulfilled.

Among other state bodies to whom we issued **30+** recommendations, the following performed better than average in the reporting quarter: Ministry of Justice (**91%**), the State Security Service (**97%**), the Ministry of Ecology and Natural Resources (**90%**), the Ministry of Territories and Communities Development (**94%**).

The following state bodies were less successful in implementation of recommendations provided by the BOC:

the National Police (**76%**), the Prosecutor's Office (**79%**), local government authorities (**72%**), state-owned-enterprises (**85%**), the Ministry of Social Policy (**86%**), the Parliament, the Cabinet of Ministers, the Office of the President of Ukraine (**85%**).

It is worth mentioning that in the reporting quarter, local government authorities have improved their performance by **3pp** as compared to Q1 2021, the Ministry of Social Policy – by **1pp**.

2.2 SYSTEMIC ISSUES IDENTIFIED AND SOLVED

During reporting quarter the Council attended several working meetings – organized under auspices of respective parliamentary committees – aimed at facilitating prompt consideration of draft laws on administrative procedure and competition reform. Once adopted, these documents would ensure implementation of the vast array of the Council's systemic recommendations in such fields as administrative appeal and antitrust.

The Business Ombudsman Council provides recommendations to state bodies on the basis of individual cases and in accordance with published systemic reports. Over 6 years of operations, we have prepared

17

SYSTEMIC REPORTS

on selected business problems and issued over 400 recommendations to state bodies.

In particular, in Q2 2021 we acknowledged that the following of the BOC recommendations were implemented:

SYSTEMIC REPORT January 2016

NATURAL MONOPOLIES VS. COMPETITIVE BUSINESS: HOW TO IMPROVE RELATIONS

Issue

Insufficient level of analytical work of state regulators on the analysis of the quality of services provided by natural monopolists.

BOC's recommendation

National Energy and Utilities Regulatory Commission and AMCU — ensure continuous analysis of the situation and performance of their duties by licensees.

Actions taken by government agencies

On September 29, 2016, the AMCU and the National Energy and Utilities Regulatory Commission signed a Memorandum on strengthening cooperation in the markets of electricity, natural gas and in the areas of heat supply, water supply and sewage.

In particular, the AMCU and the National Energy and Utilities Regulatory Commission agreed, inter alia, to (i) exchange information on problematic issues in the electricity, natural gas and

heat supply, water supply and sewage markets in order to be able to take prompt measures within their competence; (ii) to create an effective competitive environment during the introduction of new models of electricity, natural gas and heat supply, water supply and sewage markets, simplification of the procedure for connecting consumer equipment to the engineering networks of natural monopolies.



During 2016-2020, the BOC monitored the nature, regularity and effectiveness of the measures taken by the National Energy and Utilities Regulatory Commission together with the AMCU in the framework of the implementation of the Memorandum to ensure the full implementation of the BOC's recommendations.

In the framework of additional requests and BOC's own observations, we consider this recommendation fulfilled.

SYSTEMIC REPORT**February 2017****CHALLENGES FOR GOVERNMENT
AND BUSINESS IN DEALING WITH
LOCAL GOVERNMENT****Issue**

The lack of properly recorded information on the boundaries of territorial communities in the State Land Cadastre creates a basis for disputes between local governments over the territory of their jurisdiction, which is especially important in the context of decentralization reform in Ukraine.

Taking into account the above-mentioned, there is a need to establish a simplified procedure for establishing and changing the boundaries of territorial communities, according to which:

- the community itself has the right to make decisions on establishing and changing the boundaries of the community through the relevant local government in agreement with the adjacent territorial community (except when it causes changes in the boundaries of settlements, districts and regions);
- as part of the land management works that need to be carried out to establish and change the boundaries, only works on fixing the turning points of the boundaries of the territorial community should be performed, without carrying out any land management works within the community territory.

**BOC's recommendation**

Ministry of Regional Development, Construction and Residential Services, Regional State Administrations, All-Ukrainian associations of LGAs — to join forces with all-Ukrainian associations of LGAs to draft a law establishing the procedure for further functioning or elimination of county councils in counties whose boundaries coincide completely with those of territorial communities.

Actions taken by government agencies

On April 28, 2021 — the Law of Ukraine “On Amendments to the Land Code of Ukraine and other legislative acts on improving the system of management and deregulation in the field of land relations” №1423-IX was adopted.

On May 24, 2021, the law was signed by the President of Ukraine

During reporting quarter the Council attended several working meetings – organized under auspices of respective parliamentary committees – aimed at facilitating prompt consideration of draft laws on administrative procedure and competition reform. Once adopted, these documents would ensure implementation of the vast array of the Council's systemic recommendations in such fields as administrative appeal and antitrust.

2.3. SUMMARY OF IMPORTANT INVESTIGATIONS

In this section one can get familiar with the cases which the BOC has been investigating.

TAX ISSUES

Subject: VAT invoice court decision

Court decision on tax invoices registration enforced

Complainee:

The State Tax Service (STS),
Main Department of the STS
in Odesa Oblast (MD STS)

COMPLAINT IN BRIEF:

The Business Ombudsman Council received a complaint from an Odesa fruit trading company. The company complained that the tax authority had blocked its tax invoices worth UAH 174 k and put it on the risky taxpayers list. The court found actions of the tax authority illegal and ordered the MD STS to register the complainant's tax invoices. The company appealed to the tax service and demanded enforcement of the court decision, which had come into force. However, despite the requirements of the law, the court decision was ignored by tax authorities. Due to tax invoices suspension, the company could not use the tax credit and risked losing suppliers. The company immediately asked the BOC for help.

ACTIONS TAKEN:

The investigator examined the circumstances of the case and found the complaint substantiated. The BOC recommended that the STS comply with the court decision, which had entered into force and register tax invoices. In particular, the Council referred the subject of the complaint to the working group with the STS.

RESULT ACHIEVED:

The STS followed the Council's recommendations and registered tax invoices amounting to UAH 174 k. The case was successfully closed.

Subject: Non-enforcement of court decisions on VAT invoices registration

Court decision enforced – tax invoices registered

Complainee:

The State Tax Service (STS)

COMPLAINT IN BRIEF:

An enterprise approached the BOC, since the STS did not enforce the court decision on tax invoices registration. The court found the tax authority's actions illegal and ruled to charge court fees on the case in favour of the complainant. However, the tax service did not comply with the court decision, which had come into force. Faced with inaction of the tax authority, the company asked the BOC to launch its own investigation.

ACTIONS TAKEN:

The investigator examined the case file and found the complaint substantiated. The BOC recommended that the State Tax Service

Subject: Tax inspections

AMIC gas station network avoids ungrounded financial sanctions worth over UAH 22 mn

Complainee:

The Central Interregional Department of the STS for Large Taxpayers (CID STS)

enforce the court decision and register tax invoices. In a letter to the tax service, the Council reminded that according to the Law "On the Judiciary and the Status of Judges", a court decision that had entered into force was binding on all public authorities. Intentional court decision non-enforcement or obstruction of its enforcement is a criminal offense.

RESULT ACHIEVED:

The STS registered tax invoices. The case was closed.

COMPLAINT IN BRIEF:

The Business Ombudsman Council (BOC) received a complaint from AMIC, a large gas stations network. The company disagreed with the tax audit findings. The company was exposed to financial sanctions of over UAH 22 mn, so at the stage of consideration of objections to the audit report, it turned to the BOC for support.

Thus, according to tax officers, the company allegedly sold liquefied gas without taking proper account of liquefied gas revenues, in particular, due to absence of a log book according to 2-FC form during the audit. The complainant submitted to the tax office all primary documents refuting existence of allegedly unaccounted goods at the point of sale. The company also presented arguments that according to the Law of Ukraine "On Accounting and Financial Reporting", the log book of petroleum products was not the source document being the basis for accounting the taxpayer's goods. The record book reflects only performed accounting operations at the gas station.

ACTIONS TAKEN:

The investigator examined the circumstances of the case and found possible violations of the complainant's legal rights. The BOC recommended that the CID STS ensure a comprehensive and impartial consideration of the complainant's objections and cancel auditors' conclusions. The Council stressed that the company had provided all the evidence along with objections to the audit report that it had properly executed primary documents confirming delivery of liquefied gas to the point of sale, and kept records of goods in accordance with applicable law.

RESULT ACHIEVED:

The CID STS followed the Council's recommendations and cancelled conclusions of the audit report, which could be the basis for application of financial sanctions worth UAH 22 mn as provided in Art. 20 of the Law "On the Use of Cash Register in Trade, Catering and Services". The case was successfully closed.

Subject: Inclusion of taxpayers in “risky” lists

Kharkiv enterprise is no longer a “risky” one

Complainee:

The State Tax Service (STS), the Main Department of the State Tax Service in Kharkiv Oblast (MD STS)

COMPLAINT IN BRIEF:

The Tax Service, without giving reasons, included a Kharkiv company in the high-risk taxpayers list and blocked the company's tax invoices. The MD STS established that the company met the risky taxpayer criteria in accordance with para 8. “Tax information – a company and/or a counterparty is involved in risky transactions.” To confirm the reality of transactions with counterparties, the company repeatedly submitted document copies and explanations to the tax authority, but unsuccessfully. The wording in the “Tax Information” section was not changed or clarified. Referring to inaction of tax authorities, the company asked the Business Ombudsman Council for help.

ACTIONS TAKEN:

The investigator examined the case file and found the complaint substantiated. The Council brought up the complaint for consideration of the expert group with the MD STS working under the Memorandum of Partnership and Cooperation between the BOC and the STS.

RESULT ACHIEVED:

Due to the effective work of the expert group of the MD STS, the company was excluded from the risky taxpayers list. The case was successfully closed.

Subject: Tax criminal cases

International express shipments released from under arrest

Complainee:

The State Fiscal Service (SFS), Investigative Department of Financial Investigations of Large Taxpayers Office of the SFS (ID FI)

COMPLAINT IN BRIEF:

A postal company turned to the Business Ombudsman Council. As part of criminal proceedings, law enforcers searched the company's warehouses in Kyiv. They confiscated international express shipments from the complainant. Although the court did not impose arrest on the property, law enforcement officers kept the parcels. The company could not deliver shipments to recipients. As a result of the company's appeal against LTO investigator's actions, the court ordered the state body to return the seized express shipments. However, the ID FI did not comply with the court decision. The investigator started reviewing the company's complaint.

ACTIONS TAKEN:

After examining the circumstances of the case, the investigator found the complaint substantiated. The Council recommended that the SFS and the LTO immediately return the illegally seized property to the company. The investigator pointed out that the court ruling had been officially published in the register, and the investigator was aware of its contents. In particular, the BOC stressed that according to the Constitution of Ukraine, a court decision that entered into force was binding, and its intentional non-execution was a criminal offense.

RESULT ACHIEVED:

The SFS followed the Council's recommendations and returned seized international express shipments to the complainant. The case was successfully closed.

Subject: VAT electronic administration

Mobile operator tax debts

Complainee:

The State Tax Service (STS)

COMPLAINT IN BRIEF:

A Ukrainian mobile operator representative turned to the Business Ombudsman Council. The company complained that periodically there was a tax debt on land rent in the taxpayer's e-office. At the time of lodging the complaint, the amount was UAH 2k. Tax authorities referred to incorrect operation of the software, due to which the system displayed information about the debt. The complainant requested the State Tax Service to issue a certificate of no indebtedness and to write off the mistakenly accrued debt. Due to such a technical error, the mobile operator could not participate in public procurement tenders and incurred financial losses. The BOC started case investigation.

ACTIONS TAKEN:

The investigator examined the case file and found the complaint substantiated. The Council recommended the State Tax Service to correct the complainant's integrated card data and write off the incorrectly accrued rent debt.

RESULT ACHIEVED:

Due to the fact that the BOC drew the tax service's attention to the mobile operator's case, the data in the integrated card was corrected. The STS wrote off the mistakenly accrued debt to the mobile operator. The case was closed.

Subject: Tax issues – other

Methodological error worth 220 mn: mayonnaise producer to face difficult trial with tax authorities

Complainee:

Large Taxpayers Office of the State Tax Service (LTO)

COMPLAINT IN BRIEF:

A company producing mayonnaise, ketchup and other products approached the Council. The company's tax audit suddenly resulted in a tremendous charge of UAH 220 mn due to an allegedly trifling thing: methodological nuances of filling out adjustment calculations for VAT tax returns. However, the tax authority did not even claim that the company applied any tax evasion scheme.

The manufacturer usually exported a significant share of its products at a zero VAT rate, so it regularly declared a negative value of this tax, which was transferred from one period to another. The company once found that it had made a number of mistakes in previous tax periods: in some periods it overestimated its tax credit and underestimated it in others. The mistake did not look threatening to the budget: in total, the company made a mistake “in favor of the state” (underestimated the credit even more than overstated) and it would seem impossible to accuse it of even a penny of tax underpayment. Therefore, the taxpayer submitted adjustment calculations for all 35 tax periods covered by the error to bring its reporting in order. The company adjusted its tax returns on a cascading basis (for example, if the adjustment by January 2020 led to an increase in the amount of a negative VAT value in this period, the amount of such an increase was consistently transferred to February, March and all subsequent periods up to the current one).

The complainant was surprised when tax inspectors stated that he had done everything wrong. According to tax authorities, the reporting should have been adjusted based on a different principle – from the period in which the mistake in favor of the state had been made, the “lost” negative VAT value should have been brought directly to the current period, bypassing all intermediate ones. Yet, in periods where the mistake in favor of the taxpayer had been made, it was necessary to pay the appropriate VAT amount to the budget by correcting it. As a result, according to the logic of tax auditors, the manufacturer had to declare and pay about UAH 163 mn in tax for previous periods, while retaining the right to reflect the accumulated negative VAT value in the amount of UAH 206 mn in the current period.

As a result of the audit, the LTO issued the taxpayer tax notifications-decisions (TNDs) totaling about 220 mn, including 163 mn in taxes and 40 mn in fines to be paid to the budget.

ACTIONS TAKEN:

The Council's investigator comprehensively analyzed both the circumstances of the case and arguments of both parties to the dispute. He acknowledged that provisions of the corresponding bylaw determining nuances of filling out tax returns – Procedure No. 21 – could be interpreted both in favour of the taxpayer and the tax authority. However, it could not be said about provisions of Article 200 of the Tax Code of Ukraine, which quite clearly enshrined a taxpayer's right to transfer a VAT negative value from one period to the next one without exception. The provision of Procedure No. 21 intended to simplify lives of taxpayers (allowed to transfer a "lost" negative value from the old period directly to the current one without adjusting all intermediate periods) should not apply to the detriment of the latter. And in the interpretation of the tax authority, it caused the need for business to transfer over UAH 200 mn to the budget, the necessity of payment thereof was not stipulated by the Code. At first glance, it seemed that the demand to pay these amounts was at least partially balanced by the taxpayer's right to transfer similar negative VAT value amounts to the current period and then claim their refund from the budget. However, in practice, this right turned out to be an illusion. The amounts specified in the TND were payable directly to the budget and would not increase the payer's registration limit in the VAT electronic administration system, within which the taxpayer could claim a budget refund. For business, paying these amounts would mean losing them forever. Besides, it is unknown whether the business itself could withstand such a loss.

Taking all the circumstances of the case into account, the Council upheld the complainant and recommended a higher-level tax authority – the State Tax Service of Ukraine satisfy its appeal and cancel the disputed TND.

RESULT ACHIEVED:

Notwithstanding the Council's proposals, the State Tax Service of Ukraine agreed with the LTO position this time and left the disputed TND unchanged. The complainant had to go to court, armed, inter alia, with the BOC's conclusion in its favor. The case is currently being considered at first instance.

Subject: Tax issues – other

The Council helps a “dormant” individual entrepreneur from Odesa to write off single contribution arrears

Complainee:

The Main Department of the State Tax Service in Odesa Oblast (the “MD STS”)

COMPLAINT IN BRIEF:

The Business Ombudsman Council received a complaint from a private entrepreneur from Odesa. At the time of her appeal to the Council, the complainant had already ceased her business activities and in August 2020 tried to obtain a write-off of the accrued single contribution for periods when she had not received any income from her business activity. For this purpose, according to the procedure established by the para. 9-15 of Section VIII of the Law of Ukraine “On Collection and Accounting of the Single Contribution for Compulsory State Social Insurance System” (the “Law”), the woman submitted a completed report on the single contribution and a respective application for writing off arrears. However, as a result of the audit, tax authorities refused to write off the debt due to the fact that she had allegedly received income in the specified period, having recorded this information in the single contribution reports. This position of the tax authority was justified by the fact that in the submitted reports the complainant had herself determined the basis for accrual of a single contribution at the minimum salary level, and did not put dashes in the relevant space.

Therefore, according to the MD STS position, self-determined amounts of the single contribution are payable on a general basis. Thus, the total debt of the complainant amounted to UAH 24k. In an attempt to help the private entrepreneur, the Council launched an investigation.

ACTIONS TAKEN:

The Council's investigator found the complaint substantiated. In view of the re-announcement of the campaign on writing off arrears on the single contribution for “dormant” private entrepreneurs in December 2020, the Council upheld the entrepreneur's position and recommended that MD STS reconsider the possibility of writing off the debt in her situation. The Council backed up its position by official letters of the State Tax Service of Ukraine, which, firstly, stated that the formal displaying of the income amount for which a single contribution was accrued, could be the ground for refusal to write off arrears, penalties and fines in accordance with para. 9-15 of Section VIII of the Law; secondly, the example of filling in reports on the single contribution in case of non-receipt of any income (profit) was given.

Therefore, in the Council's view, the complainant prepared its reports in accordance with the methodology provided by the current legislation, and the fact that they determined the formal amount of income for which a single contribution was accrued, in this case could not be the only and due reason for refusing to write off arrears, penalties and fines.

RESULT ACHIEVED:

With the Council's facilitation, having repeatedly considered the complainant's application for write-off of arrears on the single contribution, penalties and fines, the MD STS took the above arguments into account and wrote off the debt accrued to her since 2018. The case was successfully resolved.

ACTIONS OF NATIONAL POLICE

Subject: National Police procedural abuse

**One letter from the BOC —
law enforcers return the
company's property**

Complainee:

The Main Department of
the National Police in Volyn
Oblast (Volyn National Police)

COMPLAINT IN BRIEF:

The Business Ombudsman Council received a complaint from a Volyn-based sawmill company. The company complained that law enforcers did not return 838 pine trunks seized during the search. The district court refused to satisfy the senior investigator's motion to seize the company's property. The legality of the ruling was confirmed by the appellate court. However, law enforcers did not return the property, despite the complainant's numerous appeals to Volyn National Police. The company risked losing its property, as long-term storage of needle-leaved tree trunks in the warehouse could cause their damage. The company asked the Council to investigate the case immediately.

ACTIONS TAKEN:

After examining the case file, the investigator found the complaint substantiated. The Council concluded that these circumstances indicated possible violations of the sawmill company's legitimate interests. The BOC recommended that Volyn National Police return the temporarily seized property to the complainant, as required by law. In her letter, the investigator stressed that non-enforcement of the court decision, which had entered into force, violated the principle of the rule of law.

RESULT ACHIEVED:

After the Council's involvement the MD NP returned the temporarily seized property to the sawmill company. The case was successfully closed.

Subject: National Police procedural abuse**Econia in focus of the BOC****Complainee:**

Main Investigation
Department of the National
Police of Ukraine (MID NPU)

COMPLAINT IN BRIEF:

For the second time, Econia, the company-producer of drinking water and baby food from Cherkasy region, approached the Business Ombudsman Council. Back in 2018, the company faced a raidership attack, but with the BOC assistance, the illegal attack was fought back. However, the pressure on the company continued. Law enforcement officers conducted an investigation concerning a possible illegal acquisition of the furniture factory of a bankrupt company in the town of Zolotonosha. Thus, as a part of the criminal proceeding the investigators conducted searches involving security divisions in the complainant's office in Kyiv, the house and cars of the company's owner and her family. In addition, law enforcers sent inquiries to the company's contractors and asked for documents confirming the relationship with the complainant. The company turned to the BOC asking to help protect its rights.

ACTIONS TAKEN:

After examining the case file, the Council's investigator found the complaint substantiated. The investigator noted that the circumstances of the complaint signified a violation of the legal rights of the enterprise. There were court decisions confirming that the complainant had not broken the law when he bought the factory. The ownership of the property complex according to the complainant was additionally confirmed by the Ministry of Justice as a result of the circumstances' inspection held by a special commission in 2018.

During the investigation, the Council, in particular, detected that the searches were conducted by law enforcers with violations of the Criminal Procedural Code of Ukraine. Thus, law enforcers illegally seized documents and computers of the company. Investigators did not return the seized property, despite the rulings of the investigating judges.

In order to find a solution in this complex case, the BOC raised a complaint for discussion at the expert group meeting with the Prosecutor General's Office. The Council requested the Prosecutor General's Office and the State Bureau of Investigation to verify whether the police were operating properly and to return the temporarily seized property to the complainant.

RESULT ACHIEVED:

Following the interference of the Business Ombudsman Council, law enforcers closed the criminal proceeding concerning the company and returned the property seized during the searches to the complainant.

ACTIONS OF STATE REGULATORS

Subject: DABI

**At fourth attempt:
company receives a
building permit with the
BOC facilitation**

Complainee:

The State Architectural and
Construction Inspectorate
(DABI)

COMPLAINT IN BRIEF:

A Mykolaiv grain trader complained to the Business Ombudsman Council of the inaction of the DABI. The company applied to the supervisory authority three times, but it refused to issue a permit for construction works commencement on the elevator in Poltava Oblast. According to the responsible official of the DABI Permit Procedures Department, the complainant's documents were not in line with the current legislation and there was no conclusion on the environmental impact assessment and other necessary documents among them. The last time the complainant submitted an application and a comprehensive package of documents online through the "DIIA" portal, but had not received the respective response. Having received the company's complaint, the Council's investigator launched his own investigation.

ACTIONS TAKEN:

The Council found the company's complaint substantiated and recommended the DABI to consider the complainant's application for a building permit impartially. In particular, in case of a refusal to issue such a permit, the Council requested the DABI to explain in detail the reasons for such a refusal, and what actions had to be taken and/or what documents had to be provided by the complainant to obtain a permit. A meeting of representatives of the company and the DABI was also arranged to agree on the necessary package of documents and to start a working dialogue between the parties.

RESULT ACHIEVED:

The DABI followed the Council's recommendations. The complainant was granted a permit to begin construction works on the site. The company returned to the BOC with gratitude for help: "We are sincerely grateful to the Council for timely and quality work. Thanks to you, our company has received a positive result. It is very important that business in Ukraine has the opportunity to get the truth when facing malpractice of the state". The case was successfully closed.

Subject: Actions of state regulators – other**The first step made to solve
Odesa seaport driveway
problem****Complainee:**

The Ministry of Infrastructure

COMPLAINT IN BRIEF:

A subsidiary of a German logistics holding approached the Business Ombudsman Council. For several years, the company's trucks could not freely and easily enter the territory of Odesa Commercial Sea Port. This happened because one company remained a monopolist in this field and serviced a cargo for a fixed fee upon entering the port. It turned out that the problem was significant for the residents of the streets of Odesa city on which trucks moved to the terminal standing in traffic jams around the clock and creating an obstacle for ordinary cars. Local people repeatedly protested and even blocked streets. Back in 2019, during his visit to Odesa, the President of Ukraine instructed city authorities to settle the issue of free entry to the port. Odesa City Council discussed construction of an alternative road to the seaport overpass with all the stakeholders. However, solution of the problem was delayed.

ACTIONS TAKEN:

The BOC recommended that the Ministry of Infrastructure develop a roadmap for the construction of an alternative road to Odesa port and hold a meeting involving the respective stakeholders. The Ministry of Infrastructure announced that the budget program for 2020 included the road construction with paths to Odesa Commercial Sea Port. Specialists began developing a road construction project.

RESULT ACHIEVED:

Thanks to the BOC interference, the Ministry of Infrastructure approved construction of a free road to access Odesa Commercial Sea Port. It is known that the new road will connect Odesa Commercial Sea Port territory and Odesa – Iuzhnyi M-28 road. The case was closed.

ACTIONS OF THE MINISTRY OF JUSTICE

Subject: Department of State Registration and Notary

The Council facilitates cancellation of illegal registration actions which might be a part of raiders' attack on gas stations chain in cooperation with the Ministry of Justice

Complainee:

State Registrar of the
Malomyhaylivska Village
Council

COMPLAINT IN BRIEF:

Following a complaint that the Council received in August last year, in April 2021 two more complaints related to a notorious conflict between two business groups around the ownership of gas stations chain were filed.

Within the conflict during only a few weeks (in March-April 2018) a large number of disputable (questionable) registration actions were taken. Behind most of these actions were "black registrars", registered in small distant towns. Shareholders and directors of twenty companies operating the business, had been changed a number of times without documents required by law for such changes, or on the basis of forged documents, and then were no less mysteriously changed back. Warnings about the ban on alienation of corporate rights disappeared from the state register without any grounds and soon appeared again. Some registration actions disappeared from the register without a trace. At the same time, the same ambiguous actions were taken to register the rights for real estate (actually the gas station) in the register of proprietary rights. Various agencies approached by the parties to the conflict – courts, law enforcement bodies, the Collegium on consideration of appeals in state registration under the Ministry of Justice of Ukraine, and the Business Ombudsman Council, within their competence, had been studying and still helping to cease the consequences of the turmoil resulted from this "registration war".

In January 2021, the Ministry of Justice already determined the fate of several illegal registration actions committed in the interests of one of the parties to the conflict. Despite the fact it had been a long time since the disputed events took place (due to which there were some doubts whether to consider those appeals given the statute of limitation) – the Ministry of Justice concluded that appeals should still be considered on the merits and registration actions should be canceled. However, representatives of another party to the conflict soon filed their own appeals with the Ministry of Justice, demanding that the other part of illegal registration actions initiated by their opponents be cancelled. It is interesting that given the chronology of illegal registration actions, it was the opponents who were the first to attack, so the complainants had a good reason to call them "raiders".

Meanwhile, along with the appeal to the Ministry of Justice, the complainants also asked the Council to facilitate an objective and impartial consideration of this complex case by the Ministry of Justice.

ACTIONS TAKEN:

Having thoroughly studied the materials of this sophisticated case, the Council's investigator realized the need for a careful and balanced approach to its consideration. After all, the Council should not enter into conflict between two business groups and give any preference to either of them. In fact, the Ministry of Justice was in the same delicate situation. But it was impossible to avoid resolving this issue. After all, formally the subject of the appeal was registration actions committed by the public authorities' officials (state registrars), and it was necessary to provide a fair assessment of their legality or illegality, regardless of the fact in favor of which interests – one party or another they were committed.

The Council's investigator took part in the hearing held by the Collegium, where he voiced his position on the case. Subsequently, the Council brought its position to the notice of the Ministry of Justice in writing.

Taking into account that in January 2021 the Ministry of Justice already applied a loyal approach to the appellant in calculating a 60-day deadline for filing an appeal (recognizing that even slightest reasonable doubts that the complainant might not know about the contested registration actions must be interpreted in favor of the latter), the Council proposed, for reasons of consistency and non-discrimination, to apply the same approach to the appeals of opponents. As to the appeals' subject, the Council considered that registration actions being appealed were in fact illegal due to a number of violations: from violation of the principle of territoriality and the absence of certain statutory documents foreseen by law to obvious disregard by the state registrar of the court ban on alienation of corporate rights.

RESULT ACHIEVED:

On April 21-22, 2021, the Ministry of Justice issued orders approving the conclusions of the Collegium based on the results of the appeals review. The conclusions of the Collegium generally coincided with the position of the Council. The registration actions being appealed were cancelled, and the state registrar who committed them (and it was not her first violation) was completely denied access to the register. The consequence of these decisions of the Ministry of Justice should be restoration of the original (initial) information that existed before the dramatic surge of ambiguous registration actions. This means that the original owner will continue to be the legal registered owner. If the other party to the conflict does not agree with this state of affairs, it will have to defend its interests in court. The case was closed.

ACTIONS OF LOCAL GOVERNMENT AUTHORITIES

Subject: Local government authorities – other

“Local” obstacles on the way to wind farm construction in Donetsk Oblast

Complainee:

Nikolsk District State Administration (District State Administration)

COMPLAINT IN BRIEF:

An alternative energy development company turned to the Business Ombudsman Council. Prior to the wind farm construction, the company had to pay to the local budget for losses that were to be caused by felling of plantations. In turn, such damages had to be calculated and approved by the Commission for Compensation of Losses to Landowners and Land Users (the Commission) under the local authority. However, the complainant encountered obstacles on the part of the Commission. Initially, the Commission refused several times and explained to the complainant that it could not make a calculation due to lack of specialists. In view of the said, the company proposed to the Commission to make a preliminary calculation of losses according to tree plantations felling plan by engaging the forestry at the company's request. The complainant sent the prepared documents to the Commission for consideration, but, in its opinion, the calculation was incorrect. The district state administration proposed to engage other forestries in the oblast to keep records of trees. Such an approach did not guarantee either that the prepared calculations would not be acknowledged incorrect. Therefore, the complainant insisted that the procedure defined by the legislation in accordance with which the Commission makes calculations should be observed. Having found itself in a difficult situation, the company asked the BOC for help.

ACTIONS TAKEN:

The investigator examined the case file and found the complaint substantiated. According to the Council, the District State Administration needed expert support from Donetsk Regional State Administration to ensure proper performance of duties by the Commission.

Therefore, the BOC appealed to Donetsk Regional State Administration and District State Administration and asked the Commission to calculate losses from felling as soon as possible, as provided by law.

To help resolve the dispute between the company and the local government authority, the Business Ombudsman held an online meeting with the leadership team of Donetsk Regional State Administration. The BOC investigator closely monitored implementation of recommendations provided to the local government authority.

RESULT ACHIEVED:

By order of the Cabinet of Ministers, Nikolsk District State Administration was reorganized. Powers of the Commission on organization were transferred to the newly established Mariupol District State Administration. The local government authority followed the Council's recommendations. The Commission calculated losses from felling of plantations. The company thanked the Council's team for support: "We would like to express our sincere gratitude to you for professional and high-quality resolution of the issue on our complaint. We are especially grateful to the investigator who conducted our case and approached the issue with deep understanding and carefulness".

ACTIONS OF STATE COMPANIES

Subject: State companies – other

State forestry performs contract terms

Complainee:
SE “Slovechanskyi Forestry”

COMPLAINT IN BRIEF:

The Business Ombudsman Council received a complaint from a private entrepreneur engaged in wooden structures production. The businessman won the tender for the purchase of wood. Accordingly, the complainant entered into a purchase contract of unprocessed timber with the forestry in Zhytomyr Oblast. However, the seller refused to perform its contractual obligations. Despite the agreed volume of deliveries of 330 cubic meters, the forestry delivered only 216 cubic meters of wood to the complainant. Meanwhile, companies that had won fewer lots received their deliveries in full. The private entrepreneur appealed to the forestry with complaints twice, but to no avail. At this point, the BOC investigator got down to investigation.

ACTIONS TAKEN:

Having examined the circumstances of the complaint, the Council found the complaint substantiated. The investigator found out that under the terms of sales contract between the complainant and the seller, the forestry had to supply 330 cubic meters of wood within five working days from the date of payment receipt. Moreover, the contract provided that the entrepreneur made a full prepayment to the seller's account, then the forestry had to send the entrepreneur a shipment notice. However, the complainant did not receive any payment receipts or notifications of readiness. The BOC appealed to the State Enterprise “Slovechanskyi Forestry” and the State Forest Resources Agency of Ukraine being the founder of the forestry, and asked the seller to fulfill his contractual obligations under the contract. The Council's investigator also reminded that the refusal of the forestry to fully fulfill contractual obligations was a civil economy requirements violation, for which the seller may be subject to sanctions.

RESULT ACHIEVED:

Due to mediation of the BOC, the forestry supplied the rest of timber to the private entrepreneur. The case was successfully closed.

3. COOPERATION WITH STAKEHOLDERS

3.1. COOPERATION WITH STATE BODIES

Since its inception in 2015, the BOC has signed

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MEMORANDA OF COOPERATION WITH

- the State Tax Service
- the State Customs Service
- the State Fiscal Service
- the Prosecutor General's Office
- the State Security Service of Ukraine
- the Ministry of Ecology and Natural Resources
- the State Regulatory Service
- the Ministry of Justice
- the National Anti-Corruption Bureau
- Kyiv City State Administration
- the National Police
- the National Agency on Corruption Prevention

The Business Ombudsman Council became a part of the working group with the Office of the National Investment Council and the State Enterprise "Ukraine Invest". The working group aims to solve the most pressing issues of business that affect quality of the business climate in Ukraine. In June, two meetings took place.

EXPERT GROUP MEETINGS

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

ACTIVITIES OF EXPERT GROUPS ESTABLISHED UNDER MEMORANDA OF COOPERATION WITH RESPECTIVE STATE BODIES IN Q2 2021:

	Number of meetings (including online meetings)	Number of cases considered during these meetings
State Tax Service	11	145
Prosecutor's Office	1	16
National Police	1	17
Kyiv City State Administration	1	3
TOTAL	14	181

WEBINARS WITH THE UKRAINIAN UNION OF INDUSTRIALISTS AND ENTREPRENEURS

In the beginning of the year the online webinars project was joined by one more Business Ombudsman Council's partner – the Ukrainian League of Industrialists and Entrepreneurs (ULIE). In April-May 2021, the BOC finished the first webinars series with the ULIE. The discussions were dedicated to the most pressing issues of business in their relations with state bodies. We appreciate a high interest of 400 participants from different industries that registered for these webinars. In Q2 2021, the following topics were in focus:



27.05.2021

"CUSTOMS ISSUES: HOW THE BUSINESS OMBUDSMAN COUNCIL CAN HELP"

WEBINARS WITH THE AMERICAN CHAMBER OF COMMERCE

The Council's speakers not only always keep stakeholders informed about the institution's activities, but also share expert views on diverse state bodies' malpractice related to issues entrepreneurs regularly face. In Q2 2021, jointly with the American Chamber of Commerce and Martyniv Law Firm the following webinar was conducted:



21.04.2021

"BLOCKING THE REGISTRATION OF VAT INVOICES"



07.04.2021

"BUSINESS ISSUES IN RELATIONS WITH LAW ENFORCERS: BOC EXPERTISE"

WEBINARS WITH THE MINISTRY OF ECONOMY AND SME.DO

In the reporting quarter, the Business Ombudsman Council completed the project, which consisted of 5 joint webinars in partnership with the Ministry of Economy and the SME Development Office. During the events the BOC investigators raised the most common issues of entrepreneurs and gave an overview of successful case studies. In the reporting quarter, the following event was held:



27.04.2021

"BOC IN ACTION: CUSTOMS ISSUES"

WEBINARS WITH THE UKRAINIAN NATIONAL BAR ASSOCIATION

It is quite often that the BOC complainants are represented by lawyers and advocates, who ask the institution for help in solving business issues of their clients. Thus, it is important that lawyers are aware of how the Council operates and what services it can offer in order to increase the chances of successfully resolved cases in favor of their clients. Hence, in the reporting quarter, the BOC conducted a few more joint webinars with the Ukrainian National Bar Association (UNBA):



26.05.2021

"BUSINESS COMPLAINTS RELATED TO LABOR ISSUES: EXPERTISE OF THE BUSINESS OMBUDSMAN COUNCIL"



28.05.2021

"EFFECTIVE INTERACTION OF BUSINESS WITH ARCHITECTURE AND CONSTRUCTION CONTROL BODIES"



07.04.2021

"BIG TRAVEL BOC: KHARKIV"

Aiming to establish tighter contacts with local businesses, the BOC in partnership with the UNBA initiated a project of webinars for regional lawyers and entrepreneurs. Each event is dedicated to business issues in a specific Ukrainian region. In Q2 2021, the following online events took place:



14.05.2021

"BIG TRAVEL BOC: ZAPORIZHZHIA"

3.3. PUBLIC OUTREACH AND COMMUNICATIONS

The Business Ombudsman Council uses public communication to report trends of business appeals, voice systemic business issues and suggest their possible solutions.

It is worth mentioning that we cooperate with media only on the free of charge basis, providing expert opinions from our side, legal analysis and recent statistics concerning malpractice of state bodies.

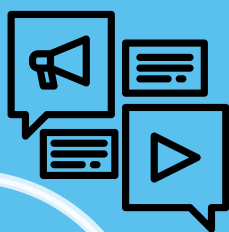
THE MEDIA

Given the mission to protect legal rights of entrepreneurs and improve the business climate in Ukraine, we enjoy the willingness of journalists to communicate our results of our work. High level of legal expertise and the ability to consistently convey the important message through is also highly appreciated by media channels – our experts are frequent authors at major online platforms, speakers at forums and seminars, guests in TV and radio studios.



PUBLICATIONS

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



28000+
TIMES

with

99.9%
MENTIONS

being positive
or neutral.

Estimated value of
publications in Q2 2021,
based on the assessment of
the ECOSAP media monitoring
agency, was

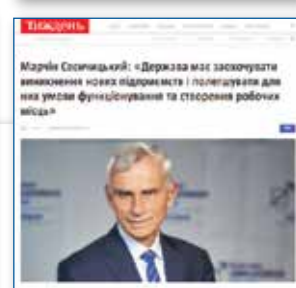
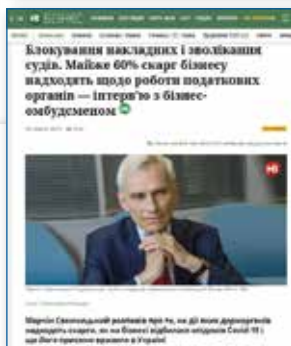
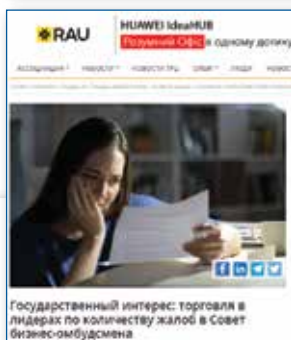
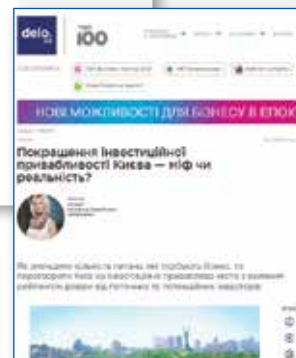
UAH

1.2 MILLION



IN Q2 2021, WE COOPERATED WITH THE FOLLOWING MEDIA:

PUBLICATIONS:



ТВ ТА РАДІО:



GRACING THE COVER



One of the directions of the BOC outreach activities is creating video-cases. Among our recent products was the video of Ukraflora company prepared jointly with the EBRD. It was noteworthy, that a picture taken during the case production and featuring the Deputy Business Ombudsman Iaroslav Gregirchak graced the cover of the EBRD Annual review 2020.

EVENTS

02.04.2021

Meeting with Iryna Novikova,
Deputy Minister of Economy
Organized by
Ministry of Economy of Ukraine

07.04.2021

Thematic webinar "Incentives for
Business Integrity"
Organized by
OECD

08.04.2021



Discussion "Law on Administrative
Procedure – New Chapter
in Relations with Public
Administration and Citizens"
Organized by
EU Project "Pravo-Justice"

12.04.2021



Meeting of the VRU Committee on
Economic Development regarding
the BOI Draft Law
Organized by
The Committee of the Verkhovna
Rada on Economic Development

21.04.2021



Webinar "Improving existing
mechanisms of protection of
the rights of entrepreneurs in
Kyrgyzstan"
Organized by
Council of Europe

22.04.2021

Round table "Establishment of the
Bureau of Economic Security of
Ukraine"
Organized by
Ukrainian Advocates' Association

28.04.2021

Meeting of the VRU Committee on
Economic Development regarding
the BOI Draft Law
Organized by
The Committee of the Verkhovna
Rada on Economic Development

12-13.05.2021



VIII International Tax Forum

Organized by
Yuridicheskaya Praktika publishing house

12.05.2021



Round table "Business Integrity in Eastern Europe and Central Asia"

Organized by
OECD

13.05.2021



Webinar "Compliance with Risky Taxpayers' Criteria. Counteraction Algorithm"

Organized by
Dictum Law Firm

18.05.2021



Discussion "Municipal Business Ombudsman: Powers, Support and Areas of Activity"

Organized by
USAID Program "Competitive Economy of Ukraine"

18.05.2021



Reception of the occasion of the 5th anniversary of Union of Ukrainian Entrepreneurs

Organized by
Union of Ukrainian Entrepreneurs

19.05.2021



Panel discussion "Tax Supervision Based on Risk Assessment: Changing the Paradigm and Practice in Ukraine"

Organized by
UNIC

20.05.2021



International Compliance Day 2021

Organized by
Business Format company

21.05.2021



The State Tax Service Collegium meeting

Organized by
The State Tax Service of Ukraine

26.05.2021



VII Ukrainian Antitrust Forum

Organized by
Yuridicheskaya Praktika publishing house

26.05.2021



Expert Group Meeting

Organized by
The State Tax Service of Ukraine

27.05.2021



Online round table of the State Customs Service of Ukraine

Organized by
The State Customs Service of Ukraine

28.05.2021



Business Protection Forum

Organized by
Ukrainian Advocates' Association

01.06.2021

Meeting of Prime Minister of Ukraine with Nomination Committee members

Organized by
Cabinet of Ministers of Ukraine

04.06.2021



Meeting with Oleksiy Lyubchenko, First Vice Prime Minister of Ukraine

Organized by
The Cabinet of Ministers of Ukraine

06.06.2021



Expert Group meeting with the Prosecutor General's Office of Ukraine

Organized by
Prosecutor General's Office of Ukraine

10.06.2021



Gender Policy Conference
Organized by
International School of Economics at Tbilisi State University

11.06.2021

OECD Monitoring session Ukraine
Organized by
OECD

15.06.2021



Launch event "Fighting Bid Rigging in the Energy Sector in Ukraine: A Review of Ukrenergo"

Organized by
OECD

15.06.2021

Meeting with the State Tax Service of Ukraine concerning implementation of the BOC recommendations on enforcement of court decisions
Organized by
Business Ombudsman Council

16.06.2021



Discussion "Presentation of the Results of Public Monitoring of Special Aspects of Customs Operation"
Organized by
Institute of Economic Research and Policy Consulting

24.06.2021

Roundtable Discussion: Corporate Governance of SOEs in Ukraine

Organized by
OECD

25.06.2021



Kharkiv Legal Tax Forum
Organized by
Ukrainian Bar Association

30.06.2021



Expert Group meeting with the State Security Service of Ukraine
Organized by
The State Security Service of Ukraine

30.06.2021

Nomination Committee meeting
Organized by
Cabinet of Ministers of Ukraine

SOCIAL MEDIA

THE BUSINESS OMBUDSMAN COUNCIL IS ALL OVER SOCIAL MEDIA. WE REGULARLY SHARE OUR UPDATES WITH SUBSCRIBERS, IN PARTICULAR WE:

Tell stories about successfully closed cases and complex cases of entrepreneurs

Share own publications about important issues for entrepreneurs

Create own video content. Share videos

Communicate with followers

Highlight systemic issues of business and suggest ways to solve them

Report about results of operations

BOC employees' appearance on TV and at public events

Inform about actual events with participation of the BOC employees. Stream them live

Publish feedbacks of complainants

THE BOC IS ALL OVER SOCIAL MEDIA:

If you wish to be the first to receive news about the BOC results for companies conducting business in Ukraine, learn useful pieces of advice, read recent publications with analysis and expert views on systemic business issues and stay in touch, please follow us on the Business Ombudsman Council social media pages.



Facebook (@BusinessOmbudsmanUkraine)



YouTube (@Рада бізнес-омбудсмена)



LinkedIn (@Business Ombudsman Council)

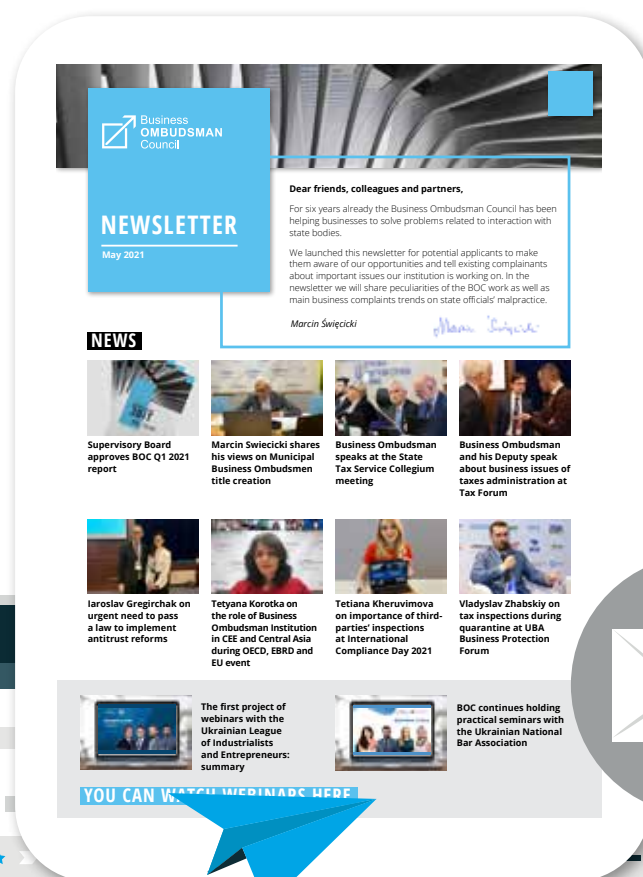


Twitter (@bus_ombudsman)

In Q2 2021,

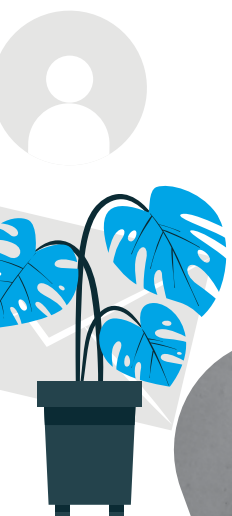
WE LAUNCHED A NEWSLETTER

for potential applicants to make them aware of our opportunities and tell existing complainants about important issues our institution is working on. In the newsletter we will share peculiarities of the BOC work as well as main business complaints trends on state officials' malpractice.



**SUBSCRIBE TO THE
NEWSLETTER AT:
BOI.ORG.UA**

**INDEPENDENTLY.
CONFIDENTIALLY.
FREE OF CHARGE.**



BOI.ORG.UA

Podil Plaza Business Centre,
30A Spaska St.,
04070 Kyiv, Ukraine
(entrance from 19 Skovorody Str.)

Phone: +380 (44) 237-74-01
Fax: +380 (44) 237-74-25
E-mail: info@boi.org.ua

www.boi.org.ua
[www.facebook.com/
BusinessOmbudsmanUkraine](https://www.facebook.com/BusinessOmbudsmanUkraine)