



01 July – 30 September 2021

# Quarterly report

**Report focus:**  
analysis of appeals  
concerning law  
enforcement bodies





## 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 Świącicki**

*Marcin Świącicki*

**Dear friends, colleagues and partners,**

In Q3 2021, the Business Ombudsman Council received 638 business complaints on malpractice by state bodies. This is 20% more than in Q2 2021 and 45% more than in Q3 2020. This figure was greater only in Q4 2017 and Q1 2018, when the automatic tax invoices registration system (SMKOR) was being launched and its operations fine-tuned. However, if we single out complaints about tax invoices suspension, in the reporting quarter we register a record of appeals in other cases in general since the BOC inception.

Such an increase in the number of complaints, in my opinion, does not necessarily indicate a deterioration of business climate in Ukraine. Undoubtedly, there is a growing awareness of the activities of the Business Ombudsman Council operation among entrepreneurs, our practical webinars for business and lawyers bring results. In addition, there is a high level of trust in the institution, many businesses turn to us repeatedly.

As always, the majority of complaints received related to tax issues. In the reporting quarter, the share of the tax block was 65%. Similarly to the previous quarter, the most common subject of complaints was non-enforcement of court decisions on tax invoices registration. We would like to remind that in our systemic reports we recommended appointing a person responsible for monitoring in each state body and regularly report on court decisions enforcement that had entered into force.

The number of complaints about inclusion in risky taxpayers list decreased as compared to the previous quarter. According to our observations, in 98% of cases the reason for inclusion is clause 8 of risk criteria, which is very vague. Therefore, we recommend that tax authorities clarify this point at the regulatory level and clearly explain to taxpayers what exactly has to be changed to be excluded from the list.

Another record figure for the quarter is the number of complaints against law enforcers, the second most common block of complaints after tax issues. In Q3, we received the largest number of complaints on problems of interaction with law enforcement bodies (98) over the entire period of the institution's operations. Given a common nature and complexity of the problem of abuse of powers by law enforcers we devoted a new systemic report to address it. For more about issues brought to the forefront of our systemic study, please see the announcement on pages of this report.

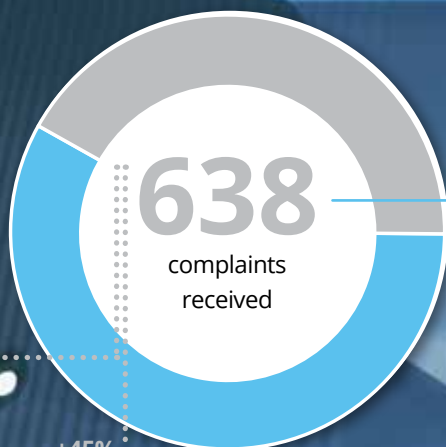
Traditionally, the vast majority (87%) of our applicants is Ukrainian business, the share of foreign business accounts for only 13%. Three-quarters (73%) of complaints came from small and medium-

sized businesses and 27% – from large ones. It is noteworthy, for the first time in a long time the share of Kyiv and Kyiv Oblast together accounted for less than 40% of applications, thus showing activity of other regions of Ukraine we receive complaints from.

In the Q3 2021, the BOC completed the investigation of 373 cases that is 30% more than in Q2 2021 and 36% more than in Q3 2020. A successful resolution of cases allowed business to return and save UAH 483 million. A considerable part of this financial result was the case of Nova Poshta, which complained to us about actions of the State Service of Ukraine on Food Safety and Consumer Protection, and jointly with partners, we helped the company drop the groundless fine of the state regulator.

The issue of the draft law on the Business Ombudsman Institution was raised at the summit in Vilnius, when the First Deputy Speaker of the Verkhovna Rada voiced doubts about constitutionality of this document. Addressing these concerns, I submitted the relevant explanations and independent expert examinations findings, which once again prove the draft law compliance with the Constitution principles. In November this year, the bill should be on the agenda of the Verkhovna Rada.

# Q3 2021 at a glance



**373**

cases closed

+30%

as compared to Q2 2021

+36%

as compared to Q3 2020

Direct financial impact:

**UAH  
483  
mn**



**93%**

of complainants who provided feedback were satisfied with working with the BOC

**88%**



of case-by-case recommendations were implemented by state bodies



## TOP-5

## blocks of complaints

Tax issues

65%

Actions of law enforcement bodies

15%

Actions of state regulators

6%

Local government authorities

4%

Customs issues

3%

## TOP-5

## most active regions

Kyiv

32%

Dnipropetrovsk Oblast

9%

Kharkiv Oblast

9%

Kyiv Oblast

8%

Odesa Oblast

6%

## TOP-5

## industries

Wholesale and Distribution

21%

Agriculture and Mining

18%

Manufacturing

11%

Individual Entrepreneurs

9%

Real Estate and Construction

8%

Size of business

27%

Large

73%

Small/Medium

Origin of investment

87%

Local business

13%

Foreign business

# 1.

# Complaints trends

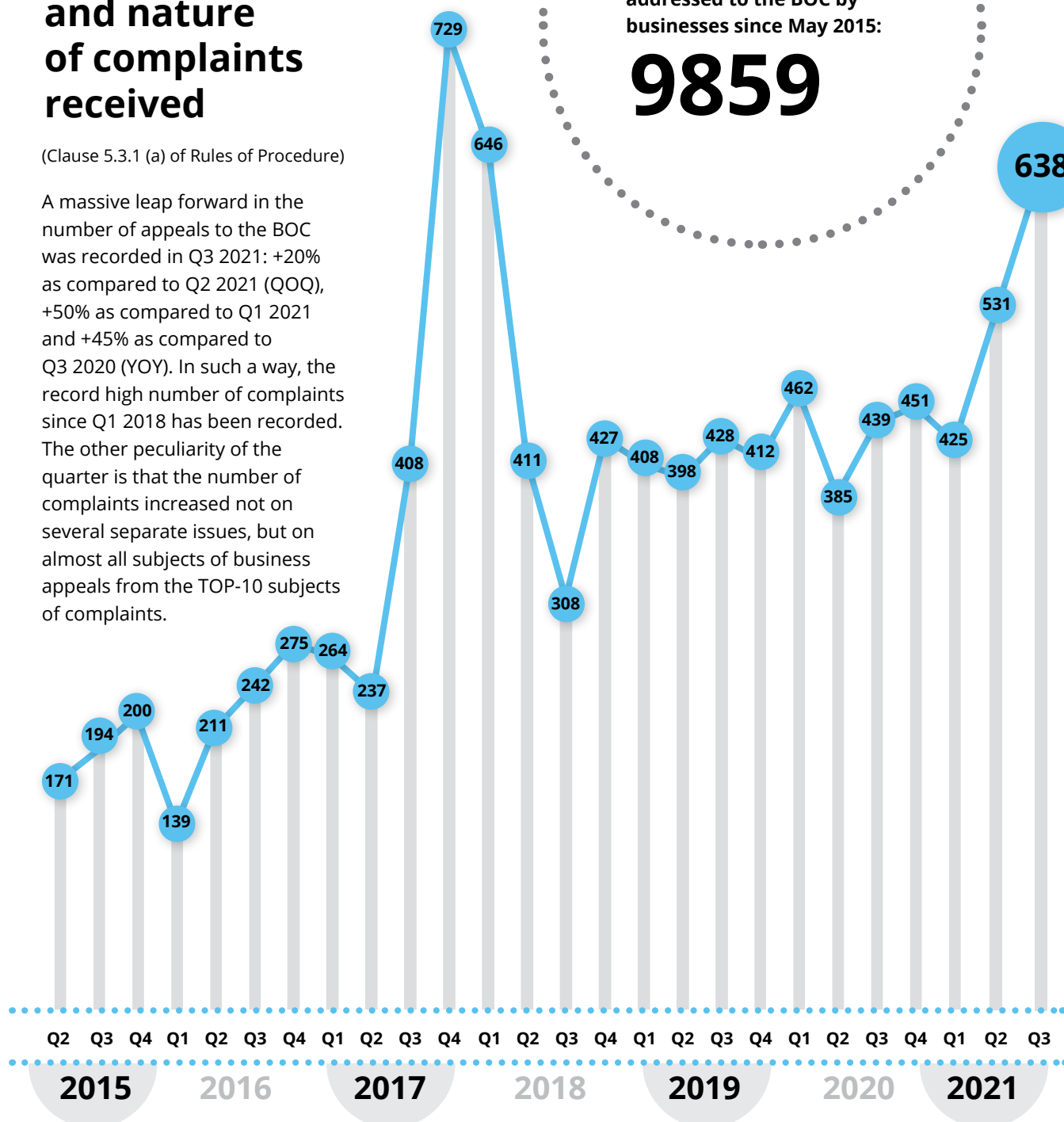
## 1.1. Volume and nature of complaints received

(Clause 5.3.1 (a) of Rules of Procedure)

A massive leap forward in the number of appeals to the BOC was recorded in Q3 2021: +20% as compared to Q2 2021 (QOQ), +50% as compared to Q1 2021 and +45% as compared to Q3 2020 (YOY). In such a way, the record high number of complaints since Q1 2018 has been recorded. The other peculiarity of the quarter is that the number of complaints increased not on several separate issues, but on almost all subjects of business appeals from the TOP-10 subjects of complaints.

The total number of complaints addressed to the BOC by businesses since May 2015:

# 9859





In the reporting quarter, we received 638 complaints from businesses. More appeals were recorded only in Q4 2017 (729) and Q1 2018 (646). Then such a surge of complaints was driven by the launch of SMCOR. But if to single out appeals concerning suspension of registration of tax invoices, it turns out that

**in all other subjects the number of complaints in Q3 2021 was the largest in the history of the BOC.**

	<b>Q3 2021</b>	<b>Q1 2018</b>	<b>Q4 2017</b>
Total number of complaints received	638	646	729
Complaints regarding suspension of tax invoices (incl. risky list and non-enforcement of court decisions in Q3 2021)	275	303	368
<b>All other subjects</b>	<b>363</b>	<b>343</b>	<b>361</b>

## TOP-10

## Subjects of complaints in Q3 2021

	Number of complaints received in		
	<b>Q3 2021</b>	<b>Q2 2021</b>	<b>Q3 2020</b>
<b>Tax issues</b>	<b>413</b>	<b>346</b>	<b>297</b>
VAT invoice court decision	164	115	36
VAT invoice suspension	75	71	102
Tax inspections	56	45	35
VAT risky taxpayer	36	41	63
Tax criminal cases	21	20	16
VAT electronic administration	5	3	12
VAT refund	3	3	4
Tax termination/renewal/refusal of VAT payers registration	1	1	1
Tax other	52	47	28

	Number of complaints received in		
	Q3 2021	Q2 2021	Q3 2020
<b>Actions of the National Police</b>	<b>42</b>	<b>33</b>	<b>24</b>
National Police procedural abuse	17	17	12
National Police inactivity	15	14	10
National Police criminal case initiated	5	0	0
National Police corruption allegations	0	0	1
National Police other	5	2	1
<b>Actions of State Regulators</b>	<b>41</b>	<b>26</b>	<b>21</b>
Antimonopoly Committee of Ukraine (AMCU)	4	2	4
State Architectural and Construction Inspectorate (DABI)	2	2	1
StateGeoCadastre	2	1	0
National regulatory agencies — NERCUS other	2	1	1
National regulatory agencies — NBU licensing	0	1	0
National regulatory agencies — NBU other	0	0	1
Other state regulators	31	19	14
<b>Prosecutor's Office actions</b>	<b>26</b>	<b>16</b>	<b>19</b>
Prosecutor's Office procedural abuse	14	10	16
Prosecutor's Office inactivity	8	4	2
Prosecutor's Office corruption allegations	1	1	0
Prosecutor's Office other	3	1	1
<b>Actions of local self-government authorities</b>	<b>23</b>	<b>21</b>	<b>14</b>
Local self-government authorities rules and permits	3	6	2
Local self-government authorities land plots	5	4	6
Local councils/municipalities investment disputes	1	0	0
Local self-government authorities other	14	11	6

	Number of complaints received in		
	Q3 2021	Q2 2021	Q3 2020
<b>Customs issues</b>	<b>18</b>	<b>12</b>	<b>23</b>
Customs valuation	6	2	7
Overpaid customs duties refund	2	0	0
Customs administrative proceedings	1	1	0
Customs clearance delay/refusal	1	5	14
Customs other	8	4	2
<b>Ministry of Justice actions</b>	<b>17</b>	<b>13</b>	<b>16</b>
MinJustice State Registration Department	9	4	11
MinJustice Enforcement Service	8	9	5
<b>Legislation drafts/amendments</b>	<b>17</b>	<b>10</b>	<b>3</b>
Deficiencies in regulatory framework state regulators	10	5	1
Deficiencies in regulatory framework tax	0	3	0
Deficiencies in regulatory framework other	7	2	2
<b>State Security Service actions</b>	<b>9</b>	<b>9</b>	<b>4</b>
State Security Service procedural abuse	8	7	0
State Security Service criminal case initiated	1	0	2
State Security Service inactivity	0	1	1
State Security Service other	0	1	1
<b>Actions of state companies</b>	<b>6</b>	<b>8</b>	<b>3</b>
State companies investment/commercial disputes	1	1	1
State companies abuse of authority	0	2	2
State companies other	5	5	0





## Tax issues

In Q3 2021, the Business Ombudsman Council received 413 complaints from entrepreneurs on tax issues – the largest number in the last three and a half years of the BOC operations. It is noteworthy that compared to Q2 2021, the number of complaints increased in almost every subject except for inclusion of tax payers in risky lists.

**Non-enforcement of court decisions on registration of tax invoices** again became the most common reason for business appeals. In total, this issue amounted to 40% of all tax-related complaints. Moreover, we observed a significant increase in the number of complaints on this subject, both in the short and long trend: entrepreneurs lodged with the BOC almost half more complaints (115 vs. 164) QOQ and 4 times more (36 vs. 164) YOY. The significant share and the upward trend of appeals concerning non-enforcement of court decisions on registration of tax invoices once again signify to state bodies the urgency to implement our systemic recommendations in order to improve the situation.

**Suspension of registration of tax invoices** by a wide margin became the second largest number of appeals in the reporting quarter. Entrepreneurs submitted 75 such complaints, which is 6% QOQ, but 26% YOY.

Following the lifting of the moratorium, the number of complaints on **tax inspections** has also increased. In Q3 2021, businesses

approached us 56 times with this problem, which is 24% more QOQ and 60% more YOY.

We received 36 complaints about **inclusion of taxpayers in the risky lists**: this is 12% less QOQ and 43% less YOY. According to the State Tax Service, currently there are from 30 to 50 thousand of VAT payers in risky lists in Ukraine. Among the factors which influence inclusion of taxpayers in risky lists, based on the BOC observations, one can highlight: insufficient tax return on VAT and income tax, negative value of VAT "without good reason"; insufficient number of employees and working capital, low wages; doubtful VAT credit "at the entrance"; "suspicious" accumulation of stocks; misunderstandings with tax authorities regarding inquiries, cross-checks, admission to inspections; falling into the field of view of law enforcement officers. After correcting possible mistakes, you can apply to the tax authority for a review of the riskiness (paragraph 6 of the Order № 1165) – this application can be submitted repeatedly. It is also possible to involve the Business Ombudsman in the procedure of administrative appeal – among the completed investigations of such cases by the BOC, 49.2% were closed successfully.

Companies complained more about **unreasonably opened criminal proceedings** on tax issues. In the reporting quarter, we received 21 appeals in this respect, which is 5% more QOQ and 31% more YOY.

The number of complaints regarding **VAT e-administration** increased slightly QOQ (from 3 to 5), but YOY it decreased from 12 to 5. We received sporadic appeals regarding VAT refund (3 complaints) and termination of agreements on recognition of electronic reporting (1 complaint).



## Actions of law enforcement bodies

In Q3 2021, entrepreneurs complained more about malpractice of law enforcers. We received a total of 77 complaints against decisions, actions and inactivity (hereinafter "actions") of law enforcement officers. More than half of them concerned the National Police (42 complaints), one third – the Prosecutor's Office (26 complaints), the rest – the State Security Service of Ukraine (9 complaints).

The number of complaints regarding malpractice of the National Police increased by a quarter (from 33 to 42) QOQ. Most often, business appeals concerned procedural violations of policemen (17 complaints) and their inactivity (15 complaints).

With respect to actions of the Prosecutor's Office we received two thirds more complaints (26 vs. 16) QOQ and one third more (19 vs. 26) YOY. Over a half of complaints, in the reporting quarter, were connected with procedural violations by the Prosecutor's Office, and one third was related to their inactivity. We received one complaint which was directly accusing the Prosecutor's Office of corruption.

Businesses lodged with the BOC 9 complaints related to malpractice of the State Security Service – the same number as in Q2 2021, but twice more than in Q3 2020 (4 vs. 9). Almost all complaints (89% in the reporting quarter) concerned procedural violations by the SSS officers.



## Actions of local government authorities

In Q3, 2021, the number of complaints went up by 10% versus Q2 2021 and by 64% versus Q3 2020. Business appeals concerned, inter alia, land plots allocation and receiving permits.



## Actions of state regulators

Entrepreneurs sent us 41 complaints, in which they reported malpractice by the AMCU, DABI, the State Geocadastre, NERCUS and other controlling bodies. Thus, the total number of complaints in the block increased by 58% QOQ (from 26 to 41) and by 95% YOY (from 21 to 41). The number of complaints against other state regulators went up significantly, in particular, we received 10 complaints regarding the Ministry of Social Policy and 18 complaints regarding the Ministry of Economy, in the reporting quarter.





## Customs issues

Entrepreneurs lodged 50% more complaints on customs issues with the BOC as compared to Q2 2021 (18 vs. 12). Among other things, entrepreneurs reported problems related to customs valuation of goods (6 complaints) and refund of customs overpayments (2 complaints). It should be noted that in the reporting quarter, we received only one complaint about delays in customs clearance, while in Q2 2021 there were 5 such appeals, and in Q3 2020 – 14.



## Actions of the Ministry of Justice

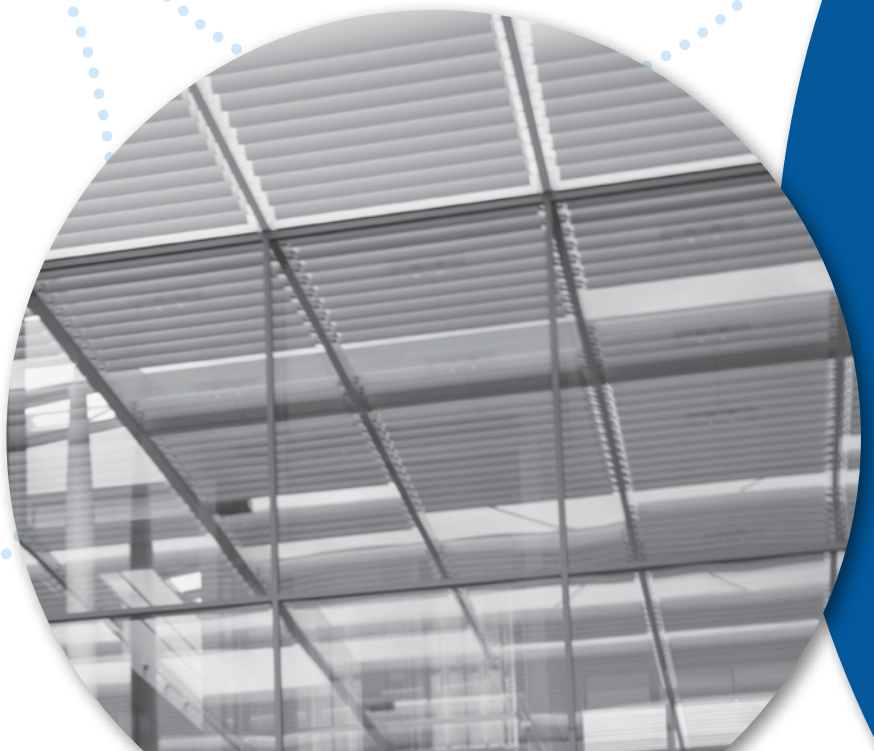
The number of business appeals featuring the Ministry of Justice increased by one third QOQ (from 13 to 17) and by 6% YOY (from 16 to 17). The key driver of such a growth was the Department of State Registration and Notary of the Ministry of Justice (+125% compared to the previous quarter), while the number of complaints against the Enforcement Service decreased by 11% over the past three months.



## Other issues

The TOP-10 most common subjects of appeals in the reporting quarter also included complaints about deficiencies in the legislation, the number of which increased significantly QOQ (+70%, from 10 to 17) and YOY (+467, from 3 to 17). The largest share of amendment proposals to the legislation in this block concerned functioning of state regulators (59% or 10 complaints).

We received 6 complaints about malpractice by state-owned enterprises, which is twice more than in Q3 2020, but a quarter less than in Q2 2021.





## 1.2. Timelines of the preliminary review of complaints

(Clause 5.3.1 (b) of Rules of Procedure)

In Q3 2021, the average time for preliminary review of a complaint was

**7** working days,

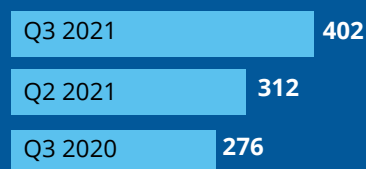
which means that the BOC perfectly fits Rules of Procedure's target of 10 working days.

## 1.3. Number of investigations conducted and grounds for dismissing complaints

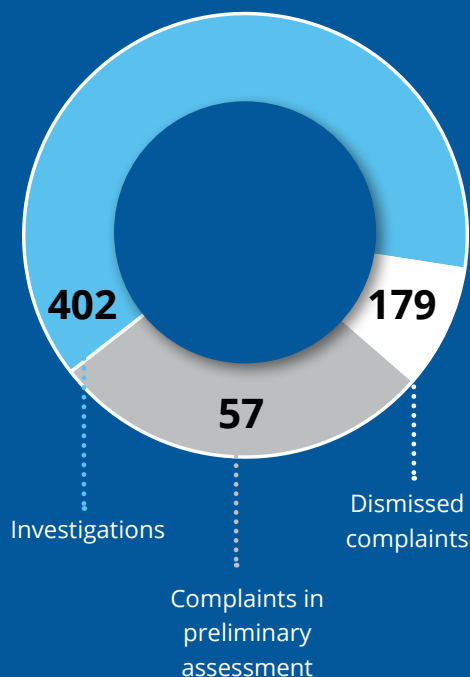
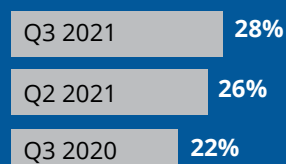
(Clause 5.3.1 (c) of Rules of Procedure)

In Q3 2021, out of 638 complaints received, the BOC undertook 402 investigations, which is 29% more than in Q2 2021 and 46% more than in Q3 2020 and amounts to 63% of complaints received. The rest of appeals remained at the stage of preliminary assessment (9%) or was dismissed as not fitting the Council's eligibility criteria (28%) as of September 30, 2021.

### Number of initiated investigations:



### Ratio of dismissed complaints:



## Number of complaints received in

Main reasons for complaints dismissal in Q3 2021	Q3 2021	Q2 2021	Q3 2020
Complaints outside Business Ombudsman's competence	94	107	63
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	25	20	12
An investigation by the Business Ombudsman in a similar case is pending or otherwise on-going	12	2	2
A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration	9	3	2
A complaint relates to an issue that has already been addressed	8	3	2
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	8	4	0
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	5	12	23
Other circumstances where the Business Ombudsman, in his sole and absolute discretion, determines that an investigation of the complaint is not necessary	4	2	1
A complaint had no substance, or other agencies or institutions were already investigating such matter	4	8	7
If the complainant requests to withdraw the complaint, the Business Ombudsman shall cease pursuing the investigation	3	1	2
All other	5	6	8

The most widespread reason (53%) for complaints dismissal – they were outside the Business Ombudsman's competence. Active court proceedings (14%) and similar pending complaints (7%) were also common in Q3 2021.



Thanks to Legal and Economic Security Bar Association and the Business Ombudsman Council's team joint efforts it was possible to cease illegal inaction and actions of tax authorities and restore the company's violated rights resulting in receiving by the latter of an actual VAT refund on its bank account in full.

**Serhii Kolisnyk**

Managing partner

Legal and Economic Security Bar Association

## 1.4. Timelines of conducting investigations

(Clause 5.3.1 (d) of Rules of Procedure)

In the reporting quarter, the BOC closed 373 cases. Average duration of the investigation was 77 days, which is 13 days less than standardly envisaged in our Rules of Procedure.

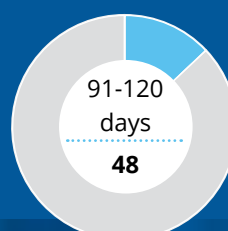
Q3 2021  
**77**  
days

Q2 2021  
**79**  
days

Q3 2020  
**76**  
days

### Ratio of closed cases by days:

The majority of cases – 298, which is 80% of all closed cases in Q3 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

### Complainees

	Q3 2021	Q2 2021	Q3 2020
State Tax Service	393	327	281
State Customs Service	18	12	23
Tax Police	21	20	16
National Police	42	33	25
Prosecutor's Office	26	16	18
Local government authorities	23	21	14
Ministry of Economy	18	10	3
Ministry of Justice	17	14	18
Parliament, the Cabinet of Ministers, the President of Ukraine	10	11	3
Ministry of Social Policy	10	3	3
State Security Service	9	9	5
Other	14	12	3



Your competent intervention in this difficult case, which deprived the company of prospects for development and questioned the very fact of its existence for three years, allowed us not only to enforce the decision of the Court of Appeal on our appeal to be reconsidered by Stategeonadra, but also an order for granting a special permit was issued by this body.

Konstantyn Shpylovi  
Director  
Azov-Mineraltekhnika LLC

## Other complainees

	Number of complaints received in		
	Q3 2021	Q2 2021	Q3 2020
State Enterprises	6	9	3
Ministry for Communities and Territories Development	5	3	2
Ministry of Infrastructure of Ukraine	5	3	2
Antimonopoly Committee of Ukraine	4	2	4
Ministry of Finance of Ukraine	3	3	1
State Emergency Service of Ukraine	3	0	0
National Commission for State Regulation of Energy and Public Utilities	2	1	1
State Border Guard Service of Ukraine	1	0	0
Commercial and other courts	1	5	0
National Bureau of Investigation of Ukraine	1	4	4
State Funds	1	1	4
State Service of Ukraine on Food Safety and Consumer Protection	1	0	0
Ministry of Defense of Ukraine	1	1	0
Ministry of Internal Affairs of Ukraine	1	0	2

In Q3 2021, entrepreneurs lodged 393 complaints with the BOC on malpractice by the State Tax Service, which is +20% QOQ and +40% YOY. As compared to the previous quarter, the number of appeals concerning the State Customs Service and the Tax Police also went up: by 50% and 5% respectively.

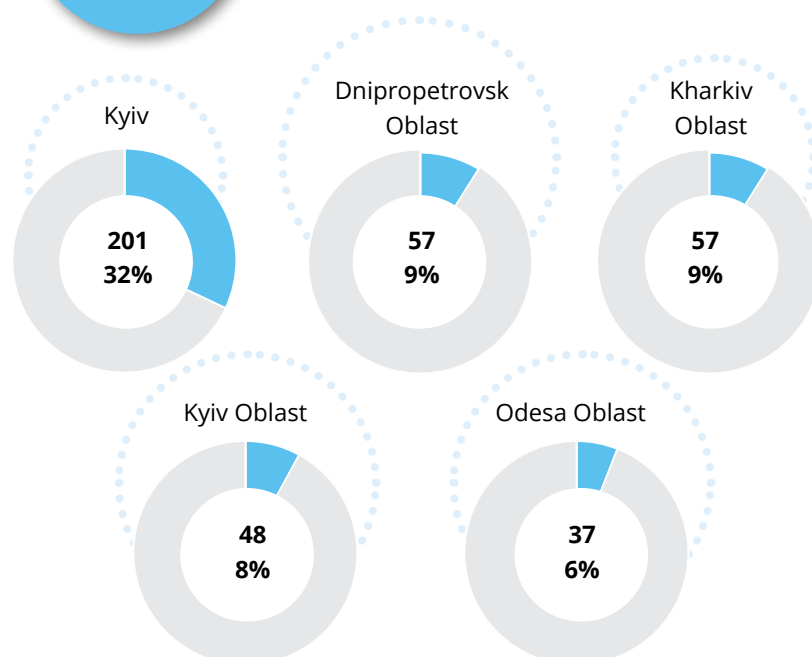
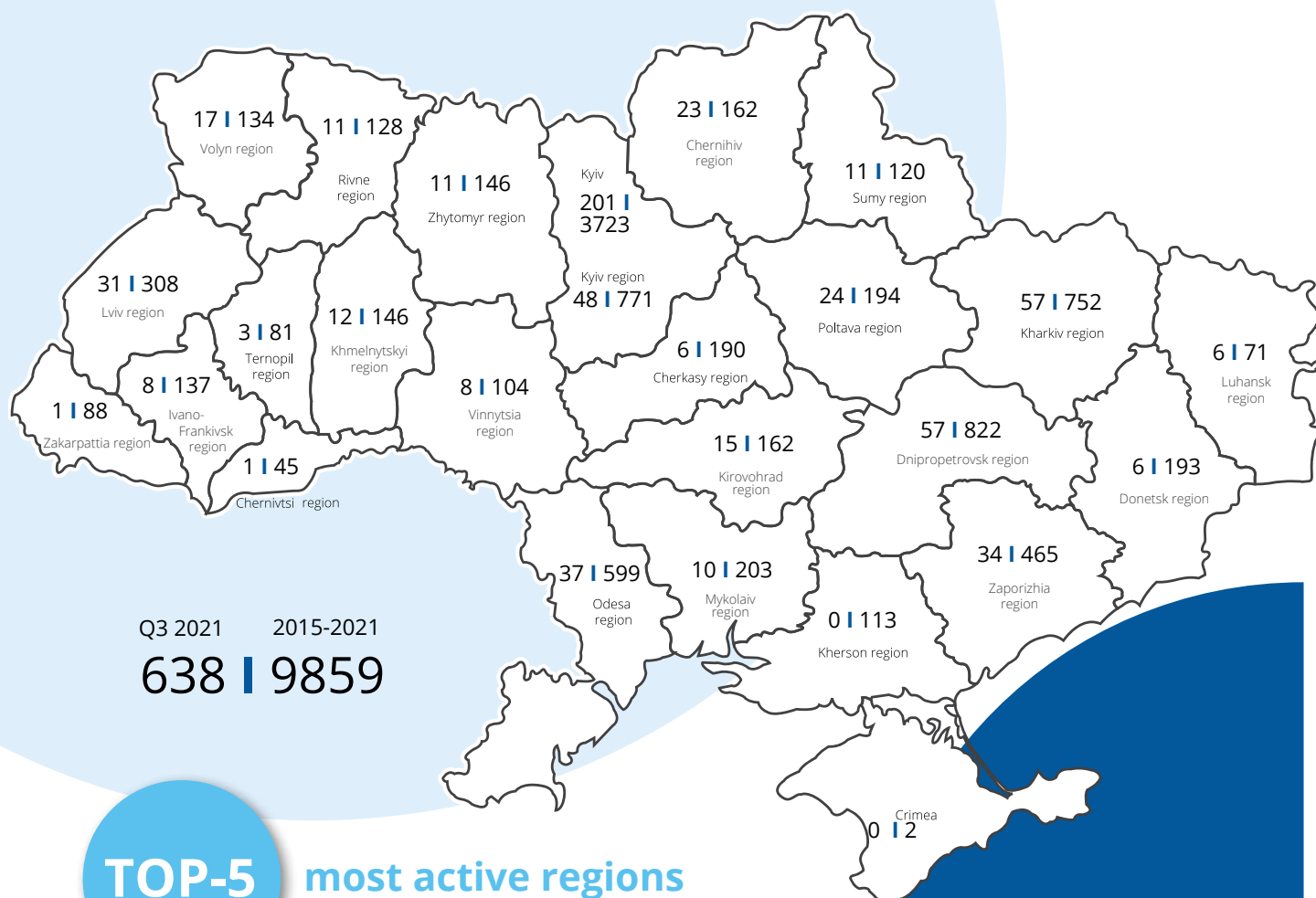
Companies complained more about actions and inactivity of law enforcement agencies: both compared to the previous quarter (+33%) and last year (48%). The most significant increase in the number of appeals was observed with respect to the National Police (+27% QOQ and +68% YOY) and the Prosecutor's Office (+63% QOQ and +44% YOY).

The number of appeals concerning local government authorities also went up: +10% in comparison with Q2 2021 and +64% in comparison with Q3 2020.

As for the other state bodies in the ranking, as compared to Q2 2021, entrepreneurs reported more episodes of malpractice by the Ministry of Economy (+100%), the Ministry of Justice (+21%) and the Ministry of Social Policy (+233%).

The number of complaints featuring the Parliament, the Cabinet of Ministers, the President of Ukraine decreased by 9% QOQ, but increased by 233% YOY.

## 1.6. Geographical distribution of complaints received



In Q3 2021, we received more complaints from entrepreneurs from the city of Kyiv: + 4% as compared to Q2 2021. However, the increase from other regions was even greater, so the share of Kyiv in the overall structure of appeals decreased by 4 p.p. – down to 32%.

In comparison with Q2 2021, the number of appeals from Dnipropetrovsk region increased by 14%, from Kharkiv – by 33%, Kyiv – by 60%, Odessa – by 19%.



87% of the BOC complainants were Ukrainian companies – in the reporting quarter, we received 555 appeals from local business. At the same time, large business lodged 83 complaints with the Council, which is 13% of all appeals.

### Local vs Foreign business

87%

555

Ukrainian companies

13%

83

Foreign companies

## 1.7. Complainants' portrait

638  
appeals

### Size of Business

73%

465

Small and medium-sized enterprises

27%

173

Large companies

Small and medium-sized enterprises (SMEs) comprise the vast majority of the Council's applicants. In Q3 2021, the number of complaints from SMEs amounted to 73%. As for large companies, 27% of complaints in the reporting period were lodged by them.

## TOP-5

## Complainants' Industries

Number of complaints received in Q3 2021	Number of complaints received in Q2 2021	Number of complaints received in Q3 2020
--	--	--



## Wholesale and Distribution

136

134

125



## Agriculture and Mining

114

73

58



## Manufacturing

72

54

44



## Individual Entrepreneur

56

47

42



## Real Estate and Construction

53

44

48

In comparison with Q2 2021, the BOC observed growth in the number of appeals with respect to all industries given in TOP-5 complainants. In the reporting quarter, we received most of appeals from wholesalers and distributors (136) – this industry is traditionally leading the ranking. At the same time, a sharp growth in the number of complaints was demonstrated by representatives of agriculture (+56%) and manufacturing (+33%) as compared to the previous quarter. In addition, an increase was recorded in the appeals of the representatives of real estate and construction (+20%) and individual entrepreneurs (+19%).

## Other industries include:

Retail	29
Physical Person	27
Auto transport	19
Farming	9
Oil and Gas	9
Warehousing	9
Electric installation works	8
Information and Telecommunications	8
Public Organizations	7
Hire, rental and leasing	7
Energy and Utilities	7
Financial Services	5
Consulting	5
Repair and Maintenance Services	4
Advertising	4
Activity in the field of law	4
Private security firms activity	4
Processing Industry	4
Education	3
Supply of electricity, gas, hot water, steam and air conditioning	3
IT companies	3
Health, Pharmaceuticals, and Biotech	3

Transportation and Storage	2
Computer and Electronics	2
Audio recording	2
Ground and pipeline transport	2
Conferences and trade exhibitions organizing	1
Activities in the field of culture and sports, recreation and entertainment	1
Activity of telephone centers	1
Printing and reproduction activity	1
Non-state pension provision	1
Charitable organizations	1
Restaurant business	1
Delivery services	1
Activities in the field of sport	1
Waste collection and disposal	1
Banks	1
Publishing and printing services	1
Activity in the field of architecture	1
Water transport	1
Accommodation services	1
Other	3



## 1.8. Report focus: analysis of complaints against law enforcement bodies

### 1. Dynamics of received complaints

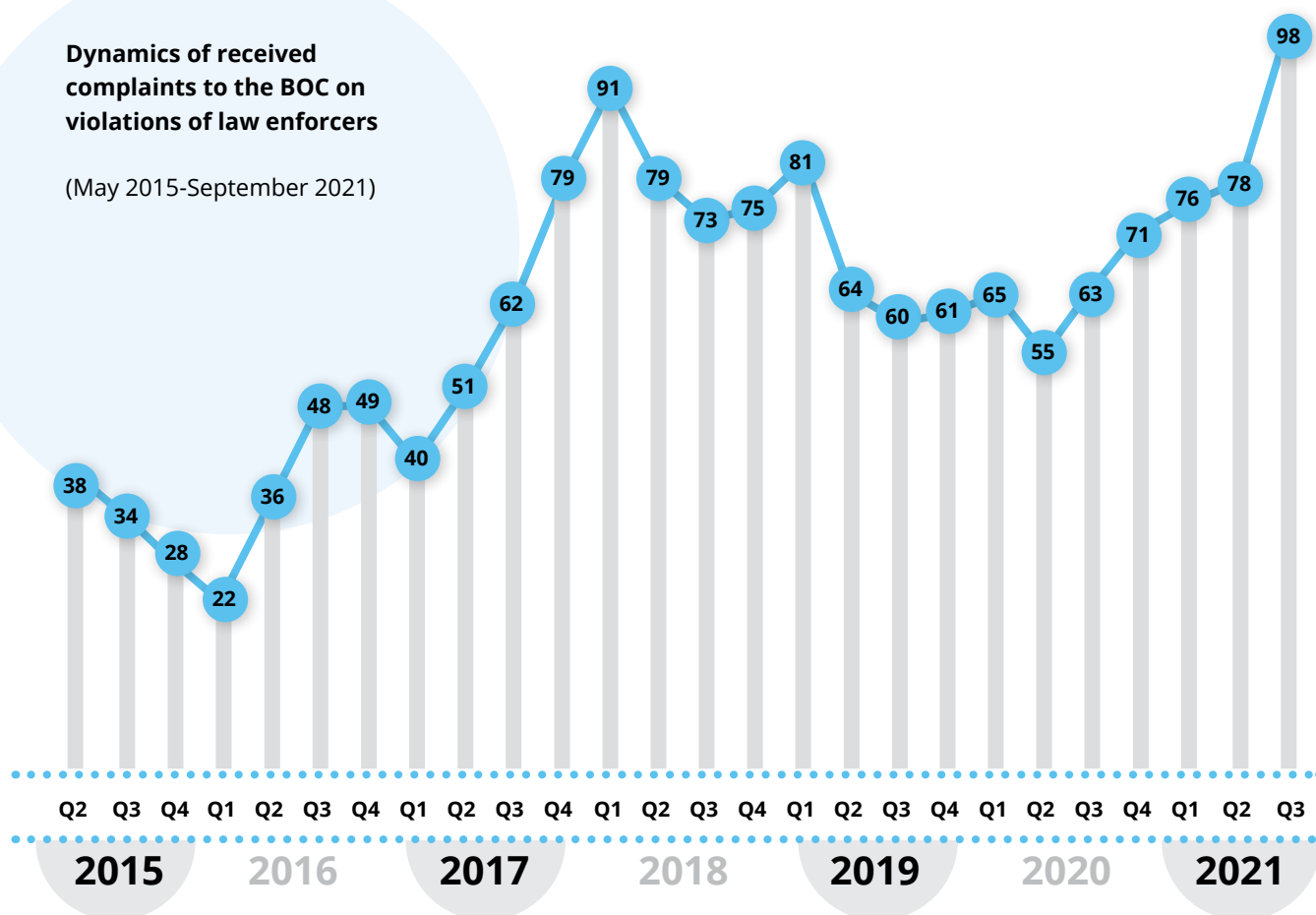
During the entire period of its operations, the Business Ombudsman Council received 1,577 complaints from entrepreneurs about malpractice (decisions, actions and inaction) of law enforcement bodies. The law enforcement block in this analysis includes the National Police, the Prosecutor's Office, the SFS (Tax Police), the State Security Service of Ukraine and the Ministry of Internal Affairs. In the structure of appeals to the

BOC, this block occupies the second position with a share of 16% (tax issues hit the first place by a wide margin).

In Q3 2021, the number of business appeals reached its maximum in the history of the institution - the BOC received 98 complaints against law enforcers. We set the last record in Q1 2018 - we received 91 complaints then.

#### Dynamics of received complaints to the BOC on violations of law enforcers

(May 2015-September 2021)



In a long trend, you can see seasonality of complaints against law enforcers - with peaks in Q1 of 2018-2020.

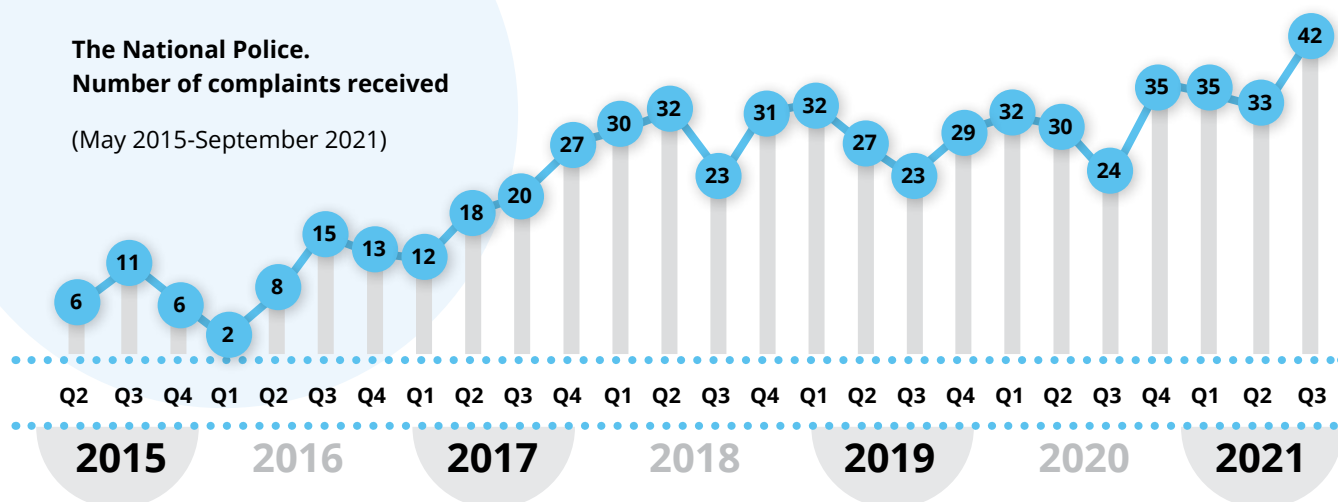
In Q2 2020, we recorded a decline in the number of complaints, after which the trend confidently

went up. In Q3 2021, the number of appeals from entrepreneurs reached its all-time high during 6 years of BOC operations – entrepreneurs sent us 98 complaints on law enforcers.



### The National Police. Number of complaints received

(May 2015-September 2021)



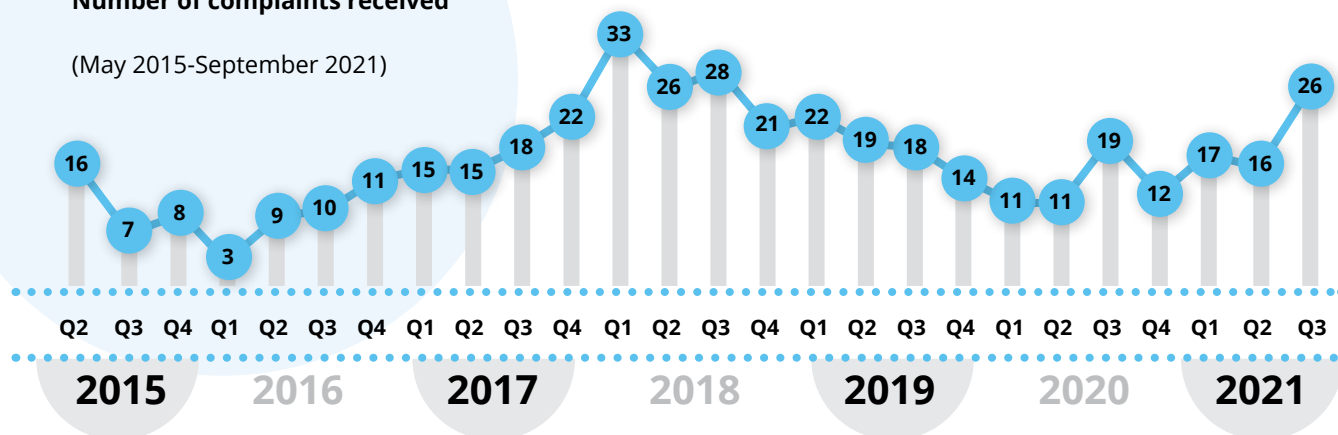
The National Police is the leader among law enforcement bodies by the number of business complaints. During the whole period of the BOC operations, we received 596 complaints or 38% of total appeals against law enforcement officers.

A clearly visible trend – the lowest number of complaints in the third quarters can be traced in 2018, 2019, 2020.

However, the year 2021 has become a special one – throughout the year we recorded the highest number of appeals with a peak of 42 complaints in Q3 2021. This is almost twice as many as in Q3 2020.

### Prosecutor's Office. Number of complaints received

(May 2015-September 2021)



The prosecution system hits the second place with a share of 28%. We received 438 business complaints on their decisions, actions and inaction.

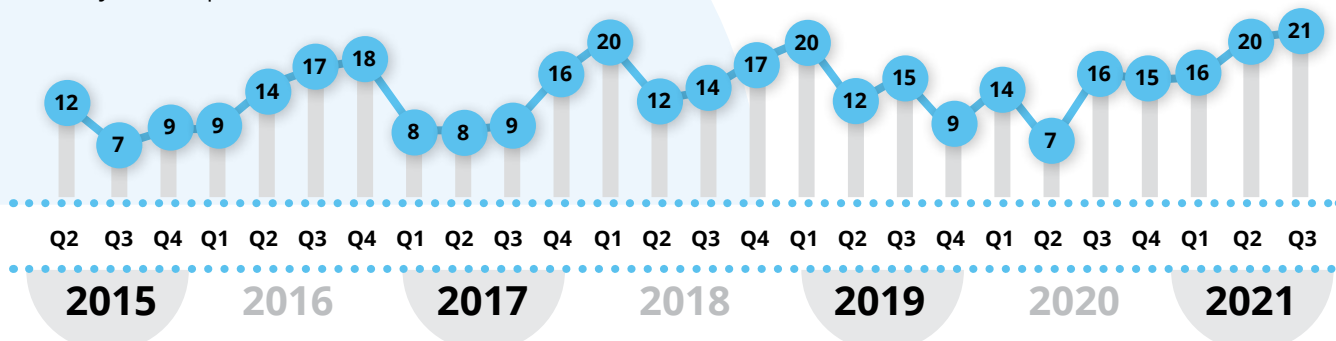
We recorded a peak of appeals in Q1 2018. At that time, law enforcement bodies were being reformed, MaskShowStop laws entered into force, and business

began speaking freely about violations of the Prosecutor's Office.

After that, for two years one could observe a clear downward trend. In Q3 2020, fluctuations began, as a result of which in Q3 2021, we recorded the largest number of appeals since 2018.

### Tax Police. Number of complaints received

(May 2015-September 2021)

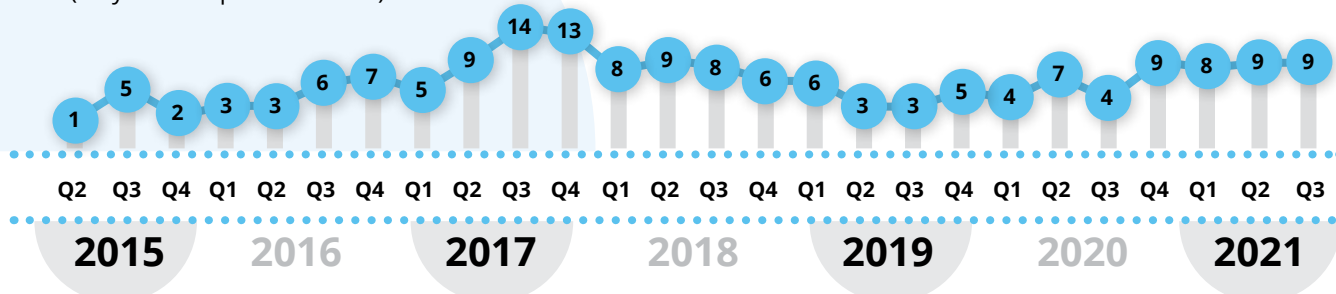


The third position in terms of the number of business complaints to the BOC among law enforcement bodies is occupied by the Tax Police (355 or 23%).

The highest indicators of the number of complaints are recorded in Q1 of 2018, 2019 and 2021. However, as of the end of September 2021, the number of complaints is increasing the fourth consecutive quarter.

### State Security Service of Ukraine. Number of complaints received

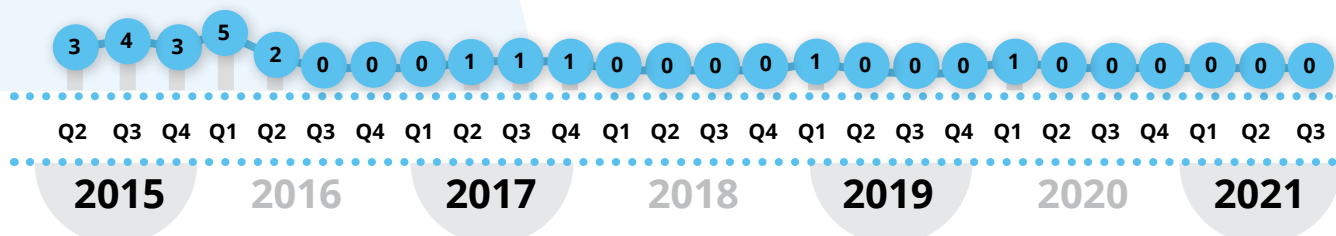
(May 2015-September 2021)



As compared to other law enforcement bodies, the number of complaints against the SSS is significantly lower – 166 complaints from entrepreneurs have been received so far. The highest number was recorded in Q3 2017.

### Ministry of Internal Affairs. Number of complaints received

(May 2015-September 2021)



With regard to the Ministry of Internal Affairs, entrepreneurs sent us a total of 22 complaints over the whole period of the institution's activity.

Once most law enforcement functions were transferred from the Ministry of Internal Affairs to the National Police, we virtually stopped receiving complaints from the Ministry of Internal Affairs.

## 2. Complaints status:

	NATIONAL POLICE	PROSECUTOR'S OFFICE	TAX POLICE	SSU	MIA	TOTAL
Current complaints	22	15	14	7	0	58
Complaints dismissed	253	210	142	72	13	690
Cases closed	321	213	199	87	9	829
<b>TOTAL</b>	<b>596</b>	<b>438</b>	<b>355</b>	<b>166</b>	<b>22</b>	<b>1577</b>

During the entire period of its operations, the BOC completed the investigation of 829 cases concerning law enforcement bodies, which is 53% of all complaints received on this topic.

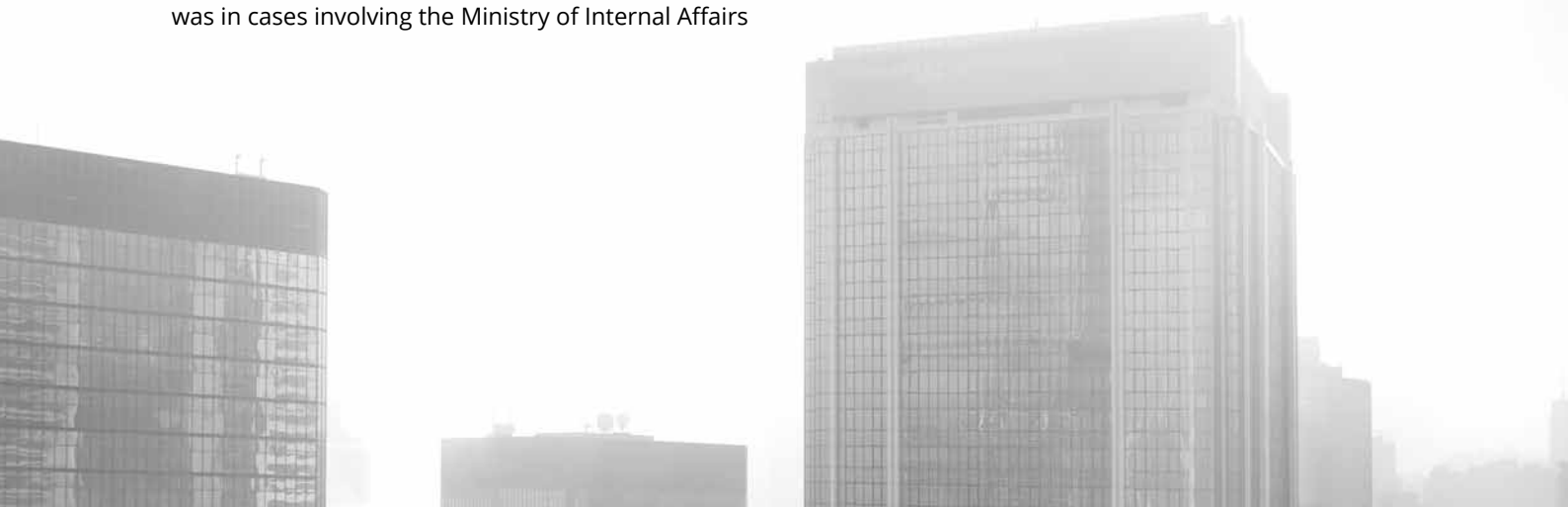
The share of dismissed complaints among appeals relating to law enforcers is 44%, which is significantly higher than the average level of dismissed complaints – 29% .

### Status of closed cases:

	NATIONAL POLICE	PROSECUTOR'S OFFICE	TAX POLICE	SSU	MIA	TOTAL
Cases closed successfully	198	138	146	62	5	549
Cases closed without success	88	63	44	21	3	219
Cases closed with recommendations	35	12	9	4	1	61
Cases closed successfully	62%	65%	73%	71%	56%	66%
<b>TOTAL</b>	<b>321</b>	<b>213</b>	<b>199</b>	<b>87</b>	<b>9</b>	<b>829</b>

Overall, two-thirds of cases (66%) were closed with the desired outcome for the complainant. The best indicators of successfully closed cases belong to the Tax Police (73% or +7 p.p.) and the State Security Service of Ukraine (71% or +5 p. p.). The lowest percentage of successfully completed investigations was in cases involving the Ministry of Internal Affairs

(56% or -10 p.p.), the National Police (62% or -4 p. p.). The share of successfully closed cases concerning the Prosecutor's Office (65%) is close to the average success rate among all law enforcers related cases. It should be noted that the average success rate in all cases of appeals to the BOC is 62% .



### 3. Subjects of closed cases

(May 2015-September 2021)

The structure of business complaints by subjects demonstrates that entrepreneurs largely faced procedural abuses and inaction on the part of the law enforcement bodies listed in the table. Hence, out of 321, 46% complaints concerned procedural abuse of the National Police officials, while 38% – their inaction. That is to conclude that law enforcers either violate legislation when conducting investigations in criminal proceedings in business cases or stay inactive that makes businesses ask for the Council's mediation to solve their issues. The mentioned subjects took the lead in appeals against the Prosecutors' Office and the Tax Police - a half of complaints came with respect to procedural abuse and around a quarter referred to inaction of these law enforcement bodies. Procedural abuses were a subject of the majority of appeals against the State Security Service. At the same time, inaction was the most widespread subject of business appeals against the Ministry of Internal Affairs.

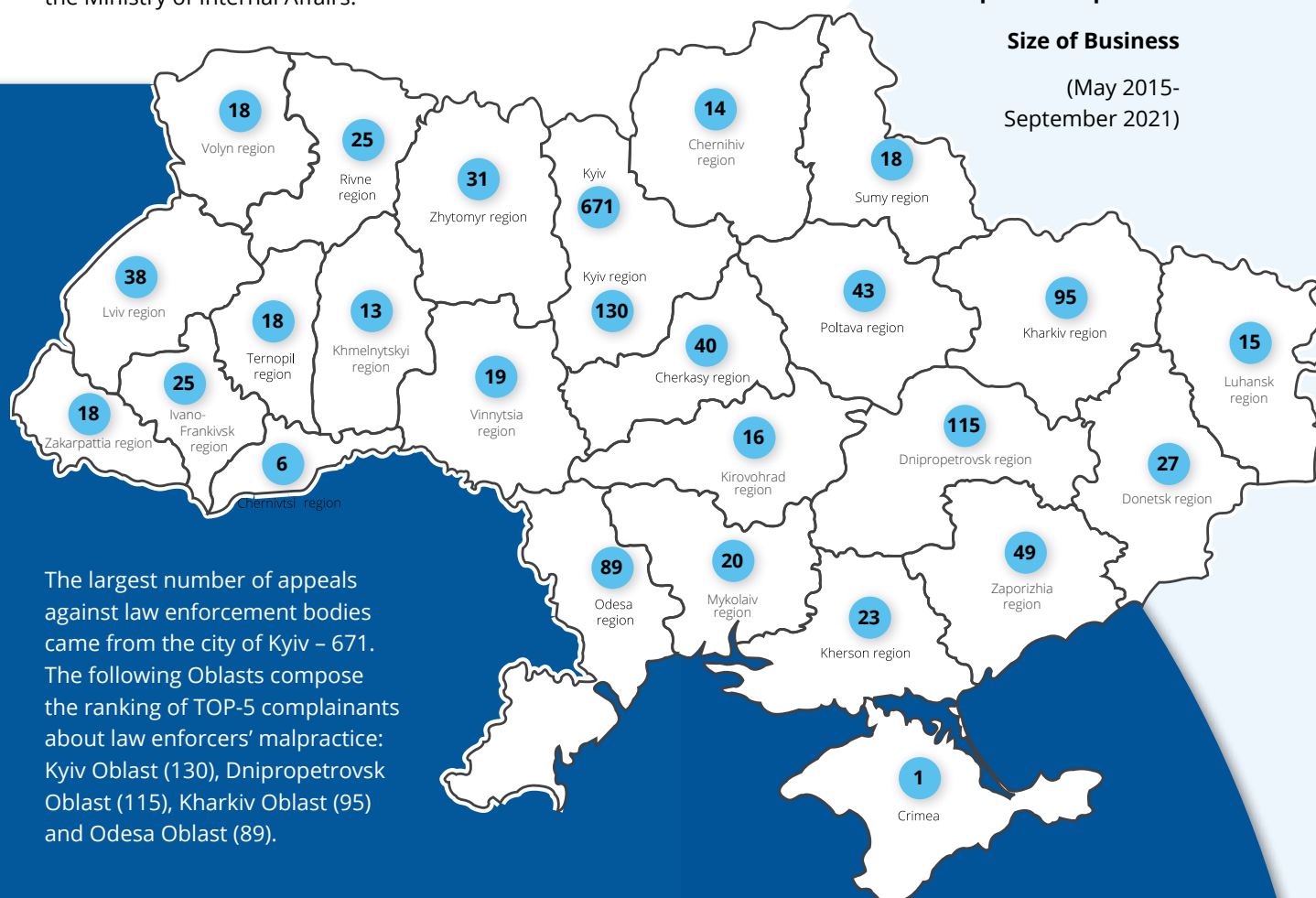
<b>National Police</b>	<b>321</b>
Procedural abuse	149
Inaction	125
Other	22
Open criminal cases	21
Corruption allegations	4
<b>Prosecutor's Office</b>	<b>213</b>
Procedural abuse	104
Inaction	47
Open criminal cases	41
Other	16
Corruption allegations	5
<b>Tax Police</b>	<b>199</b>
Procedural abuse	150
Inaction	26
Open criminal cases	20
Other	2
Corruption allegations	1

<b>SBU</b>	<b>87</b>
Procedural abuses	47
Other	21
Open criminal cases	13
Corruption allegations	3
Inaction	3
<b>MIA</b>	<b>9</b>
Inaction	4
Open criminal cases	2
Procedural abuse	1
Corruption allegations	1
Other	1

### 4. Complainants' portrait

#### Size of Business

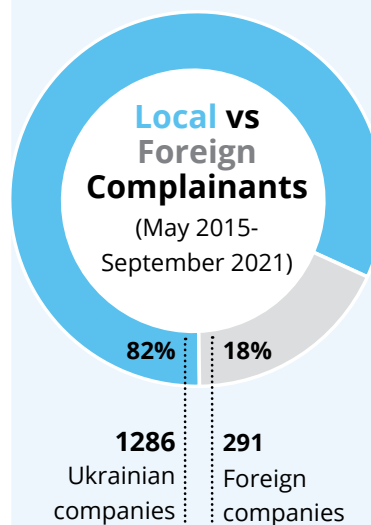
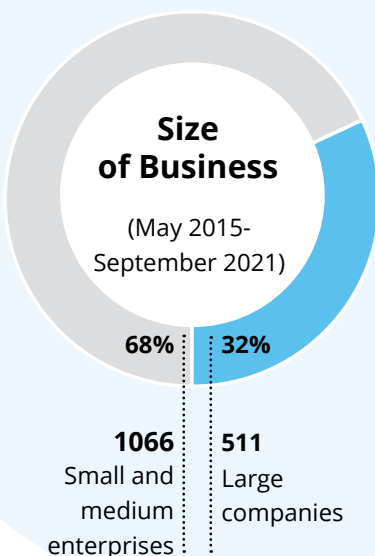
(May 2015-September 2021)



The largest number of appeals against law enforcement bodies came from the city of Kyiv – 671. The following Oblasts compose the ranking of TOP-5 complainants about law enforcers' malpractice: Kyiv Oblast (130), Dnipropetrovsk Oblast (115), Kharkiv Oblast (95) and Odesa Oblast (89).



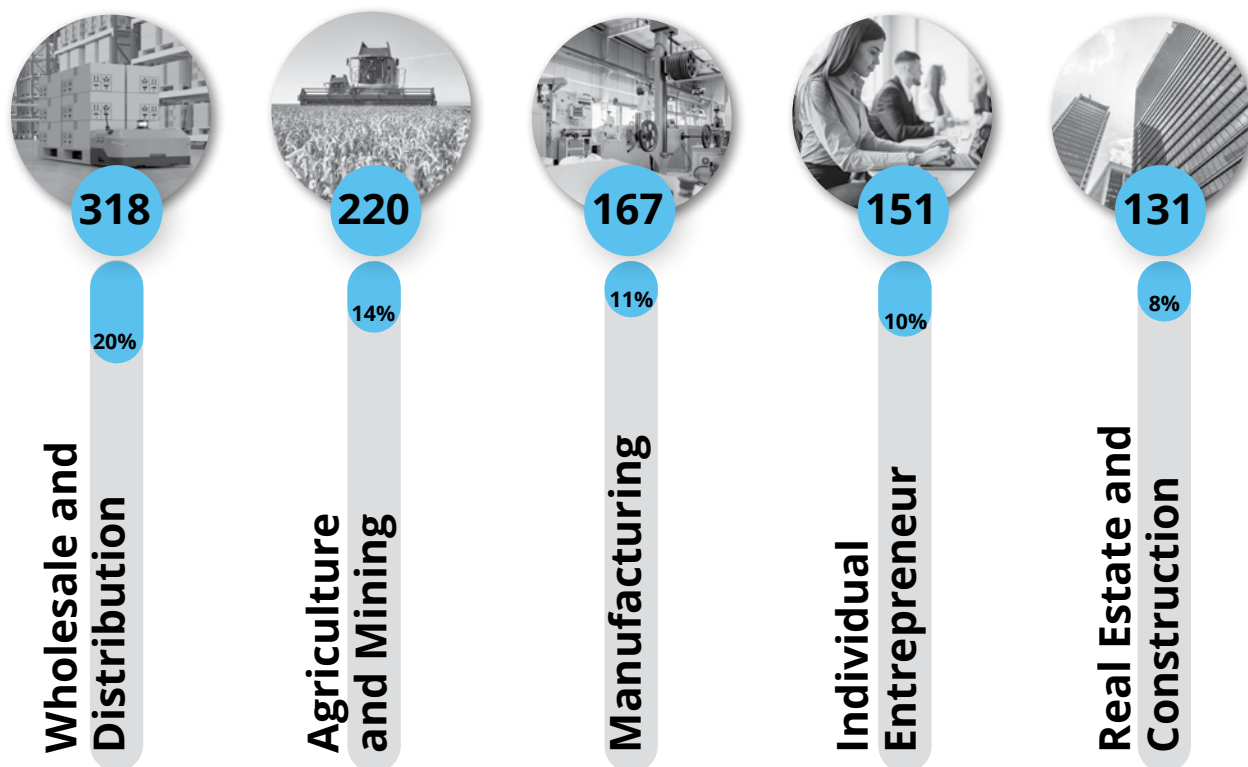
Over two thirds of complaints (68%) about law enforcement bodies' malpractice were lodged by small and medium-sized businesses (SMEs). 32% of the Council's applicants on this subject were large companies.



Since the BOC launch of operations, local businesses with a share of 82% most often have turned to the BOC for help in ceasing malpractice of law enforcement bodies. Less appeals in this regard were received from foreign businesses – 18%.

#### TOP-5 industries

(May 2015-September 2021)



Out of TOP-5 industries that characterize the BOC applicants, 20% of complaints were received from representatives of wholesale and distribution. 14% appeals came from manufactures and 11% - from individual entrepreneurs. Representatives of real estate and construction and agriculture and mining are observed at the bottom of ranking with a share of 10% and 8% respectively.

## 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 the 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

# 138

completed feedback  
forms  
from complainants

In

# 129

of them,  
applicants  
said they were  
satisfied with  
working with  
us –

in such a way the  
client satisfaction  
level reached

# 93%

The Business Ombudsman Council is given feedbacks by its complainants both via email, on social media and by post.

## In the reporting quarter we received the following feedbacks from complainants:



We would like to express our sincere gratitude to your team for its active and firm position in protecting legal rights and interests of Ukrainian business. We are confident that without your assistance and hard work of all BOC team members, without your support it would be difficult for Nova Poshta LLC, as well as all Ukrainian business to defend their legitimate rights and restore justice

**Oleksandr Bulba**

Director of Nova Poshta



Let me express my gratitude to the Business Ombudsman Council for the extremely effective response and humane attitude to my problem, which lied in long-term illegal abuse of architectural and construction supervision officials in Ivano-Frankivsk Oblast.

Thanks to your coordinated, high-quality and effective work, obstacles to implementing my legal rights and interests as an entrepreneur have been removed.

**Liudmyla Ruzhylo**



We express our sincere gratitude to the Business Ombudsman Council for highly professional support and effective assistance in inducing the State Tax Service of Ukraine to duly enforce the court decision, which has entered into force.

**Oleksandr Fesenko**

Director, GARANT RESURS FM LLC



Please, accept my sincere gratitude for the work done by the Business Ombudsman Council's team in resolving our appeals. It is your consistent and principled position that made the STS Commission decide that our company was non-compliant with the risk criteria as a taxpayer.

**Volodymyr Shykun**

CEO

SPETSPIDVOBUD-7 LLC



We truly thank you for your efforts and professionalism in the work resulting in support and protection of business interests in state bodies. We are convinced that the Business Ombudsman institution is, of course, an effective communication of business with state bodies, particularly with regulatory authorities.

**Denys Hrenov**

Acting Head of PJSC ABINBEV EFES UKRAINE

## 2.

# Summary of key matters and follow-up of recommendations

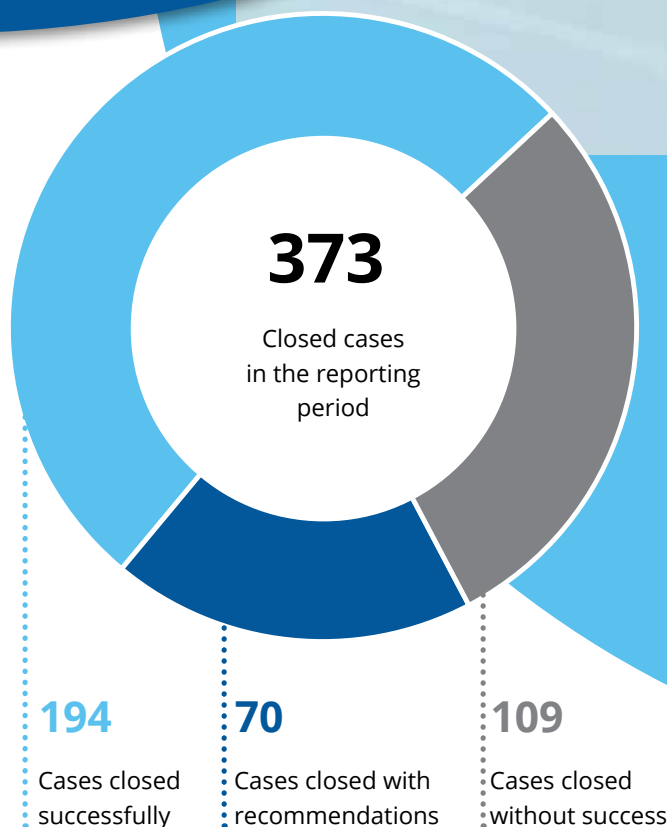
The Business Ombudsman is entitled to examine entrepreneurs' issues in their relations with state bodies on case-by-case basis, provide respective recommendations to state bodies in case business rights were violated, and to draw attention to pressing business issues that became systemic by suggesting 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: **6483**





## TOP-10

### subjects of closed cases:

	Q3 2021	Q2 2021	Q3 2020
Tax issues	282	193	209
Actions of state regulators	21	22	9
National Police actions	13	19	17
Customs issues	11	14	8
Actions of local government authorities	10	4	6
Actions of the Prosecutor's Office	9	11	8
Actions of the Ministry of Justice	7	4	4
Actions of state-owned companies	4	7	6
Actions of the State Security Service	3	4	1
Other	8	8	2
<b>Total</b>	<b>373</b>	<b>287</b>	<b>274</b>

In the reporting quarter, we finalized investigation of 373 cases, which is 30% more than in Q2 2021 and 36% more than in Q3 2020. Three quarters (76%) of closed cases were tax-related.

Actions of state regulators were in the focus of 21 closed cases.

With respect to law enforcement bodies, we closed 25 cases in total. 13 cases were related to actions of the National Police, 9 cases – to the Prosecutor's Office and 3 – to the State Security Service.

Among the most common subjects of closed investigations were also customs issues (11 cases), actions of local government authorities (10 cases), the Ministry of Justice (7 cases) and state-owned enterprises (3 cases).

## Financial impact in Q3 2021:

UAH  
**483**  
mn

Total financial impact of BOC's  
operations May 20, 2015 –  
September 30, 2021:

UAH  
**19.5**bn

Other state regulators	325,851,550
Tax inspections	94,416,447
Tax VAT invoice suspension	34,039,175
Tax other	16,274,311
State companies investment/ commercial disputes	4,928,758
Tax VAT electronic administration	2,000,000
Customs administrative proceedings	1,211,567
Prosecutor's Office — funds refund	1,203,850
Customs valuation	985,500
Customs other	887,051
Tax criminal cases	713,917
Customs clearance delay/refusal	345,000
Overpaid customs duties refund	113,224
Enforcement Service	8,522
Pension Fund - Budget compensations	8,000
<b>TOTAL</b>	<b>482,986,872</b>

Under financial effect of the BOC activities, 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 to the financial result, for instance. Nevertheless, since May 2015, financial effect of the BOC activities for businesses operating in Ukraine amounts to UAH 19.5 billion.



In Q3 2021, the biggest line of the financial impact – UAH 325 mn – resulted from successful resolution of the case from Nova Poshta regarding malpractice of The State Service of Ukraine on Food Safety and Consumer Protection. The revision of tax inspections led to a saving of UAH 94 mn in favour of business.

Registration of tax invoices brought UAH 16 mn, while solving investment disputes with state-owned companies – additional UAH 5 mn.

## NON-FINANCIAL IMPACT OF BOC'S OPERATIONS:

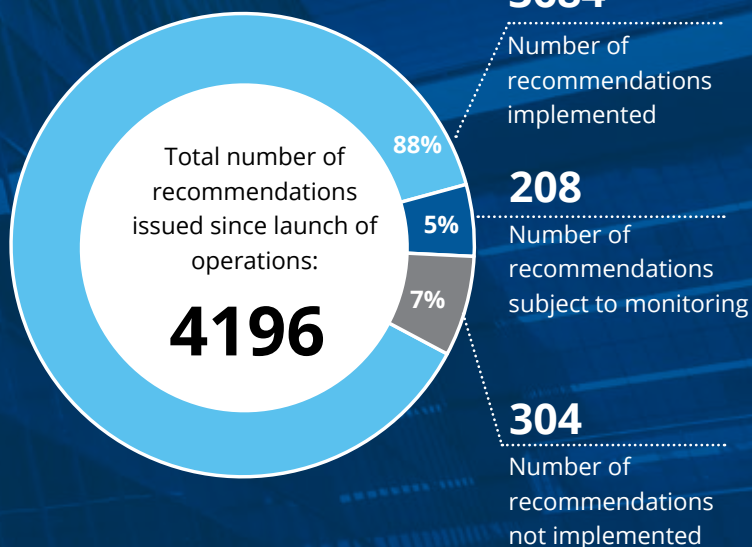
	Q3 2021	Q2 2021	Q3 2020
Criminal case initiated against state official/3rd party	0	0	1
Contract with state body signed/executed	0	1	0
State official fired/penalized	1	1	1
Legislation amended/enacted; procedure improved	1	5	4
Claims and penalties against the Complainant revoked   Sanction lifted	2	1	0
Criminal case against the Complainant closed; property/accounts released from under arrest	3	6	2
Tax records reconciled, tax reporting accepted	8	1	9
Permit/license/conclusion/registration obtained	11	3	3
Malpractice ceased by complaine	48	49	41
Other issues	71	33	39

In Q3 2021, the BOC ceased 48 episodes of state bodies malpractice (mainly various procedural abuses), helped companies obtain 11 licenses and permits, submit 8 packages of tax reporting and and, among other things, close 3 ungrounded criminal cases.

## Recommendations provided

Recommendations issued in Q3, 2021:

**256**



**Government agencies 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 Q3 2021
State Fiscal Service	2944	2673	91%
National Police of Ukraine	244	183	75%
Prosecutor's Office of Ukraine	166	130	78%
Local government authorities	156	111	71%
Ministry of Justice	134	120	90%
Ministry of Economic Development and Trade of Ukraine	113	96	85%
State Security Service	62	58	94%
Ministry of Ecology and Natural Resources of Ukraine	51	46	90%
State Enterprises	42	37	88%
Ministry for Communities and Territories Development	39	35	90%
Ministry of Social Policy	37	32	86%
Parliament, the Cabinet of Ministers, the President of Ukraine	33	28	85%
Ministry of Infrastructure of Ukraine	27	19	70%
Ministry of Finance of Ukraine	25	18	72%
Ministry of Health of Ukraine	17	14	82%
Ministry of Energy and Coal Industry of Ukraine	14	14	100%
Ministry of Internal Affairs	14	11	79%
Antimonopoly Committee of Ukraine	12	8	67%
National Commission for State Regulation of Energy and Public Utilities	12	11	92%
Commercial and other courts	7	7	100%
NABU	7	4	57%
National Bureau of Investigation of Ukraine	6	4	67%
State Funds	6	3	50%
National Bank of Ukraine	5	2	40%



	Issued recommendations	Implemented recommendations	Cumulative status of implemented recommendations as of Q3 2021
Ministry of Education and Science of Ukraine	3	3	100%
Ministry of Defense of Ukraine	2	1	50%
State Border Guard Service of Ukraine	1	1	100%
Ministry of Digital Transformation	1	1	100%
State Emergency Service of Ukraine	1	1	100%
State Regulatory Service of Ukraine	1	0	0%
State Service of Ukraine on Food Safety and Consumer Protection	1	1	100%
National Council of Ukraine on Television and Radio Broadcasting	1	1	100%
Communal Services of Ukraine	1	1	100%
Other	11	10	91%
<b>Grand Total</b>	<b>4196</b>	<b>3684</b>	<b>88%</b>

In Q3 2021, the BOC issued 256 new recommendations, while state bodies implemented 200 individual recommendations from those issued since launch of operations. In such a way, the cumulative number of implemented case-by-case recommendations by state bodies reached 3684, that is 88% as of the end of Q3 2021. This figure reflects state bodies' commitment to improve their performance and cooperate in solving disputed issues of business.

Out of 2944 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 only state-owned enterprises performed better than average in comparison with the reporting quarter (+3 pp). The performance of the rest either decreased or remained stable.



We thank your team for their professional assistance in ensuring execution of the above-mentioned investigatory judges' decisions by the pre-trial investigation body, restoration of individual's rights and wish success in protecting business interests in state bodies.

Serhii Osmukha  
Lawyer

## 2.2. Systemic issues identified and solved

Apart from case-by-case recommendations, the Business Ombudsman Council provides systemic recommendations to state bodies. Over 6 years of operations, we have prepared 17 systemic reports on selected business problems and issued over 400 systemic recommendations to state bodies. In particular, in Q3 2021 we acknowledged that the following BOC recommendations were implemented:

### Systemic report

February 2017

### CHALLENGES FOR GOVERNMENT AND BUSINESS IN DEALING WITH LOCAL GOVERNMENT

#### Issue

---

Establishing clear and comprehensive requirements for obtaining permits for emissions of pollutants into the atmosphere.

#### BOC's recommendation

---

Develop a draft amendment to the Law of Ukraine "On Atmospheric Air Protection" to ensure the definition in a special law and requirements for documents that an economic entity must submit to obtain a permit for emissions of pollutants into the atmosphere by stationary sources.

#### Actions taken by government agencies

---

Draft Law on Amendments to Certain Laws of Ukraine on Improving the Mechanism for Regulating Emissions of Pollutants into the Atmospheric Air №5339 of April 6, 2021.

On July 15, 2021, the draft law was adopted in the first reading.



## BUSINESS FOCUS ON LABOR-RELATED ISSUES

### Issue

---

Reduction of administrative barriers to attracting skilled foreign workers to Ukraine (in particular, to obtain a work permit for foreign specialists).

### BOC's recommendation

---

Develop a legal framework and mechanism for the "e-cabinet" implementation, which will meet international standards and best EU practices for procedures related to labor relations (in particular, to obtain a work permit for foreign specialists).

### Actions taken by government agencies

---

On July 7, 2021 the Cabinet of Ministers approved a draft law aimed at improving the legislation on the employment of foreigners.

The draft law provides, among other issues:

- To provide an opportunity for foreigners studying in Ukrainian educational institutions to work, providing for the employer work permit free of charge for this category of employees;
- Clearly define list of documents submitted for obtaining or renewing permits;
- To ensure free issuance of a duplicate permit in case of its loss or damage;



In 2019, the Council issued 57 systemic recommendations aimed at streamlining legal framework governing administrative appeal procedure. It is worth noting that as a result of the Council's continuous efforts at all levels the text of the Governmental Draft Law No. 3475 "On Administrative Procedure", lodged with the Verkhovna Rada for consideration in the 2nd reading in April 2021, ensures that 20 such recommendations are implemented fully and 5 partially. Although the Draft Law was adopted in the 1st reading more than a year ago (i.e., on September 2, 2020), its subsequent consideration is still pending.

## 2.3 Overview of the New Systemic Report Aimed at Tackling Abuses at the Part of Law Enforcers

In furtherance to last year's review of problems in the sphere of administering taxes, in its new systemic report the Council once again returns to the topic that was attended in the past (in 2016) – the problem of **abuses and pressure inflicted on business by law enforcers**. Hence, the document addresses the most urgent problems faced by businesses in relations with law enforcers, as observed by the Council during all years of its activity.

The Report commences by reviewing the **problems related to the stage when criminal proceedings are being launched**.

Here, among other things, the Council advocates for the need to ensure proper **digitalization of the manner in which the data is entered with the Unified State Registry of Pre-Trial Investigations (USRPI)**. We argue that if implemented, such an approach would allow building up a straight, modern and unified system of registration of applications on committed crimes.

Thereafter the Council updated its earlier recommendations aimed at alleviating pressure inflicted on business in lieu of (i) **groundless launching of criminal proceedings based on allegations of tax evasion**; as well as (ii) **groundless denial to launch criminal proceedings**.

The next chapter is focused on **inefficient (delayed) course of pre-trial investigation**. We commence by concentrating on (i) **criminal proceedings launched prior to March 15, 2018**, in whose regard the Criminal Procedural Code does not set forth deadlines of pre-trial investigation, thus resulting in such criminal proceedings becoming a convenient tool for inflicting pressure on business. While drawing attention to the **lack of proper access to selected information about course of pre-trial investigation**, we call for the need to simplify both suspect's and victim's access to the USRPI. Afterwards we advocate **vesting the defence and injured party with the right to independently lodge a motion with prosecutor or investigatory judge seeking extension of terms of pre-trial investigation**. The chapter ends by focusing on the taxonomy

of problems stemming from the **current state of legal framework governing use of court-ordered expert examinations**. In particular, the Council has comprehensively examined (i) delays with conducting expert examinations; (ii) abuses while formulating and/or amending questions subjected for expert examination; (iii) retrieval of additional documents in course of expert examination; (iv) victim's procedural rights related to initiation of expert examination; and (v) access to texts of methodologies to be followed while conducting expert examinations.

In the subsequent chapter discussing **procedural abuses in course of pre-trial investigations**, we concentrated on the following taxonomy of this problem: (i) **illicit retention of arrested property**; (ii) **transfer of materials of criminal proceedings** from one body of pre-trial investigation to another; and (iii) **practice of reiterative arrests**, when law enforcers seek imposition of arrest on property in criminal proceedings, where an investigatory judge lifted the original arrest or ordered investigatory authority to return seized property to its legitimate holder.

The Report ends with a comprehensive chapter focused on **disciplinary liability of investigators and prosecutors**. As for the latter category, the Council examined the following aspects: (i) practice of groundless denials to launch criminal proceedings; (ii) need to expand grounds for launching criminal proceedings; and (iii) challenging results thereof. As for investigators, the Council concentrated on disciplinary liability of the police and State Security Service officers. In particular, we emphasized that the latter's liability is not governed by a separate internal document. The Council also suggested improving the following elements of disciplinary liability of police officers: (i) structure of bodies carrying out consideration of a disciplinary case; (ii) grounds employed for bringing to disciplinary liability; (iii) procedure employed for consideration of disciplinary cases and rendering decision thereafter; and (iv) notification of complainants about results of internal investigation, including a respective appeal procedure.



## 2.4. Summary of important investigations

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

### Tax issues

**Subject:** Non-enforcement of court decisions on VAT invoice 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 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.

**Subject:** Non-enforcement of court decisions on VAT invoice registration

**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 174k 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 174k. The case was successfully closed.

### Subject: VAT invoice suspension

#### State Tax Service accepts agricultural company's tax return

##### Complainee:

The State Tax Service (STS),  
Main Department of the STS  
in Kyiv

## Complaint in brief:

The BOC received a complaint from a Kyiv-based agricultural company. The enterprise complained the tax authority refused to accept his single tax return of the fourth group (tax return). It all happened because of an alleged error in the name of the controlling body to which the tax return was submitted.

In column 8 "Name of the supervisory authority at land plots location to which the tax return is submitted", the company indicated "MD STS in Poltava Oblast" as an addressee. However, in column 7 "The name of supervisory authority at the main place of registration" the company indicated "MD STS in Kyiv". Because of the addressees names mismatch, the tax authority treated the company's tax return as non-submitted.

The complainant disagreed with this decision, as he had not received a written notice of the reasons within a five-day statutory period. The enterprise asked the Council for help.

## Actions taken:

The investigator examined case materials and found the complaint substantiated. The Council recommended that the STS ensure a full, comprehensive and impartial consideration of the company's complaint and accept its tax declaration. The BOC explained that column 8 "Name of the supervisory authority at land plots location

to which the tax return is submitted” was not a mandatory detail and couldn’t be the ground for rejecting the tax return. The complainant filled out other mandatory details correctly.

## Result achieved:

The STS followed the Council’s recommendations and accepted the agricultural company’s tax declaration, as filed according to the procedure established by law without missing submission deadlines. The case was successfully closed.

### Subject: Tax inspections

**State Tax Service cancels the decision worth UAH 1 mn**

#### Complainee:

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

## Complaint in brief:

The Business Ombudsman Council received a complaint from a company developing green energy. The company decided to terminate its activities in Ukraine and disagreed with the final tax audit findings. The Tax Service established the complainant had overstated the negative value amount included in the tax credit of the next reporting period by a total of over UAH 1 mn. According to the company, the last reporting tax period for VAT did not come, so the complainant had the right to declare the above-mentioned negative value amount. The company failed to convince tax officers on its own, so it turned to the BOC.

## Actions taken:

The investigator examined the circumstances of the complaint and found it substantiated. The Council considered the complainant’s objections with the participation of the MD STS administration by videoconference.

## Result achieved:

After the Council’s involvement, the Tax Service canceled the conclusion on negative value overstatement by the complainant included in the tax period worth over UAH 1 mn. The case was closed.

**Subject:** VAT electronic administration

**At 12th attempt: data tables accepted**

**Complainee:**

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

**Complaint in brief:**

An agricultural company from Odesa Oblast appealed to the Business Ombudsman Council. The company complained that the tax service had not accepted VAT data tables and blocked tax invoices of the enterprise. According to the MD STS, all types of entrepreneurial activity of the complainant did not correspond to the fixed assets indicated in the data table. The company submitted data tables and additional documents on ability to conduct certain types of entrepreneurial activity eleven times. However, each time the tax service rejected them without specifying the reasons. The BOC commenced its own investigation.

**Actions taken:**

The investigator analysed the case file and acknowledged the complaint was substantiated. The Council recommended that MD STS explain what lied behind non-correspondence of types of entrepreneurial activity to existing fixed assets of the complainant. The BOC brought up the complaint discussion at the expert group meeting between the Council and the MD STS. The latter gave the BOC information on concrete remarks to the company's data table that should be further improved by a taxpayer. The data table was submitted to the MD STS one more time.

**Result achieved:**

The MD STS upheld the BOC's recommendations and accepted the VAT data tables of the company. The case was successfully closed.

**Subject:** Tax termination/renewal/refusal of VAT payers registration

**Decision on VAT payer registration rescinded**

**Complainee:**

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

**Complaint in brief:**

The Business Ombudsman's Council received a complaint from a company trading in healthy food products. The company complained the tax service had revoked its VAT payer registration certificate. According to the tax authority, the company allegedly did not file VAT returns for twelve consecutive months or filed tax returns indicating no trade turnover. Since the company timely submitted all tax returns reflecting the volume of supply/purchase of goods/services, already last year it lodged a complaint with the STS. Not having received a response, the company re-submitted the complaint to the tax office and asked the BOC for assistance.



## Actions taken:

The investigator examined the circumstances of the case and found the complaint substantiated. The Council recommended that the STS ensure a full, comprehensive and impartial consideration of the company's complaint and cancel the decision on VAT payer registration certificate revocation.

## Result achieved:

The BOC managed to draw the tax authority's attention to the company's complaint. Two months later, the STS cancelled the decision on VAT registration certificate revocation. The case was successfully closed.

### Subject: Tax 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 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 to be 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 is accrued, cannot 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 determine the formal amount of income for which a single contribution is accrued, in this case cannot be the only and due reason for refusing to write off arrears, penalties and fines.

## Result achieved:

With the Council's facilitation, having considered the complainant's repeated 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.

### Subject: Tax other

**UAH 6.5 mln tax debt dropped for Mykolaiv enterprise**

#### Complainee:

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

## Complaint in brief:

The Business Ombudsman Council received a complaint from a car repair company. The company complained that despite tax audit results on-going court appeal the MD STS illegally entered a debt totaling to UAH 6.5 mln in the taxpayer's integrated card. Due to such a debt, the company could not participate in tenders and could even lose its contractors. The tax authority should have removed the company's debt information from the system, but was in no hurry. To help the company resolve the arrears issue, the BOC launched its own investigation.

## Actions taken:

After examining materials of the complaint, the investigator found the complaint substantiated. The Council asked the MD STS to bring the complainant's integrated card data in line with the requirements of the law, since the complainant's monetary obligations were unreconciled at that time. 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 determine the formal amount of income for which a single contribution is accrued, in this case cannot be the only and due reason for refusing to write off arrears, penalties and fines.

## Result achieved:

Due to timely application of the company to the institution, the BOC managed to help it. The STS corrected data in the taxpayer's integrated card and deleted the information on the respective debt. The case was successfully closed.

## Actions of National Police

**Subject:** Abuse of the National Police

**Foreign investor case gets underway**

### Complainee:

The National Police of Ukraine, Main Investigation Department of the National Police Ukraine (MID NP)

## Complaint in brief:

Among entrepreneurs, who turn to the Business Ombudsman for help, there is an opinion that the Business Ombudsman Council mainly helps businesses protect themselves against groundless interference in their business activities by law enforcement bodies. Meanwhile, recent statistics of complaints received by the Council shows that the businesses are increasingly more often approach the institution when they cannot get effective protection from law enforcers as the injured party in the framework of criminal proceedings investigation. The latter scenario constituted merits of the complaint lodged with the Council by a foreign investor in June 2020 to challenge unlawful alienation of its real estate worth over UAH 40 mn. Having learned about the offence, the investor turned to law enforcement bodies. However, the investor could not obtain a victim status and any information on the investigation progress from the investigator for a long time. The complainant also challenged law enforcers' attempt to transfer arrested property at the disposal of the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes (Asset Recovery and Management Agency or ARMA).

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## Actions taken:

Following the complaint's receipt, the Council's team immediately discussed the case with the MD NP representatives at the Expert Group meeting set up under auspices of the Memorandum on Partnership and Cooperation between the National Police of Ukraine and the Business Ombudsman Council of September 7, 2016. At such meetings, the Council always emphasizes that in a state governed by the rule of law seeking to build public confidence in law enforcement bodies, the latter must demonstrate a certain level of openness meaning that victims can receive timely information on the course of investigation. As it turned out, since the disputed property several times changed its owner within a short period of time, the investigation did not have reliable information about real owner's identity, which prompted them to work out several versions of the investigation. Exactly because the investigation was not sure, who the legal property owner actually was, the investor was not recognized as a victim.

## Result achieved:

Thanks to the Council's mediation, the investor received the victim status after all and his lawyers began interacting effectively with the investigator. Recently, the investigation was able to identify and detain persons involved in the investor's property misappropriation. As it turned out, lawbreakers organized a criminal group, which also seized property of other entrepreneurs. The Council welcomes successful results of investigation and would like to thank the leadership team of the MID NP for protecting interests of a legitimate business in course of criminal proceedings. We hope that criminal proceedings materials will soon be sent to court and perpetrators will be brought to justice for the wrongdoing. The complaint investigation is ongoing.

**Subject:** National Police criminal cases

**Law enforcement officers return property and over UAH 11 mn to ceramics shop**

**Complainee:**

The State Fiscal Service (SFS), Investigative Department of Financial Investigations of the State Fiscal Service in Kyiv (IDFI)

## Complaint in brief:

A tiles and bathroom equipment shop appealed to the Business Ombudsman Council. The company complained that investigators temporarily seized its property and did not return it. As part of criminal proceedings, law enforcement officers searched the complainant's office and seized over UAH 11 mn, computer equipment and company's documents. The court denied the motion to arrest the company's property and ordered investigators to return the seized items. The complainant several times asked the SFS to comply with the court decision to get his property back, but to no avail. In turn, the SFS asked for clarification of the court decision to enforce it. The BOC came to the company's rescue.

## Actions taken:

The investigator examined the materials of the complaint and found it substantiated. The Council recommended that the Prosecutor General's Office and the SFS return the seized property to the complainant. However, law enforcers returned only funds to the company. The BOC then brought up the case for consideration by the expert group with the Prosecutor General's Office. The SFS informed that it allegedly did not receive a court ruling. However, the information was false. The Council again appealed to law enforcers and asked to comply with the court ruling.

## Result achieved:

The SFS followed the Council's recommendations and returned the property to the complainant in full. The company's lawyer thanked the Council for assistance: *"We want to thank you for your contribution to protecting interests of our clients. Thanks to your professionalism, we were able to resolve our conflict with public authorities and prevent violations of Ukrainian business representatives' legal rights"*. The case was successfully closed.



**Subject:** Prosecutor's Office procedural abuse**Agricompany under pressure of law enforcers****Complainee:**

Bila Tserkva District Police  
Department of the Main  
Department of the National  
Police in Kyiv Oblast (National  
Police in Kyiv Oblast)

**Complaint in brief:**

The Business Ombudsman Council received a complaint from an agricultural company engaged in grain and oilseeds cultivation. The company complained that law enforcers opened criminal proceedings for forgery of land lease agreements. In particular, investigators confiscated land documents from the company and seized its property.

The Council found out that landlords were trying to unilaterally terminate land lease agreements. As a result, the agricultural company was illegally deprived of the right to lease. Although the applicants sought to declare the agreements invalid in court, the judiciary authority acknowledged the validity of the agreements and the need to enforce them instead. During court hearings, the landlords neither provided convincing arguments, nor denied they had entered into land lease agreements with the complainant. As the seizure of property resulted in a crisis situation in the agricultural firm's production, the company turned to the BOC for help.

**Actions taken:**

After examining the complaint, the Council found it substantiated. The BOC recommended that the National Police in Kyiv Oblast and Kyiv Oblast Prosecutor's Office fully and impartially verify the legality of criminal proceedings in the agricultural company's case. Among other things, the court established that the company had duly performed its contractual obligations to the landlords.

**Result achieved:**

Due to involvement of the Council, law enforcers closed criminal proceedings in the agricultural company's case and returned temporarily seized property. The case was successfully closed.

## Actions of State Security Service

**Subject:** State Security Service inactivity

**State Security Service approves issuance of passes to employees of the enterprise**

**Complainee:**

The State Security Service of Ukraine (SSU), SSU Central Department in Kyiv Oblast

### Complaint in brief:

The Council received a complaint submitted by a private enterprise from Odesa. The enterprise won the tender for cleaning Boryspil international airport inner premises. However, the company's employees could not obtain permanent passes to the airport premises. Moreover, due to alleged non-fulfillment of the contract terms, the SSU investigators searched the company's office. The inaction of law enforcers in approving issuance of passes made the company turn to the BOC for help.

### Actions taken:

The investigator examined the case file and found the complaint substantiated. The Council recommended that the SSU consider the company's request and agree on issuance of permanent passes to the airport's inner premises. The BOC reminded that, according to the law, appeals must be resolved within no more than a month from the date of receipt. If it is impossible to resolve the issue, the head of the respective body must set the necessary deadline for its resolution.

### Result achieved:

The SSU approved issuance of permanent passes to the company's employees. The case was closed.

## Actions of State Regulators

**Subject:** DABI

**DABI issued permits for solar power plants construction in Zhytomyr Region**

**Complainee:**

The State Architectural and Construction Inspectorate (DABI)

### Complaint in brief:

The Business Ombudsman Council received complaints from a company with foreign investment building solar power plants. The company planned to install five power plants in Novohrad-Volynskyi district of Zhytomyr Oblast with a total capacity of 5 MW. To do this, DABI had to issue 5 separate permits to start construction. The complainant submitted documents through "DIIA" public services portal. However, they received remarks from the controlling body due to non-compliance of documents with the Ukrainian

legislation. According to DABI, the company's conclusion regarding consequences of the construction, as well as the names of facilities did not correspond to those specified in the project documentation. The company corrected all the deficiencies and re-applied to DABI. This time, the inspectorate found other arguments to deny giving permits to the company to build solar power plants. The DABI referred to the fact that the project documentation was inconsistent with the town-planning conditions and restrictions. After submitting the application for the third time, the company asked the BOC to initiate its own independent investigation.

## Actions taken:

The investigator examined the case file and found the complaint substantiated. In the Council's view, the DABI's actions contained signs of malpractice, as they were contrary to the good governance principle. From the very beginning the inspectorate did not provide the company with an exhaustive list of comments, and each time after the company's appeals it found new deficiencies in the documents. In particular, according to the legislation, the state construction supervisory authority must issue a construction permit within 5 working days from the date of registration of an application. In case of refusal to issue such a permit, the controlling body must explain the decision on refusal within 10 working days. Our complainant did not receive any information about the appeals consideration status after he submitted documents for the third time through the "DIIA" portal. The BOC requested the DABI to ensure a full and impartial consideration of the company's applications and to inform the complainant of their consideration results.

## Result achieved:

After the BOC facilitation, the DABI issued solar power plants construction permits in Zhytomyr Oblast to the company. The company thanked the BOC for assistance: *"We are grateful to the Business Ombudsman Council for its constructive and prompt response to our request. At the time of applying to the BOC, the third application from our company for issuance of permits had been pending the DABI consideration for over seven weeks without any decision. Any attempts to get a response from the DABI had been unsuccessful. We express special gratitude to the BOC's team for effectiveness and professionalism in defending the interests of our company"*. The case was closed.

**Subject:** DABI**DABI issues construction permit to the company****Complainee:**

The State Architectural and Construction Inspectorate (DABI)

**Complaint in brief:**

The Business Ombudsman Council received a complaint from a company engaged in production of upholstered furniture. The company planned to reconstruct production facilities for the foam rubber workshop. However, the company could not obtain a construction permit from the DABI. The complainant applied to the DABI four times, corrected deficiencies in the documents, but was refused. The last application to the supervisory authority was considered for over 20 days. Not receiving a response from the DABI, the company turned to the BOC for help.

**Actions taken:**

The Council, having examined the case file, found the complaint substantiated. The Council recommended the DABI to ensure a full, comprehensive and impartial consideration of the complainant's application and issue the construction permit to the company. In a letter to the DABI, the BOC drew attention to provisions of the EU-Ukraine Association Agreement, according to which Ukraine undertook to adhere to the good governance principle. According to this principle, public authorities must act in a timely, appropriate and consistent manner. Among other things, the Council stressed the need for the DABI to adhere to the deadline for consideration of the company's application for the construction permit, which should not exceed ten working days.

**Result achieved:**

The DABI followed the Council's recommendations and issued the construction permit to the company. The company thanked the BOC's team for support: *"We are grateful for your promptness and professionalism in defending our company's interests"*. The case was closed.

**Subject: Other issues****Collective complaint of MDPR of the Ministry of Defense resolved****Complainee:**

The Main Department of Property and Resources of the Ministry of Defense of Ukraine (MDPR of the Ministry of Defense)

**Complaint in brief:**

The Council received a collective complaint from 11 contractors building barracks, canteens and dormitories for servicemen by order of the Ministry of Defense.

The contractors complained that against the background of the transfer of powers of former territorial housing and maintenance departments (THMD) to a newly established structural subdivision – MDPR of the Ministry of Defense, their rights arising from respective agreements were not respected. In particular, the complainants reported on a lack of timely funding for facilities construction, as a result of which the buildings remained unfinished. Contractors also complained about the lack of proper communication on the part of the customer, due to which it was impossible to timely sign construction related documents, as well as to promptly resolve working issues (regarding protection of unfinished buildings, their heating in winter, etc.).

**Actions taken:**

The Council approached the MDPR of the Ministry of Defense and initiated a discussion of issues raised in the complaint. At the beginning of February 2021, a series of multilateral meetings with the MDPR officials, including the Head of the MDPR, and representatives of contractors took place in the MDPR of the Ministry of Defense office. The Council's investigators were also invited to the first one of these meetings. During the meeting, MDPR specialists provided detailed explanations on all problematic issues raised by concerned contractors. In particular, they explained that temporary disruptions in communication with contractors were a forced consequence of the transfer of cases from former THMDs to the MDPR. Contractors were informed on prospects, timing and amounts of payment of funds for construction of facilities. Issues related to prompt signing of certain documents related to construction were agreed. MDPR contact persons responsible for further cooperation with contractors on specific objects were appointed.

**Result achieved:**

In mid-March 2021, the complainants' representative confirmed to the Council that normal working communication with the customer had been restored, additional agreements with the complainants had been signed, and complainants had resumed construction works at some objects. The case was successfully closed.



**Subject:** Other issues**Ministry of Education  
renews licenses for a  
private university****Complainee:**

Ministry of Education and  
Science of Ukraine (MES)

**Complaint in brief:**

A private higher education institution complained to the Business Ombudsman Council that the Ministry of Education and Science of Ukraine had prematurely revoked its licenses for all levels of education, thus suspending its possibility of any further educational activities, including providing the 2020/2021 graduates with the degree documents. After all, despite having appealed the MES's decision on licenses revocation in court and received the relevant secure measures in the form of suspension of the latter, MES not only entered information about revocation of the complainant's licenses in the License Register of the Subjects to Educational Activities in the Field of Higher Education, but also deleted the information about the establishment in the Register of Educational Institutions (EDEBO). This, in turn, made it impossible for the University to perform for its students such actions as issuance of diplomas and transfer of students to other higher education institutions. It should be noted that the University has been training specialists in various fields since 1992. However, due to the situation described above, which occurred in the spring of 2021, rumors began to spread among students that they would not be able to obtain their diplomas or be admitted to subsequent years of study. Meanwhile, timely challenging of the decision on licenses revocation in court as well as obtaining the measures to secure the lawsuit, enabled the University to duly continue its work. However, due to the premature application of consequences of the contested decision by the MES, the private university turned to the BOC for help.

**Actions taken:**

The Council's team of investigators promptly examined the circumstances of the case and found the complaint to be substantiated. The BOC drew the MES's attention to signs of the University's right violation to continue its educational activities in view of timely appeal against the MES's decision on licenses revocation and suspension of its validity in court. Thus, the Council recommended that the MES immediately update information in the License Register on the current status of the complainant's licenses, as well as renew the information about the University in EDEBO.

**Result achieved:**

MES followed the Council's recommendations and renewed/ updated the information about the complainant in both EDEBO and the License Register. As a result, the University provided more than 300 graduates of 2020/2021 with the degree documents.

The complainant thanked the BOC team for its efforts: *“The administration and staff of our university express their sincere appreciation and deep gratitude to the Business Ombudsman Council for the timely facilitation and assistance on the case and its solution. We wish you strength, creative inspiration and success in your work, which is vital for Ukrainian society”*. The case was successfully closed within a month of investigation. The University continues its activities while the issue of legality of the MES`’s decision on licenses revocation is being reviewed by an administrative court.

### Subject: Other issues

#### Company receives certificate of conformity for seafarers training

##### Complainee:

The State Service of Maritime and River Transport of Ukraine (Maritime Administration), Ministry of Infrastructure of Ukraine

## Complaint in brief:

The Business Ombudsman Council received a complaint from the Seafarers Training and Advanced Training Center. The company complained that, despite its application, the Maritime Administration had not inspected the applicant for compliance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the national seafarers training requirements. According to the law, the company must be inspected every two years and receive a certificate allowing seafarers training.

The Maritime Administration informed it had received the application and included the complainant in the inspection schedule, but never conducted it. The company tried to find out the inspection date, but did not receive any response. The company's old certificates expired. The company asked the Council for help.

## Actions taken:

The investigator examined the circumstances of the case and found the complaint substantiated. The Council approached the Ministry of Infrastructure and asked to ensure a full and comprehensive review of the company's complaint as well as to check the company's compliance with the STCW Convention requirements.

## Result achieved:

The Maritime Administration inspected the company for compliance with the STCW Convention requirements and issued a certificate to the complainant. The company was able to continue seafarers training. The case was successfully closed.

# Draft Laws and Amendments

**Subject:** Other issues

**Deficiencies in customs relations legislation eliminated**

**Complainee:**

The State Customs Service (SCS), Kyiv Customs

## Complaint in brief:

The Business Ombudsman Council (BOC) received a complaint from a company trading in machinery and industrial equipment. The complaint concerned regulatory obstacles to completing import operations by the company in a state of termination. Back in 2017, the company decided to terminate its activities, but still had to fulfill a number of previously undertaken obligations to supply goods to contractors under old contracts. However, Kyiv Customs deregistered and removed the company's registration number from the Register of Entities Performing Operations with Goods (Register), without explaining the reasons. The company contacted the customs and asked to restore the account in the Register, since it did not complete delivery to customers. However, almost six months later, the customs deregistered the company for the second time. The customs authority explained that it acted in accordance with Sections II and V of the Procedure for Registration of Entities Performing Operations with Goods (Procedure No. 552) of June 15, 2015. On the one hand, an entity which, although being in the process of termination, did not make a record on final termination of business activities in the Unified State Register, was subject to registration. On the other hand, the shareholders' decision to terminate the legal entity was the ground for deregistration. The ambiguous situation related not only to the complainant but also to other entrepreneurs.

The complainant's initial problem with organization of import deliveries was resolved in another way. Meanwhile, the BOC decided to go beyond the original complaint and ensure that the systemic issue was further addressed, which could create obstacles for other business entities engaged in import operations.

## Actions taken:

The investigators examined the case file and concluded the complaint was substantiated and prepared respective recommendations to the Ministry of Finance of Ukraine (MinFin) and the SFS of Ukraine.

Subsequently, the SFS of Ukraine developed a Draft Order of the Ministry of Finance "On Approval of Amendments to the Procedure for Registration of Entities Performing Operations with Goods" aimed at clarifying the grounds for registration and deregistration of

entities performing operations with goods in case of liquidation or reorganization of such entities.

In turn, the MinFin informed the BOC that the project submitted by the SFS of Ukraine did not ensure achievement of the objectives to improve provisions of Sections II and V of Procedure No.552 in terms of separating grounds for registration and deregistration of legal entities terminated as a result of reorganization or liquidation, and provisions of the Commercial and Civil Codes did not set a clear time frame for enterprises to lose the right to conduct business in such cases. In this regard, MinFin held further consultations on completion of this project.

MinFin further informed that the Procedure No.552 should be recognized no longer in effect with approval of a new alternative Procedure for registration of entities, who in the course of their activities were participants in relations regulated by the legislation of Ukraine on state customs (taking into account amendments to Article 455 of the Customs Code of Ukraine).

In the course of monitoring the BOC's recommendation, the SCS informed that the BOC recommendations were taken into account when drafting the Draft Order of the MinFin "On Amendments to the Order of the Ministry of Finance of Ukraine dated June 15, 2015 No. 552", the said Draft Order was intended to eliminate collisions in Articles 104, 105 of the Civil Code of Ukraine on determining the moment of termination of a legal entity and, accordingly, the moment of deregistration of such an entity by customs authorities.

## Result achieved:

On April 29, 2021, the MinFin adopted the Order registered under No.242, "On Amendments to the Order of the Ministry of Finance of Ukraine dated June 15, 2015 No.552" (effective since June 25, 2021). Hence, the systemic issue earlier faced in the case, was resolved.

From now on, refusal to register an entity without including data in the Register takes place when there is information that the business activity has already been terminated in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations. In turn, deregistration is carried out automatically through the Unified automated information system in case of receiving information that the business activity has been terminated. Thus, the issue of registration and deregistration has been finally and unambiguously settled.

## Resonant investigations\*



### **Nova Poshta in the spotlight of State Service of Ukraine on Food Safety and Consumer Protection**

#### **Complainee:**

The Main Department of the State Service of Ukraine on Food Safety and Consumer Protection in Kharkiv Oblast (State Food and Consumer Service in Kharkiv Oblast)

### **Complaint in brief:**

The Business Ombudsman Council received a complaint from Nova Poshta\*, a Ukrainian company providing express shipment services. The State Food and Consumer Service in Kharkiv Oblast came to the company's branches in Kharkiv and Chuhuiv with inspections due to a complaint from two customers. For example, one of the customers had his glass aquarium damaged during transportation. In accordance with the position of the State Food and Consumer Service in Kharkiv Oblast, the complainant neither provided the necessary documents, nor ensured conducting of an unscheduled inspection, thus allegedly creating obstacles for State Food and Consumer Service officials. In this regard, the State Food and Consumer Service in Kharkiv Oblast accrued Nova Poshta the maximum possible fine in the amount of UAH 325 mn calculated from the whole company turnover, not one branch.

At the same time, according to the complainant, the inspectors carried out inspections with a number of procedural violations. Considering the decision of the State Food and Consumer Service in Kharkiv Oblast illegal, Nova Poshta turned to the BOC for help.

### **Actions taken:**

The investigator examined the circumstances of the case and found the company's complaint substantiated. The Deputy Business Ombudsman represented the BOC during a tripartite meeting with the Head of the State Food and Consumer Service and the Head of Nova Poshta, where they discussed possible violations of the company's legal rights. As a follow-up of this meeting, the BOC prepared and sent a letter to the State Food and Consumer Service, requesting the state body to ensure a comprehensive, objective and impartial consideration of the company's complaint and lift sanctions totaling UAH 325 mn on two episodes of inspections. Based on the BOC position, the State Food and Consumer Service inspectors committed a number of procedural violations. The BOC also drew attention to the fact that application of maximum sanctions to Nova Poshta LLC violates the requirements of the Law of Ukraine "On Basic

\* In this case and below in the text, companies gave a permission to disclose their names.



## A company visit as a follow-up of a conducted investigation

Principles of State Supervision (Control) in the Field of Economic Activity”, namely the principle of proportionality of violations and punishment.

The BOC also drew attention to legislative gaps in the field of state supervision and economic activity. The BOC emphasized that the supervisory authority's unlimited discretion to determine the amount of the sanction from one to ten percent of the value of sold products for the previous calendar month for any violation committed by a business entity does not comply with the good governance principle.

### Result achieved:

The State Food and Consumer Service followed the Council's recommendations and dropped the fine for Nova Poshta. The complainant thanked the Council for assistance. The case was successfully closed.



**Subject:** Customs clearance delay/refusal

**How the BOC helped**  
**"Zeelandia"**

**Complainee:**  
National Police inactivity

The atmosphere of Amsterdam, small brick houses and canals, smiling workers and the sweet smell of chocolate – this is what the office of Zeelandia company, a subsidiary of a Dutch company specializing in production of ingredients for the bakery and confectionery industry welcomes its visitors with. Producing about 700 tons of products per year, the company exports dry mixes, confectionery glazes and jams to Romania, Poland, India, Belarus and the Caucasus.

Zeelandia has been working in Ukraine for 18 years, paying taxes and creating jobs. We help our customers, Ukrainian manufacturers of finished products, to increase competitiveness: we train, get them familiar with leading technologies, introduce new product categories. *"For example, today a chocolate muffin is a product familiar to every Ukrainian. However, many years ago we were the first to bring the mixture to Ukraine for its preparation"*, says **Zeelandia CEO Andrii Vasylenko**.

Most of the company's products are made from Ukrainian ingredients, but the share of import is quite high. The company often has to deal with the customs. The first complaint the company filed with the Business Ombudsman Council (BOC) back in 2015 concerned customs issues. When importing goods, the company submitted a package of necessary documents for registration of goods, but customs officers did not agree with the declared cost of products. They adjusted the customs value of goods, so the company had to pay a higher duty. Disagreeing with the actions of Kyiv Customs, the company approached the BOC.

*"After examining the case file, the Business Ombudsman Council upheld the company's position and recommended that the customs authority check whether the adjustment of the customs clearance amount was legal. The customs authority quite quickly responded to the BOC's request and cancelled the decision on customs value adjustment,"* a **BOC investigator Oleksandr Khomenko** commented on the case.

For the second time, Zeelandia appealed to the BOC in 2020 with a complaint about inaction of law enforcers. The truck of the enterprise got into road accident with several vehicles. The accident was not through the fault of the truck driver, but the car was severely damaged. To reimburse them with the help of an insurance company, the company had to obtain a respective accident protocol from the National Police. However, law enforcement officers delayed its issuance. Despite numerous complaints of the complainant, the public authority did not respond. That is why the company had to file a complaint to the BOC.

*"The BOC asked to arrange a meeting with the law enforcement agency top management and stressed the need to finalize the protocol. The Complainant soon informed that the problem had been solved",* said **Olena Kutsai**, a BOC investigator.

**Andrii** summarized cooperation with the BOC as follows: "We thank the investigators involved in consideration of cases. It was very important for us to have support at that stage in relations with state bodies, state institutions and this resulted in a positive outcome, including adoption of positive investment decisions in the future in the development of our business".

Every year, the Business Ombudsman Council receives over 1,500 complaints from entrepreneurs about violations of state bodies. Every seventh complaint comes from a business with foreign investment. To protect interests of companies operating in Ukraine, the Business Ombudsman Council ensures that civil servants follow the rules and abide the law properly. The institution works both on individual complaints of entrepreneurs and on solving systemic business problems, so that eventually the Ukrainian economy could become more attractive for both Ukrainian and foreign investors.

# 3. Cooperation with stakeholders

One of the Business Ombudsman Council's key goals is to provide effective systemic communication of business with state bodies and local government authorities, as well as state-owned enterprises or subordinate to government agencies. Our map of stakeholders includes various entities, but in this section we will talk about major parties: state bodies, business partners and the media.

## 3.1. Cooperation with state bodies

Since its inception in 2015, the BOC has signed

**12** 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

### 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 Q3 2021:

	Number of meetings (including online meetings)	Number of cases considered during these meetings
State Tax Service	10	286
Prosecutor's Office	2	42
National Police	1	20
<b>Total</b>	<b>13</b>	<b>348</b>

The Business Ombudsman Council became a part of the working group of the National Investment Council Office and "Ukraine Invest" state institution. In June, a foundation meeting of the working group was held. During July and August, Deputies Business Ombudsman participated in several more meetings within the working group jointly with ministries, partners and stakeholders coordinated by Iryna Novikova, the Deputy Minister of Economy.

In July, the working group prepared a letter addressed to Oleksii Lyubchenko, the First Deputy Prime Minister, the Minister of Economy of Ukraine, in which articulated a consolidated position with recommendations for improving business climate in Ukraine. Recommendations, inter alia, included reforming of antitrust law, tax administration and urban planning, adoption of the law on the administrative procedure. The need for adopting the law on the Business Ombudsman Institution was prioritized on the initiatives list.

## Updates on the Law on the Business Ombudsman Institution No.3607-d

In the reporting quarter, the Business Ombudsman Council continued its work with respect to the promotion of the Draft Law on the Business Ombudsman Institution (BOI) in Ukraine.

At Ukraine Reforms Conference in Vilnius on July 7th, 2021, the Business Ombudsman addressed a question with respect to the future of the law to Ruslan Stefanchuk, the First Deputy Head of the Verkhovna Rada at that time. Ruslan Stefanchuk expressed an opinion that the Draft Law on the Business Ombudsman Institution should be put in line with the Article 92 of the Constitution of Ukraine. Following the concern raised, Marcin Swiecicki prepared an exhaustive reply to Mr. Stefanchuk in the constitutionality of the draft law. This was complemented with key explanatory materials concerning the draft law.

The Business Ombudsman explained in his reply that after the law adoption the BOC will have a status of a special institution regulated by the law, not an NGO. Since the Draft Law on BOI had earlier received a comprehensive assessment of lawyers, Scientific Department of the Verkhovna Rada and Koretsky Institute of the State and Law, it was concluded the document does not contradict the Constitution of Ukraine, including the Article 92.

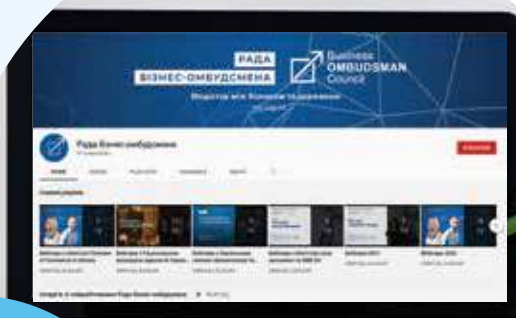
At the beginning of September, the Conciliation Committee of the Verkhovna Rada added the law to the voting list of the new session. The document is awaiting adoption in the first reading at the plenary session.

## 3.2. Online events with partners

In Q3 2021, the Business Ombudsman Council continued cooperation with its partners in conducting joint online events. The Council shared practical insights about how to effectively protect legal rights of business in Ukraine and prevent possible malpractice episodes of state bodies. Our key audience is entrepreneurs and lawyers who advocate rights of business vis-a-vis state bodies. During the webinars participants get a unique opportunity to learn more about useful instruments to solve disputable issues that can arise between business and the state.

We encourage our partners to join the BOC in spreading the word about all possible means of protecting interests of businesses operating in Ukraine.

**All recordings of the webinars are available at the BOC Youtube channel.**



### WEBINARS WITH THE UKRAINIAN NATIONAL BAR ASSOCIATION

About a half of the BOC complainants are represented by lawyers and advocates, who turn to the institution for help. It is important that they are aware of services the Council can offer in order to increase the chances for successful settlement of cases, securing legal rights of businesses. In this way, we seek to strengthen our collaboration with the largest association of advocates in Ukraine – the Ukrainian National Bar Association (UNBA). The UNBA embraces 58 000 members and is interested in their continuous professional development.

Hence, in September 2021, the BOC and the UNBA came up with a new initiative of joint online events to educate lawyers about best practices of the Council in business protection.

### In the reporting quarter, we held the following webinars:



**16.09.2021**

“The BOC Practice: Tax Inspections”



**28.09.2021**

“Land Issues in Entrepreneurs’ Activities: the BOC Experience”



We continue conducting webinars with the UNBA — few more events is planned for the upcoming quarter. At the same time, the Council cooperates with other partners in raising awareness about the BOC activities and its services. A new project of webinars is planned in collaboration with the American Chamber of Commerce in Ukraine.

[Check out the registration form.](#)



### 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.

#### Publications

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

**28500+**  
times,

Estimated value of publications in Q3 2021, based on the assessment of the ECOSAP media monitoring agency, was

**UAH**  
**1.6**  
million

with  
**99.9%**  
mentions  
being positive  
or neutral.

In Q3 2021, we have launched several joint projects with media, aiming at raising awareness about the BOC and increasing credibility to services it provides.

Jointly with **Mind.ua**, we took a look at the most common subjects of complaints submitted to the BOC in order to showcase how the institution operates and how it can help companies conducting business in Ukraine. This quarter, we analyzed business issues at customs and raidership in state registries.



**Vgorode** – is a network of regional portals that covers key cities of Ukraine. That is why, together with this media outlet, we focused on the analysis of business complaints by regions. In Q3 2021, materials on the Dnipro and Zaporizhia were published. Therefore, we are raising awareness about the BOC activities in the regions, informing entrepreneurs from various parts of Ukraine about existing, effective and free methods for dispute resolution between business and the state.



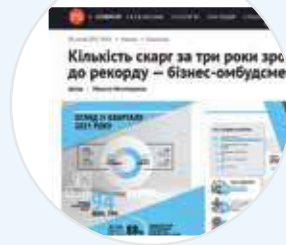
In Q3 2021, we provided interviews, comments and op-eds for the following media:

## Business media:

**TAXLINA**



**pg**



**delo.ua**



**business.ukraine**



**ЦЕНЗОР.НЕТ**



**ЛІГА закон**



**Юридична Газета**



## Specialized legal media:

## TV and radio:

**7**



**ПЕРШИЙ ДІЛОВИЙ**



**УКРАЇНА 24**



**Радіо Свобода**



**ЕСПРЕСО**



## Events



**07/05/2021**

Meeting in the Verkhovna Rada of Ukraine dedicated to moratoriums impeding enforcement of court decisions

**Organised by**

EU Pravo-Justice Project



**07/09/2021**

Meeting with Vladyslava Magaletska, Head of the State Food and Consumer Service and Nova Poshta management team

**Organised by**

State Food and Consumer Service



**07/09/2021**

Business and Legal Infrastructure Forum

**Organised by**

Yurydychna Praktyka Publishing House



**07/10/2021**

Webinar "International Arbitration and Agreements Enforcement"

**Organised by**

OECD



**07/14/2021**

Crisis Governance Forum

**Organised by**

International Development Law Organization (IDLO)



**07/25/2021**

Meeting with the leadership team of the Antimonopoly Committee of Ukraine jointly attended with the American Chamber of Commerce in Ukraine

**Organised by**

Antimonopoly Committee of Ukraine



**07/29/2021**

Presentation of the UNIC 2020 survey results on the topic: "Are Ukrainians Ready to Contribute to Spreading Business Integrity?"

**Organised by**

Ukrainian Network of Integrity and Compliance (UNIC)



**07/30/2021**

Meeting with the leadership team of the Prosecutor General's Office under the auspices of the Memorandum of Partnership and Cooperation

**08/19/2021**

Meeting of the Expert Group with the National Police of Ukraine under the auspices of the Memorandum of Partnership and Cooperation



**08/27/2021**

Polish-Ukrainian Economic Forum "From Sovereignty to Competitiveness. 30 Years of Cooperation"

**Organised by**

Polish-Ukrainian Chamber of Commerce





**09/02/2021**

High Level Event for CEOs  
"Compliance as an Advantage of  
Responsible Business"

**Organised by**  
Ukrainian Network of Integrity and  
Compliance (UNIC)



**09/10/2021**

VI International Business  
Protection Forum

**Organised by**  
Yurydychna Praktyka Publishing  
House



**02-04.09.2021**

Conference "Mariupol-2030. Great  
Investment Opportunities"

**Organised by**  
Mariupol City Council and the  
Office of Simple Solutions and  
Results



**09/14/2021**

Discussion "Opportunities and  
Challenges of Green Energy in  
Ukraine"

**Organised by**  
Atlantic Council

**09/03/2021**

CRAYFISH FEAST MEETING

**Organised by**  
Swedish Business Association



**09/21/2021**

Marcin Świącicki's business  
breakfast with Polish business  
Business Ombudsman Council  
and Foreign Trade Bureau in

**Organised by**  
Kyiv of Polish Investment & Trade  
Agency



**09/22/2021**

Expert Group meeting with the  
Prosecutor General's Office  
management team under the  
auspices of the Memorandum of  
Partnership and Cooperation



**09/24/2021**

Opening of the Ukrainian-Turkish  
Business Council South Ukrainian  
Representative Office

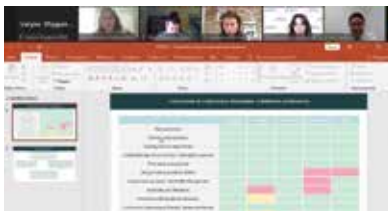
**Organised by**  
Ukrainian-Turkish Business  
Council



**09/07/2021**

Presentation of a new online  
platform for SMEs

**Organised by**  
EBRD



**09/16/2021**

Round table "Current Approaches  
to Compliance Risk Assessment -  
Anti-Corruption Certification"

**Organised by**  
American Chamber of Commerce  
in Ukraine

**09/29/2021**



Meeting of the Coordination  
Council for Entrepreneurship  
Development under Kyiv Regional  
State Administration

**Organised by**  
Kyiv Regional State Administration

## 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
- Highlight systemic issues of business and suggest ways to solve them
- Inform about actual events with participation of the BOC employees. Stream them live
- Share own publications about important issues for entrepreneurs
- Report about results of operations
- Publish feedbacks of complainants
- Create own video content. Share videos with the BOC employees' appearance on TV and at public events
- Communicate with followers



**Subscribe to the  
newsletter at:  
[www.boi.org.ua](http://www.boi.org.ua)**



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 view on systemic business issues and stay in touch, please follow us in the Business Ombudsman Council social media pages.

**The BOC is all over social media:**



**Facebook** (@BusinessOmbudsmanUkraine)



**YouTube** (@Рада бізнес-омбудсмена)



**LinkedIn** (@Business Ombudsman Council)



**Twitter** (@bus\_ombudsman)






**Independently.  
Confidentially.  
Free of Charge.**









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