



Business  
**OMBUDSMAN**  
Council

# Annual report 2021

[www.boi.org.ua](http://www.boi.org.ua)



# Contents

1

## Year in review 07

- 1.1 TOP-10 state bodies subject to the most complaints 08
- 1.2 Nature of complaints received 09
- 1.3 Business complaints trends across key categories 12
- 1.4 Timelines of preliminary review of complaints 35
- 1.5 Number of investigations conducted and reasons for declining complaints 35
- 1.6 Financial and non-financial impact 37
- 1.7 Complainants' portrait 40

2

## Systemic and individual recommendations identified and solved 42

- 2.1 Individual recommendations to state bodies and their implementation ratio 42
- 2.2 Implemented systemic recommendations from reports in 2021 45
- 2.3 Recommendations implemented from systemic reports (2015-2021) 52
- 2.4 What's next: current systemic recommendations 57

3

## Cooperation with stakeholders 59

- 3.1 Cooperation with state bodies 59
- 3.2 Status of the Draft Law "On the Business Ombudsman Institution" 60
- 3.3 Online events with partners 61
- 3.4 Selected important events 65
- 3.5 Interaction with media 68

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

# Foreword



**Roman Waschuk**  
Business Ombudsman

A handwritten signature in blue ink, reading 'Roman Waschuk', written in a cursive style.

## **Dear friends, colleagues and partners,**

Today we are going through the toughest times for our state in the history of independent Ukraine. A full-scale russian aggression since February 24, 2022 has brought dramatic changes to all areas of life without exception. The beginning of war coincided with the period of preparation of BOC annual report, that is why we postponed its presentation. And only now, having adapted to challenges and organized the work of our institution in wartime, the team is ready to look back on the past year and the Business Ombudsman Council performance results in 2021.

In the reporting year, we received a record number of entrepreneurs' complaints regarding abuses of state bodies – 2182 and closed 1491 cases. Only in 2021, BOC helped companies return and save UAH 2 bn.

Thus, as a result, in seven years of operations, the institution received almost 10,500 business complaints, of which we closed the investigation in 70% of cases. The total financial effect of the Council's activity exceeded UAH 21 bn, and 95% of our complainants confirmed in their feedback forms they were satisfied with cooperation with BOC.

Such figures show a high level of confidence in the Business Ombudsman. Being equidistant and independent from state bodies by its nature, BOC is able to effectively mediate and resolve business disputes in relations with authorities. However, our ultimate goal is not to set new complaints processing annual records but to work systemically with government bodies and businesses to eradicate the root causes of the appeal flow to us.

Tax issues are traditionally hit the top of the Council's appeals list, accounting for two-thirds of all complaints in 2021. Although the internal structure of the tax block may vary from year to year, the first lines are: tax invoices registration suspension, inclusion of businesses in risky taxpayers lists, and challenging tax audits findings.

The number of complaints regarding non-enforcement of court decisions on tax invoices registration went up fourfold. We paid special attention to studying this problem in a systemic report, in which we offered recommendations to state bodies for its immediate solution.

Following tax issues, systemic problems of business in interaction with law enforcement bodies have preserved their relevance. In contrast to 2020, the number of appeals from entrepreneurs concerning procedural abuses and inaction on the part of the National Police, the Prosecutor's Office and the Security Service of Ukraine increased by a quarter. That is why we returned to the law enforcement topic for the second time in a systemic report, in which we reminded of the need for legislative changes in the field of criminal justice.

We analyzed systemic recommendations issued to state bodies over the past seven years and highlighted a list of recommendations that, with transition to war-time, continues playing a fundamental role in fighting against corruption. Regulating the court decisions execution mechanism and relieving pressure of law enforcement bodies on business will

allow to significantly improve business climate and strengthen compliance with the rule of law principles in the process of Ukraine's recovery and its integration into the European Union.

Last year, despite partial restrictions due to the pandemic, the Business Ombudsman, his Deputies and investigators participated in dozens of national and international level events. We continued sharing the Council's expertise in protecting business rights during joint online events with partners – the Ministry of Economy of Ukraine, the SME.DO Small and Medium Enterprise Development Office (now known as the Entrepreneurship and Export Promotion Office), the American Chamber of Commerce, the Ukrainian National Bar Association, the Ukrainian League of Industrialists and Entrepreneurs, and law firms. In 2021, we co-organized and held 26 webinars.

The issue of enshrining the Business Ombudsman Institution status at the legislative level is still of importance. Last year, my predecessor Marcin Świącicki and his team did a good job on promoting the idea of BOC institutionalizing and contributed to finalizing the Draft Law on the BOI, taking into account parliamentary committees remarks. Although the war added a lot of other urgent issues to agenda, the Presidential Office and the Government of Ukraine demonstrated recognition of the BOC operational results. I have hope a provision on the Business Ombudsman Institution will still find its place in one of the future laws.





# Report highlights at a glance

2182

1491

cases closed successfully

+29% vs. 2020

+36% vs. 2019

business complaints about state bodies' malpractice received

+26% vs. 2020

+33% vs. 2019

## TOP-5 subjects of complaints

Tax issues

62%

Actions of law enforcement bodies

14%

Actions of state regulators

6%

Local government authorities

4%

Customs issues

3%

## TOP-5 industries

Wholesale trade and distribution

23%

Agriculture and Mining

17%

Manufacturing

11%

Private Entrepreneurs

10%

Real Estate and Construction

9%

## TOP-5 most active regions

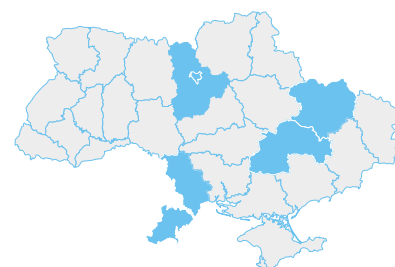
Kyiv city 34%

Dnipropetrovsk Oblast 10%

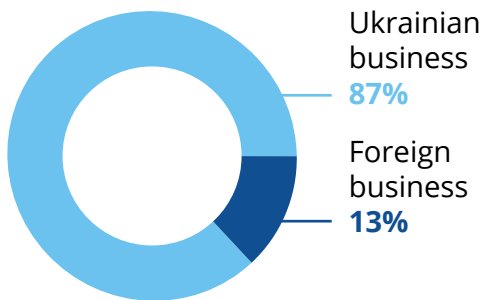
Kharkiv Oblast 9%

Kyiv Oblast 7%

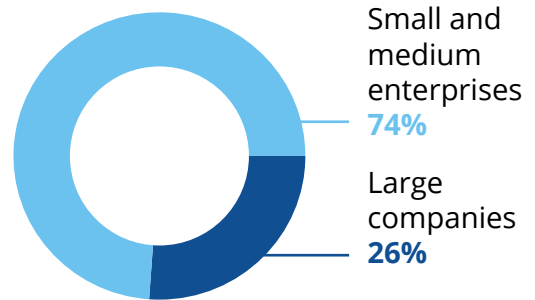
Odesa Oblast 6%



## Origin of investment



## Size of business



Financial impact:

UAH  
**2.280**  
bn.

Overall financial  
impact exceeded

UAH  
**21**  
bn.



**95%**

of complainants  
are satisfied with  
cooperation with BOC

**86%**

of individual  
recommendations  
implemented

**2** systemic reports  
published in 2021



**«How Business Can  
Seek Execution of  
Court Decisions in  
Ukraine»  
(February 2021)**

[Read](#)



**«Abuses and  
Pressure Inflicted  
by Law Enforcers  
on Business»  
(December 2021)**

[Read](#)

1

# Year in review

In 2021, BOC received the largest number of entrepreneurs' appeals since its inception –

## 2182.

Last time the record year for the Council was 2018 —

## 1792

complaints,

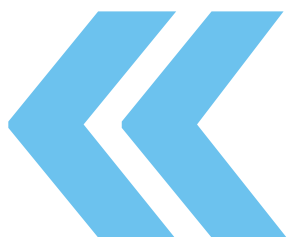
when after the SMKOR launch, the institution observed a surge of tax appeals.

Meanwhile, in contrast to the pilot 2015, in 2021 the number of entrepreneurs seeking BOC assistance,

increased  

## 4 times.

During the whole period of operations, thanks to BOC effective mediation in entrepreneurs' relationship with state bodies, the institution confidence level remains high.



Thanks to the Business Ombudsman Council's prompt and professional assistance in resolving our issue, the Ministry of Justice of Ukraine made correct and, most importantly, legal conclusions about the situation and cancelled illegal registration actions that caused takeover of the company.

**Tetiana Iakovenko**  
Representative of IVCJ JAPAN LLC

## TOP-10 state bodies subject to the most complaints

	2015	2016	2017	2018	2019	2020	2021
State Tax Service, State Customs Service, Tax Police	244	479	1059	1153	1073	1193	1484
National Police	23	38	77	116	111	122	149
Local government authorities	37	80	82	61	61	68	78
Prosecutor General's Office	30	33	70	109	81	53	71
Ministry of Justice	38	26	46	56	60	52	43
Ministry of Economy	20	18	36	44	47	23	55
State-owned companies	19	24	28	23	18	29	34
Security Service of Ukraine	9	19	41	31	17	25	33
Parliament, the Cabinet Ministers, the President of Ukraine	34	18	29	19	16	19	33
Ministry of Finance	6	8	15	21	13	8	14

As last year, in 2021 the Council observed an increase in the number of almost all key subjects of complaints.

As compared to 2020, BOC received more complaints about malpractice of the State Tax Service, State Customs Service and Tax Police (+24%), as well as law enforcement bodies – the National Police (22%), the Prosecutor General's Office (+34%), the Security Service (+ 32%). Inter alia, business lodged with us more appeals regarding abuses of the Ministry of Finance (+15%), the Parliament, the Cabinet of Ministers and the President of Ukraine (+74%), state-owned companies (+17%) and local government authorities (+15%).

In the reporting quarter the institution received 17% less complaints about actions of the Ministry of Justice than last year.





## 1.2 Nature of complaints received

Analysis of complaints received in 2021 shows that Ukrainian enterprises most often faced the following key problems:

	2015	2016	2017	2018	2019	2020	2021
<b>Tax issues</b>	206	421	1001	1098	981	1117	1410
Non-enforcement of court decisions on tax invoices registration	0	0	0	18	108	149	519
Tax invoices suspension	0	0	532	547	95	272	271
Tax inspections	53	85	153	243	370	224	199
Inclusion in risky taxpayers lists	0	0	0	11	127	206	150
Tax criminal cases	28	58	41	63	56	52	62
VAT electronic administration	18	41	74	57	52	51	20
VAT refund	40	70	55	26	16	10	14
Tax termination/renewal/refusal of VAT payers registration	1	7	9	6	4	9	4
Termination of agreement on recognition of electronic reporting and Tax status 09	32	62	58	17	12	2	0
Tax other	34	98	79	110	141	142	171
<b>National Police actions</b>	23	38	77	116	111	121	148
Procedural abuse	10	19	33	47	51	67	77
Inaction	6	10	22	41	40	41	55
Criminal case initiated	1	7	14	9	8	5	7
Corruption allegations	0	1	2	4	1	2	0
Other	6	1	6	15	11	6	9



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

	2015	2016	2017	2018	2019	2020	2021
<b>Actions of State Regulators</b>	69	78	141	128	130	90	136
Antimonopoly Committee of Ukraine	4	5	7	4	11	11	13
State GeoCadaastre	4	11	17	9	13	7	10
State Architectural and Construction Inspectorate of Ukraine	3	4	18	8	13	9	10
National Commission for State Regulation of Energy and Public Utilities	6	5	1	7	3	2	6
NBU – issuance of licenses	2	1	1	0	0	0	1
NBU inaction	4	1	0	0	0	0	0
NBU other	3	2	0	0	0	3	0
National Television and Radio Broadcasting Council of Ukraine	2	0	1	0	0	0	0
Other state regulators	41	49	96	100	90	58	96
<b>Actions of local government authorities</b>	36	58	78	60	60	68	78
Rules and permits	11	9	13	12	11	15	14
Allocation of land plots	7	16	15	16	14	16	13
Disputes	5	6	1	1	1	1	1
Other	13	27	49	31	34	36	50
<b>Customs issues</b>	36	43	53	42	85	72	74
Customs valuation	12	15	11	9	32	34	21
Customs clearance delay/refusal	14	11	19	16	30	26	17
Overpaid customs duties refund	1	2	7	6	6	0	3
Customs administrative proceedings	1	0	0	0	0	1	3
Customs criminal proceedings	2	0	1	0	0	1	0
Customs other	6	15	15	11	17	10	30
<b>Actions of the Prosecutor General's Office</b>	31	33	70	109	81	56	71
Procedural abuse	5	11	21	59	48	35	42
Inaction	4	9	23	12	10	12	17
Criminal case initiated	11	5	19	25	13	5	2
Corruption allegations	6	0	2	1	2	2	2
Other	5	8	5	12	8	2	8

	2015	2016	2017	2018	2019	2020	2021
Legislation drafts/amendments	45	73	47	45	13	19	42
Deficiencies in regulatory framework – state regulators	11	4	21	17	5	6	19
Deficiencies in regulatory framework – tax	3	15	14	15	2	3	4
Deficiencies in regulatory framework – customs	1	0	0	1	1	0	1
Legislation drafts/amendments	1	0	1	0	0	1	0
Deficiencies in regulatory framework – local councils/ municipalities	2	21	2	1	0	0	0
Other	27	33	9	11	5	9	18
<b>Actions of the Ministry of Justice</b>	<b>38</b>	<b>25</b>	<b>43</b>	<b>49</b>	<b>57</b>	<b>49</b>	<b>40</b>
MinJustice Enforcement Service	19	13	23	21	25	20	23
MinJustice Registration Service	19	12	20	28	32	29	17
<b>Actions of state-owned companies</b>	<b>13</b>	<b>25</b>	<b>27</b>	<b>20</b>	<b>21</b>	<b>28</b>	<b>35</b>
Abuse of authority	2	5	1	0	9	14	11
Investment/commercial disputes	4	1	3	0	0	5	3
Other	7	19	23	20	12	9	21
<b>Actions of Security Service of Ukraine</b>	<b>8</b>	<b>19</b>	<b>41</b>	<b>31</b>	<b>17</b>	<b>24</b>	<b>33</b>
Procedural abuse	3	11	17	15	7	14	26
Inaction	0	0	0	0	0	1	3
Criminal cases initiated	0	2	7	7	3	3	1
Corruption allegations	0	1	3	0	0	1	1
Other	5	5	14	9	7	5	3
<b>Other issues</b>	<b>27</b>	<b>27</b>	<b>34</b>	<b>69</b>	<b>71</b>	<b>76</b>	<b>97</b>
Other	27	27	34	69	71	76	97



We are very grateful to the Council investigators actively participating in the case. We believe that prompt BOC involvement to protect the company's interests in supervisory authorities will help improve business in our country and ensure transparent business in Ukraine.

**Sukhanova Khrystyna**  
Director of MARAX LLC

### 1.3 Business complaints trends across key categories

In subsection 1.3, you can find complaints trends review of key categories and get familiar with selected examples of closed investigations.

## Tax issues



In 2021, entrepreneurs were traditionally most concerned about tax issues – their number reached a new historical maximum – 1410 complaints.

The number of appeals concerning **non-enforcement of court decisions on tax invoices registration** increased almost fourfold, making up a third of complaints sent to the institution on tax matters. It is noteworthy that the problem got widespread with an automated tax invoices monitoring system (SMKOR) launch back in 2018.

In case of detecting risk criteria, the system preventively blocks invoices, which goods or services suppliers issue for their buyers. Although tax invoices registration suspension lawsuits are satisfied in favour of businesses in 90% of cases, entrepreneurs later face a delay in court decisions execution.

We analyzed where the problem lied in the similarly titled systemic report and presented respective recommendations to state bodies for its solution.

As compared to last year, the issue of **VAT invoice registration suspension** remains the second most common subject of appeals addressed to the Council (271 and 272 complaints in 2021 and 2020 respectively).

Despite the tax inspection moratorium ban introduced last quarantine year, in 2021 companies challenged tax audit results less (-11% vs 2020). Businesses claimed less **inclusion in the risky payers list** — -27 % vs 2020, respectively. Meanwhile, a drop in appeals quantity on these two subjects does not show absence of problems at all. These categories always hit TOP-5 of tax block complaints.

**Criminal proceedings unreasonably opened against business** made up only 4% of business complaints, although in contrast to last year, the institution received 10 complaints more on this topic.

Other tax issues accounted for only 12% of appeals.



## Examples of closed cases

**Victory for solar panels manufacturer – tax invoices for UAH 14.5 mn registered**

**Complainee:**  
State Tax Service (STS)

### Complaint in brief:

The Council received a complaint from an enterprise engaged in electricity projects development and implementation. For a long time, the tax authority failed to enforce the court decision on the company's tax invoices registration. It turned out that in the spring of 2019, the regional office included the company in the VAT risky taxpayers list and it was the starting point of a chain of further events that eventually ended up successfully only in early 2021.

Firstly, the tax authority suspended the complainant's tax invoices with VAT being worth almost UAH 15 mn. The company then managed to prove it was risk-free. However, within the administrative appeal procedure, the STS refused to register suspended tax invoices in the Unified Register of Tax Invoices. Then the company sought protection in court. The court upheld the complainant's claim and, inter alia, obliged the STS to register the respective tax invoices. Despite the fact that the court decision came into force in early July 2020, the tax authority did enforce it for several months. Therefore, in October and November 2020, a public enforcer issued two resolutions imposing a fine on the STS amounting to UAH 5.1k and 10.2k respectively for non-enforcement of a court decision with no due reasons. However, these also failed to stop the inaction of the state body. At the same time, the lack of the company's tax invoices registration meant that the buyer of the goods still did not have the right to a tax credit totaling almost UAH 15 mn. This fact did only complicate further business relations prospects, but also negatively affected the tax planning of such a counterparty. Hoping to resolve the disputed situation with the STS, the complainant turned to the Council for assistance.

### Actions taken:

The investigator supported the company's position and found the complaint substantiated. The Council asked the STS to eliminate the alleged malpractice and immediately enforce the court decision in question by registering the relevant tax invoices. In particular, in a letter to the tax authority, the Council reminded that a court decision is binding and current legislation sets rather short deadlines for execution of this category of court decisions. Having sent three formal appeals to the STS just within the first month of investigation, the Council brought up the subject matter of the complaint for discussion at the permanent expert group meeting between the STS and the Council according to the Memorandum of Partnership and Cooperation. Following the

expert group meeting, the STS assured the Council that the court decision would be strictly enforced in the nearest future.

It is also important to point out that at the end of December 2020, the complainant managed to establish a judicial control over enforcement of this decision. In particular, the STS was obliged to submit a report to the court on the decision's enforcement within 30 days upon the relevant ruling receipt.

### **Result achieved:**

The STS followed the Council's recommendations and, based on the results of its fourth appeal in January 2021, had registered the relevant tax invoices for a total amount of VAT equal to over UAH 14.5 mn. The company thanked the Council for support: "We would like to express our appreciation and deep gratitude to the Business Ombudsman Council for fruitful and effective cooperation. It was thanks to the BOC representatives involvement that the court decision was enforced by the STS of Ukraine. Our company is convinced of the effectiveness of such a mechanism as the Business Ombudsman Council, the purpose of which is to protect small and medium-sized business, as well as to assist businesses affected by malpractice, to protect their right to free enterprise or against illegal interference with their economic activities". The case was successfully closed.

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**The Council helps tomato paste producer save over UAH 2 mn by proving to tax authorities purchase of gas relates to its production activity**

### **Complainee:**

Large Taxpayers Office of the State Tax Service (LTO)

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### **Complaint in brief:**

A production enterprise with two tomato paste production plants in the south of Ukraine turned to the Council. The company complained that tax audit resulted in unexpected conclusions from LTO auditors, who stated that all the gas purchased by the company during the period under review was not related to the complainant's production activities. Thus, according to the tax authority, the complainant had to accrue itself the so-called "compensatory" VAT liabilities for the for the whole amount of VAT included in the price of purchased gas – it was over UAH 2 mn. The conclusion surprised the complainant very much. After all, the company bought gas for the sole purpose – to use it as fuel for steam boilers, with the help of which fresh tomatoes are steamed, turning into a paste. Seemingly, connection with production activities is obvious here. The complainant's activities do not provide for any other ways of using gas (e.g., for facilities heating or reselling to other consumers). However, the LTO did not accept these complainant's arguments while considering the

objections to the tax audit report. Tax officers did not like the way in which the complainant accounted for the gas (there was a dispute over the accounting nuances – whether the gas should be considered a stock subsequently written off into production, or whether its value could be immediately attributed to costs). In addition, the LTO concluded the complainant should have set gas consumption rates (how many cubic meters were used to produce a certain amount of product) in its internal documents, and absence of such standards was an argument in favor of considering gas as “not used in production”. The complainant had to appeal tax audit results to the highest level tax authority – the State Tax Service of Ukraine (STS). In an effort to ensure an objective and impartial consideration of the appeal, the tomato paste producer requested the Council to join its appeal consideration process.

### **Actions taken:**

The Council's investigator examined the case file and concluded the complaint was substantiated.

Firstly, according to the investigator, the legislation currently does not imperatively oblige industrial enterprises to set standards for gas consumption in production. The corresponding norm rooted in the days of planned economy, has recently expired. And even if it remained in force, it was in any case unrelated to the taxation sphere, and was intended only to control the energy efficiency of production.

Secondly, the investigator concluded that the way in which the complainant accounted for the purchase of gas was in line with the company's accounting policies and did not contradict International Financial Reporting Standards (IFRS), based on which the company maintains its records. Considering that the gas purchased by the company was not stored and technically could not be stored in any gas storage facility, and after entering the territory of the enterprise it was consumed immediately and without alternative in steam boilers, the complainant's chief accountant's judgement that gas is not a stock (an asset – a resource controlled as a result of past events), and, accordingly, does not have to be accounted as a material, but should be immediately included in the costs seemed quite reasonable from the Council's point of view. If we assume that boilers used by the company to produce steam would not be gas but electric, the company would also be unlikely to account electricity as a stock and then write it off. Of course, purchasing electricity would be

perceived solely as a cost and not as an acquisition of an asset that could later be used in one way or another at the discretion of the enterprise. Exactly the same approach, from the Council's standpoint, was true for gas as well. In addition to the above, the Council's investigator agreed with the complainant's representatives, who emphasized that all these accounting nuances were not directly related to VAT taxation.

For the above reasons, the Council proposed that the State Tax Service of Ukraine satisfy the Complainant's appeal and cancel tax notifications-decisions issued by the LTO issued based on the audit findings.

#### Result achieved:

The State Tax Service of Ukraine followed the Council's recommendations and canceled the contested tax notifications-decisions. The case was successfully closed.

## Actions of law enforcement bodies



Photo: mvs.gov.ua

In the reporting year, entrepreneurs complained more about law enforcement bodies. As compared to 2020, the number of complaints about law enforcers' malpractice in general increased by a quarter (from 201 to 252).

BOC received 22% more complaints against **the National Police** – mainly due to procedural abuses and inaction, which became a new record number of appeals against this law enforcement body.

Meanwhile, many episodes of abuses related to pre-trial investigation ineffectiveness in criminal proceedings and delays in seized property return. As a result, entrepreneurs lodged 27% more complaints with the Council against **the Prosecutor General's Office** and 38% more against **the Security Service of Ukraine**.

In 2021, the Council analyzed problematic business issues in relations with law enforcers in its systemic report and presented recommendations to state bodies to reduce pressure on entrepreneurs.



## Examples of closed cases

### How the BOC helps «Zeelandia»

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**.*

**Andriy** 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.

## **"Econia" in focus of the BOC**

### **Complainee:**

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

### **Complaint in brief:**

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

### **Actions taken:**

After examining the case file, the Council's investigator found the complaint substantiated. The investigator noted that the circumstances of the complaint signify a violation of the legal rights of the enterprise. There were court decisions confirming that the complainant had not broken the law when he bought the factory. The ownership of the property complex according to the

complainant was additionally confirmed by the Ministry of Justice as a result of the circumstances' inspection held by a special commission in 2018.

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

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

#### **Result achieved:**

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

## Actions of state regulators



We also recorded a surge in the number of appeals from entrepreneurs as regards state regulators' malpractice. In 2021, companies submitted to BOC 136 complaints on this subject, which is half more than last year's figure (90 complaints). Businesses complained about actions or inaction of the State GeoCadastre, State Architectural and Urban Planning Inspectorate. Among other things, in

the reporting year, episodes of abuses by state regulators most often related to violations of the rights to use land plots, failure to put built objects into operation, and problems with obtaining permits, particularly through Diia application.

The last time we observed the largest number of complaints against state regulators was in 2018 – 141 appeals.

## Examples of closed cases

### **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 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 in the sphere of 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 the business entity does not comply with the good governance principle.



**“AB InBev Efes” registers declarations of conformity in the field of labor protection**

**Complainee:**

The Main Department of the State Labor Service of Ukraine in Kyiv Oblast (MD SLS)

**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.

**Complaint in brief:**

A private joint stock company “AB InBev Efes”, a part of an International Brewing Corporation “Abinbev Efes”, operating in the Ukrainian market for over 20 years approached the Business Ombudsman Council. The company could not register the Declaration of Conformity of material and technical facilities with labor protection legislation requirements (Declaration of Conformity). Such declarations allow to perform hazardous works at the place of production. The company submitted Declarations of Conformity for three branches in Kharkiv, Mykolaiv and Chernihiv through administrative services center to the MD SLS, but the MD SLS later returned them for revision. Having corrected the package of documents, the complainant tried to register Declarations of Conformity for the second and third time, but the supervisory authority delayed consideration of the complainant's declarations once again and subsequently returned the documents without indicating any certain deficiencies in declarations. Realizing that the production process was under threat, the company asked the BOC for assistance.

**Actions taken:**

The investigator examined the case file and found the complaint substantiated. The BOC recommended the MD SLS to ensure a full, comprehensive and impartial consideration of the company's declarations. In the Council's view, the complainant had duly filled out all the documents and therefore there were no grounds for returning declarations without consideration. Despite this, the MD SLS continued to delay consideration of the complainant's declarations. For this reason, the Deputy Business Ombudsman initiated a personal meeting with the administration of the State Labor Service of Ukraine to discuss the subject matter of the complaint.

**Result achieved:**

Due to the Council's mediation, the company registered the Declaration of Conformity of material and technical facilities with labor protection legislation requirements. “We truly thank you and your team for their efforts and professionalism, which resulted in support and protection of business interests in government bodies,” said the complainant. The case was successfully closed.

## Actions of local government authorities



Appeals regarding violations of local government authorities were peculiar to 2021. In the reporting year, the Council received ten complaints more – 78, as opposed to 2020. Obtaining permits for using land plots, land

management projects approval with local authorities, as well as investment disputes were among the most common appeals businesses lodged with the Council.

## Examples of closed cases

### **Company's reputation on Kyiv City State Administration website restored**

#### **Complainee:**

Kyiv City State Administration

#### **Complaint in brief:**

A food supplier to Kyiv and Kyiv region educational institutions approached the Council. The company complained that the Kyiv City State Administration had included it in the list of companies cooperation with which led to ineffective use of budget funds. This situation also negatively influenced the complainant's reputation.

In 2016, the company won the procurement for supply of sugar to the Department of Education of Holosiivskyi District in Kyiv City State Administration (Department of Education). However, as a result of the audit of the Department of Education activities on compliance with the law when making procurement, Kyiv City State Administration detected violations and shortcomings in the tender procedure. Thus, the local authority concluded that the enterprise of the Department of Education did not ensure maximum savings and effective use of funds during procurement. This led to excess costs in the amount of UAH 215k. It should be noted that the complainant was not the subject of audit, so auditors did not provide their opinion on the company's compliance with the law.

However, the company was "lucky" to be included in the list of companies with a negative experience of cooperation with contractors on Kyivaudit official internet portal and Kyiv City State Administration website. Being on such a list harmed the company's interests and could limit its right to participate in

public procurement procedures. To restore fair competition, the Business Ombudsman Council got down to reviewing the company's complaint.

#### **Actions taken:**

After examining the case file, the investigator found the complaint substantiated. The Council recommended that Kyiv City State Administration check the grounds for including the company in the list with a negative cooperation attribute and exclude the company from the list in accordance with the law on protection of economic competition. The Council arranged a discussion of the complaint with the participation of the complainant and the leadership team of Kyiv City State Administration by video conference within the expert group between the BOC and Kyiv City State Administration. The participants agreed that the company would provide information on tenders it was not allowed to participate in due to being on the list. For its part, Kyiv City State Administration informed that the "Experience of Cooperation with Contractors" section was constantly updating and the entry of the complainant would be deleted in the nearest future.

#### **Result achieved:**

Thanks to a successful mediation of the Council, Kyiv City State Administration excluded the food supplier from the list of companies with a negative experience of cooperation and updated the information on its web portal. The case was closed.

#### **"Local" obstacles on the way to wind farm construction in Donetsk Oblast**

##### **Complainee:**

Nikolsk District State Administration (District State Administration)

#### **Complaint in brief:**

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

not guarantee that the prepared calculations would not be acknowledged incorrect. Therefore, the complainant insisted that the procedure defined by the legislation in accordance with which the Commission makes calculations is observed. Having found itself in a difficult situation, the company asked the BOC for help.

#### **Actions taken:**

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

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

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

#### **Result achieved:**

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





## Customs issues



Comparing with last year, it can be stated that complaints about abuses of the State Customs Service remained at the same level – 74 complaints in 2021 vs 72 in 2020. Customs value

adjustments and customs clearance delay/refusal account for half of all appeals of the customs block.

## Examples of closed cases

### Cargo with frozen beef is unblocked

#### Complainee:

The State Customs Service (SCS), Volyn Customs of the State Customs Service (Volyn Customs)

#### Complaint in brief:

The Business Ombudsman Council received a complaint from a Belarusian cargo carrier. The company complained that during import of frozen beef from Poland to Ukraine, Volyn Customs detained a cargo belonging to a Polish company. Customs officers drew up an inspection report on transported goods and found the complainant was transporting goods different from those stated in the documents. For almost 30 days, the cargo, as well as the complainant's vehicle and driver, were at the customs terminal. During this time customs officers did not make any claims or accusations against the carrier. The company turned to the BOC for help.

#### Actions taken:

The investigator examined the case file and found the complaint substantiated. During investigation of the complaint by the Council's investigator, it was established that there were no refrigeration units for storage of goods at Volyn Customs. The Council asked Volyn Customs and the SCS to explain why the company's vehicle and driver had been detained at the border and, if there were no violations by the carrier, to let his vehicle and driver go through the customs control zone.

**“All because of square brackets”: technical error due to which importer lost money during customs clearance was detected**

**Complainee:**

The State Customs Service (SCS), Kyiv Customs of the State Customs Service (Kyiv Customs), State Tax Service of Ukraine (STS)

**Result achieved:**

The SCS followed the Council’s recommendations and placed the cargo in special refrigeration units for safe storage, as well as cleared the complainant’s vehicle and allowed it to enter the territory of Ukraine. The case was successfully closed.

**Complaint in brief:**

The Business Ombudsman Council received a complaint from one of the largest retail chains in the country also importing food products to Ukraine.

When making customs clearance of goods, the company paid significant VAT amounts at the customs. These amounts, however, were not lost forever. After all, they increased the company’s registration limit in the VAT electronic administration system (SEA VAT) at the expense of “ΣCust” component. In future, the company could include these VAT amounts in the tax credit when selling goods to consumers.

Meanwhile, after analyzing SEA VAT data in its e-office, the company found that in some cases the VAT paid at customs was not pulled in to the registration limit. It was about situations when the customs authority adjusted (increased) the customs value of imported goods. In such situations, the company usually challenged the decision on adjusting the customs value to a higher level of customs authority or court. At the same time, to release goods for free circulation as soon as possible, the company paid VAT amounts additionally accrued by the customs as a financial guarantee. Upon expiration of a 90-day period established by law, if at that time the customs decision on adjusting the customs value of goods had not yet been cancelled, the paid financial guarantee amount was transferred to the budget. At the time of such transfer, the registration limit in the SEA VAT should be automatically increased by the transferred amount. However, judging by archival records found by the company in the taxpayer’s e-office, it often did not happen. The total amount of funds lost for this reason, according to the company’s estimates, could exceed UAH 2 mn.

The company asked the tax authority where it was registered to explain this problem, but did not receive a clear response. The company turned to the BOC for help.

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**Actions taken:**

After examining the materials of the complaint, the Council's investigator found that the problem was at the intersection of the of the STS and the SCS powers. Therefore, a letter was sent to both bodies with a request to establish reasons for the error by joint efforts of the authorities.

The STS immediately confidently replied that the problem was on the customs side. Thus, it was the customs turn to solve the issue. However, at first glance, they failed to establish causes of the problem. A working meeting in the SCS office was arranged with the Council's facilitation to investigate the unusual situation in more detail. It was attended by employees of various departments of this body, as well as representatives of Kyiv Customs, the Complainant and the Council. Brainstorming paid off. It turned out that certain amounts were not pulled in to the complainant's SEA VAT registration limit due to technical errors in drawing up adjustment sheets to customs declarations. In particular, the reason was an absence of square brackets, provided by the methodology of filling out the appropriate forms, around relevant amounts of VAT. Such a trifle thing, at first glance. Following the meeting, it was agreed that the Complainant, jointly with Kyiv Customs, would correct these errors. In addition, the SCS will draw attention of all customs to the need to take into account these nuances of adjustment sheets drawing up to prevent similar cases in the future.

**Result achieved:**

As a result of measures taken, the Complainant recovered about UAH 500k of registration limit in SEA VAT. The rest of the lost amount, unfortunately, was no longer recoverable due to statutory 1095-day period expiration. At the same time, from now on, the Complainant and the Customs have drawn attention to due filling of the respective fields (columns) of adjustment sheets, which will help avoid similar cases in the future. The case was successfully closed.

## Actions of the Ministry of Justice



Complaints against the Ministry of Justice to the Business Ombudsman can be divided into two main categories. Entrepreneurs are mostly concerned about raidership episodes related to the Department of Notary and State Registration activities, particularly cases when state registrars illegally make changes to statutes of enterprises. The second category covers issues of inaction or ineffective work of the Department of the State Enforcement Service of the Ministry of Justice – businesses report on illegally launched enforcement proceedings due to allegedly existing tax debts.

In the reporting year, companies complained less about raidership cases – the number of complaints on this subject decreased by 1.5 times in contrast to last year. This trend correlates with the generally positive dynamics in the field of administrative appeal of real estate and business state registration.

However, in 2021, the institution received only three complaints more about abuses of the Enforcement Service (23).

## Examples of closed cases

### State registrars “playing along” with raiders

**Complainee:**  
Ministry of Justice of  
Ukraine (MinJust)

### Complaint in brief:

The Business Ombudsman Council received a complaint from a transportation company from Odesa. The company complained of having been raided by a financial company, which tried to seize the company's real estate by engaging “black” state registrars. According to the complainant, both state registrars from Zaporizhia and Donetsk regions violated the territoriality principle by registering property location of which did not coincide with their place of work. The company tried to challenge illegal actions of state registrars on its own through the Collegium of the Ministry of Justice for considering complaints against decisions, actions or inaction of the state registrar (the MinJust Collegium). However, the MinJust Collegium was in no hurry to draw conclusions. Following the hearing, the complainant neither received a copy of the Collegium's opinion, nor official information to be posted on the Ministry of Justice's official

\* Information taken from the Ministry of Justice of Ukraine website: <https://minjust.gov.ua/news/ministry/ofis-protidii-reyderstvu-pidsumovue-2021-y-sistema-zahistu-prava-vlasnosti-efektivno-pratsyue>

website. The company called the MinJust hotline, however, received no support other than promises. It turned out later that the MinJust Collegium had postponed consideration of the transportation company's complaint to other dates. The inaction of the Ministry of Justice was a trigger for the complainant to ask the BOC to take up his case immediately.

#### **Actions taken:**

After reviewing the case file, the investigator found it substantiated. The Council recommended that the MinJust Collegium review the transportation company's case with the participation of the complainant and the Council's representative and estimate controversial registration actions of the registrars.

#### **Result achieved:**

Following facilitation by the Council, the case was resolved quickly during the second meeting of the MinJust Collegium on the complainant's issue. The MinJust partially satisfied the transportation company's complaint and cancelled illegal decisions made by the state registrar from Zaporizhia region. The case was successfully closed.

#### **Enforcement proceedings get underway**

##### **Complainee:**

Ministry of Justice of Ukraine (MinJust), State Enforcement Service in Poltava (SES)

#### **Complaint in brief:**

The Council received a complaint from an enterprise providing engineering, geology, and geodesy services. The company complained about inaction of the State Enforcement Service. Last year, the court declared the complainant bankrupt and initiated liquidation procedure. As part of the bankruptcy case, the insolvency officer (liquidator) of the company appealed to the court and asked to declare car sale and purchase agreement concluded with the counterparty invalid. The court declared the agreement invalid and ordered the contracting company to return the property received under the agreement before liquidation of the enterprise to the complainant. However, three months after initiating enforcement proceedings, the SES neither performed any actions, nor announced the search for vehicles in accordance with the liquidator's motion. The Council started investigating the complainant's case.

#### **Actions taken:**

After analyzing the circumstances of the complaint, the investigator found malpractice signs in the SES inaction. The Council recommended that the MinJust and the SES immediately consider the insolvency officer's motion and issue an order to search for the car. The investigator noted that according to Art. 36 of the Law of Ukraine "On Enforcement Proceedings", in case of necessity of search of the debtor's vehicle, the executor issues



an order on such search being mandatory for enforcement by police. In particular, the Council's investigator stressed the importance of meeting reasonable time frames for enforcement proceedings, publicity and openness as required by law.

#### **Result achieved:**

The MinJust and the SES accepted the Council's recommendations and announced a search for the complainant's property under the invalid sale. The case was closed.

## Legislation drafts/amendments



Deficiencies in state regulation area are another important category of business appeals. Although it does not apply to violations of individual government bodies, the business reserves the right to complain about the

legislative act or existing legal collision that, in its opinion, may harm business interests. Thus, in 2021, the number of appeals on this subject doubled, reaching 42 complaints against 19 last year.

## Examples of closed cases

**The Council helps eliminate collision in legislation, which did not allow self-employed pensioners to apply for unemployment benefits during quarantine**

#### **Complainee:**

Dnipro City Employment Center

#### **Complaint in brief:**

In June 2020, a private entrepreneur, a disabled person, approached to the Council. Due to introduction of quarantine to prevent the spread of coronavirus disease (COVID-19), she had to suspend her business activities. Left without a source of income, she applied to a local employment center for unemployment benefits. However, the employment center neither decided on providing her with assistance, nor paid it. The complainant got outraged by this situation. After all, in the corresponding procedure adopted by the Cabinet of Ministers (Procedure No.306), her right to receive assistance was clearly provided.

### **Actions taken:**

After reviewing case materials, the Council's investigator found that it was not only and not so much about the complainant's individual case, but rather a systemic problem affecting interests of all Ukrainian retired or disabled private entrepreneurs, who had to terminate their business activities in the background of quarantine. Despite the fact that such persons are exempted from the obligation to pay a monthly unified social contribution (USC), the Cabinet of Ministers clearly stipulated their right to receive assistance in the amount of two thirds of minimum wages per month in the relevant Procedure No.306. However, the provisions of Procedure No.306 turned out to be inconsistent with the provisions of the Law of Ukraine "On Employment of the Population". The latter established that persons receiving a pension (by age or disability) were not entitled to receive benefits. Due to this collision, employment centers massively denied such applicants assistance.

The problem seemed difficult, as it required legislative amendments to address it. To facilitate it, the Council communicated with a number of state bodies, including the dedicated committee of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Ministry for Development of Economy, Trade and Agriculture of Ukraine, and the State Employment Center of Ukraine (SECU).

### **Result achieved:**

Amendments to the Law of Ukraine "On Employment of the Population" came into force on December 21, 2020, while to the Procedure No. 306 – on March 13, 2021. In addition, at the Council's request the SECU provided a clarification confirming the right of private entrepreneurs who were pensioners or disabled persons, and did not pay USC, to receive unemployment benefits if they had to stop doing business during quarantine period. Thus, the conflict in the legislation was eliminated and now this category of entrepreneurs has the right to apply for assistance like others. The practical possibility of entrepreneurs receiving assistance depends on their own activity (it is necessary to collect and submit the respective package of documents for that) and on budget funds allocated for this purpose. The case was closed.

## **Special duty on cable imports to Ukraine cancelled**

### **Complainee:**

The Cabinet of Ministers of Ukraine (CMU), Interdepartmental Commission on International Trade of the Ministry of Economy of Ukraine (Commission)

### **Complaint in brief:**

The Business Ombudsman Council received a complaint from a cable importer and distributor. The company disagreed with the decision of the Interdepartmental Commission on International Trade to introduce a special duty of 23.5% (with further reduction) for a period of three years on cable products imports to Ukraine. The Commission decided to impose a special duty by referring to an unpredictable sudden and sharp increase in imports, and, as a result, significant damage caused to producers, as well as imbalance in favor of foreign cable suppliers to Ukraine. The Commission's decision states the increase in imports of this product to Ukraine was due to unforeseen circumstances such as industrial growth, increased leftover inventory and exports from China, adding to trade tensions between China and the United States, renewable energy industry development and 4G introduction. The decision of the Commission provided that a special duty would not apply to imports to Ukraine of goods originating from 62 countries. The list of exceptions, however, did not include countries where the complainant himself produced cables (some EU countries and the United Kingdom).

It is noteworthy that, according to statistics, the volume of cable imports from the EU to Ukraine in 2020 decreased compared to the previous year, and exports to the EU, increased instead. These statistics suggest that imports of this product from the EU do not threaten a domestic producer. In view of violation of its legitimate interests, the company turned to the BOC for assistance.

### **Actions taken:**

The investigator carefully examined the case file and found the complaint substantiated. The Council recommended that the Commission study the materials provided by the complainant and review introduction of a special duty, particularly as regards the exempt countries list. In addition, the Deputy Business Ombudsman reported on the issue raised in the complaint to Taras Kachka, a Trade Representative of Ukraine, Deputy Minister of Economy of Ukraine

### **Result achieved:**

The Commission overturned the decision to impose a special cable duty. The case was successfully closed. Disagreeing with the special duty cancellation, one of the national producers challenged it in court. Therefore, the final fate of the special duty will be decided by a Ukrainian court.

## Other issues



In the reporting year, we received 25% more appeals from enterprises regarding actions of state-owned companies. The rest of business complaints to BOC – 97 – dealt with other issues.

## Examples of closed cases

### **State Bureau of Investigation closes criminal proceedings against streaming platform**

#### **Complainee:**

The Main Investigation Department of the State Bureau of Investigation (MID SBI)

#### **Complaint in brief:**

The Business Ombudsman Council received a complaint from an American Online Streaming Platform representative office (office). As a result of the audit, the tax office decided to increase the VAT amount to be paid by the company to UAH 9 mn and accrued a fine of UAH 529 k.

Tax officers concluded that the company met the criteria of a “permanent office”, as its actual activities allegedly coincided with the main activities of the parent company, namely production and sales of specialized video broadcasting equipment. The company explained that the representative office in Ukraine provided only technical support: it neither had access to software development, nor generated revenue for the parent company. At the same time, according to the Tax Code, a “permanent office” is defined as fully or partially conducting its economic activity of a non-resident. Despite the fact that after the company’s appeal, the tax authority overturned the decision on audit, the State Bureau of Investigation (SBI) launched criminal proceedings against the company for non-compliance with the tax law for 2016-2018. According to SBI investigators, the company understated the VAT amount and did not submit a software development operations report in 2018. The SBI searched the streaming platform’s office. Disagreeing with such law enforcers’ actions, the company ordered an examination of tax findings from Kyiv Research Institute of Forensic Examinations of the Ministry of Justice of Ukraine. As a result, arguments of the tax service were not documentally supported. Therefore, the office asked the BOC for help.

### **Construction permit through DIIA portal obtained**

#### **Complainee:**

Ministry of Digital Transformation of Ukraine

#### **Actions taken:**

The investigator examined the case file and found the complaint substantiated. The Council recommended that the Prosecutor General's Office and the SBI carefully examine the law enforcers' actions in the pre-trial investigation against the company and take into account the complainant's evidence as to the absence of a crime. In a letter to the PGO and the SBI, the Council emphasized that investigative actions that caused harm or had negative consequences for the business entity and that were not necessary to solve the crime violated the rule of law.

#### **Result achieved:**

After the Council's involvement, the SBI closed criminal proceedings in the case of the office. The case was successfully closed.

#### **Complaint in brief:**

The Council commenced investigation in the case of an olympic training and sports center from Kyiv region. The complainant could not obtain a construction permit for one of the objects. The sports center representatives submitted documents through DIIA portal. It should be noted that according to the legislation novelties, application for obtaining such a permit had to be submitted exceptionally in electronic form from December 1, 2020. After several attempts the director managed to sign and send the application, however information about the document's status did not display. A technical support manager informed about a technical error in DIIA system. If the portal operates correctly, after application submission, it obtains a number and a "pending" status. The complainant did not get any information about the deadline of fixing a technical error. The administration of the olympic training and sports center lodged a complaint to the Business Ombudsman Council.

#### **Actions taken:**

Having examined a case file, the investigator acknowledged the complaint was substantiated. The Council asked the Ministry of Digital Transformation to fix a technical error at DIIA portal and allow submission of documents for obtaining construction permits without any issues. The Council emphasized that the issue can become systemic, since apart from the complainant, other enterprises may have problems with documents submission. As long as applications can be submitted only in electronic form, technical error at DIIA portal can lead to construction delays, violation of contractual commitments and applying penalties in relation to enterprises.

#### **Result achieved:**

After the Council's interference, the Ministry of Digital Transformation improved operation of DIIA portal. The complainant successfully obtained a construction permit. The case was closed.



1.4 Timelines of the preliminary review of complaints

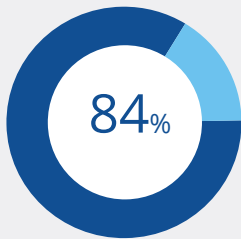


The average time for preliminary review of a complaint in 2021 was

7.5 days



According to our Rules of Procedure, the average time for the preliminary review of a complaint should not exceed 10 working days.



84% of business complaints were preliminary processed within 10 days, as standardly foreseen by BOC regulations.

The average investigation time was 77 days

1.5 Number of investigations conducted and reasons for declining complaints

Investigations conducted



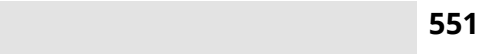
Cases closed successfully



Cases closed with recommendations



Cases closed without success



In 2021, BOC completed the investigation of 1440 cases, of which 818 were closed successfully , 122 — with recommendations, implementation of which is being monitored, and 551 — without success .

274 cases remained at the investigative stage as of December 31, 2021.



## Reasons for declining complaints

In the reporting year, the Council rejected

# 691

complaints because they did not fit criteria, stipulated by BOC's Rules of Procedure.

## Among the reasons for rejection were:

	2015	2016	2017	2018	2019	2020	2021
Complaints outside Business Ombudsman's competence	44	73	105	167	242	267	389
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	48	43	70	84	111	77	88
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	36	29	36	58	45	67	47
A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration	3	5	10	14	19	19	44
In the opinion of the Business Ombudsman, the complaint is unsubstantiated	20	11	63	78	58	29	33
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	8	16	14	19	22	13	22
An investigation by the Business Ombudsman in a similar case is pending or otherwise on-going	1	2	2	5	8	7	20
A complaint withdrawn by the Complainant	0	0	3	2	5	8	18
Other circumstances under which the Business Ombudsman, exclusively at his own discretion finds complaint consideration unnecessary	0	8	3	5	6	2	9
Complaints arising in the context of private-to-private business relations	18	17	17	17	12	5	5

## 1.6 Financial and non-financial impact

Financial impact is 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, with permission of 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,

exceeded UAH **21** bn.



Financial effect in 2021:

UAH **2.3** bn.

Financial effect in 2020:

UAH **0.8** bn.



We thank the Business Ombudsman Council  
for its constructive and prompt response  
to our request. Permits for construction works  
performance were obtained from DABI.

**Serhii Ivanov**  
CEO of Resol 1 LLC

## We recorded the financial result among the following appeal subjects:

AMCU - claims cancellation	<b>1,180,000,000</b>
Actions of state regulators (insurance reimbursement)	<b>326,367,558</b>
Tax inspection	<b>258,805,311</b>
State companies other	<b>209,748,376</b>
VAT invoice suspension	<b>156,894,689</b>
VAT electronic administration	<b>33,043,991</b>
State companies investment/commercial disputes	<b>29,428,758</b>
Fiscal and tax bodies other	<b>28,761,005</b>
VAT refund	<b>23,149,670</b>
Criminal proceedings initiated by the Tax Police	<b>17,840,371</b>
National Police inaction – debt settlement	<b>7,881,000</b>
Customs administrative proceedings	<b>1,712,639</b>
Prosecutor's Office – funds refund	<b>1,203,850</b>
Customs other	<b>1,073,283</b>
State Treasury Service – budget compensations	<b>772,049</b>
NEURC compensation	<b>590,745</b>
Customs clearance delay/refusal	<b>445,000</b>
Prosecutor's Office – budget compensations	<b>385,180</b>
MinJustice Enforcement Service actions	<b>269,726</b>
Overpaid customs duties refund	<b>119,158</b>
Pension fund – budget compensations	<b>8,000</b>

## Non-financial effect

In addition to cases closed with financial result, BOC closed cases with desirable non-financial impact for applicants:

Malpractice ceased by complaine	196	194
Criminal case against a Complainant closed	18	33
Permit/license/conclusion/registration obtained	15	26
Tax records reconciled; tax reporting accepted	33	20
Legislation amended/enacted; procedure improved	13	18
Claims and penalties against the Complainant revoked	1	4
State official fired/penalized	3	4
Contract with state body signed/executed	2	3
Criminal case initiated against state official/3rd party	6	1
Other	141	208
<b>Total</b>	<b>428</b>	<b>511</b>

Ceased malpractice of state officials remains the key non-financial impact for our complainants.

In particular, in 2021, we helped complainants to successfully submit tax reporting, close more ungrounded criminal cases and obtain permits and licenses.



## 1.7 Complainants' portrait

### Size of business

In 2021, we got the largest amount of complaints ever from **small and medium-sized enterprises (SMEs)**

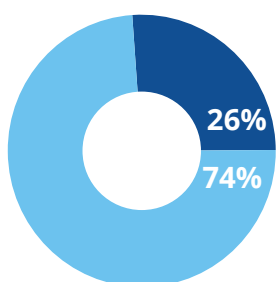
1612.

Thus, since launch of operations the overall SMEs appeals number amounted to

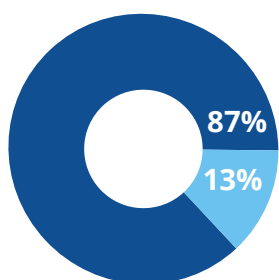
7581.

570  
applicants

who sought help from BOC in the reporting year were **large business representatives**.



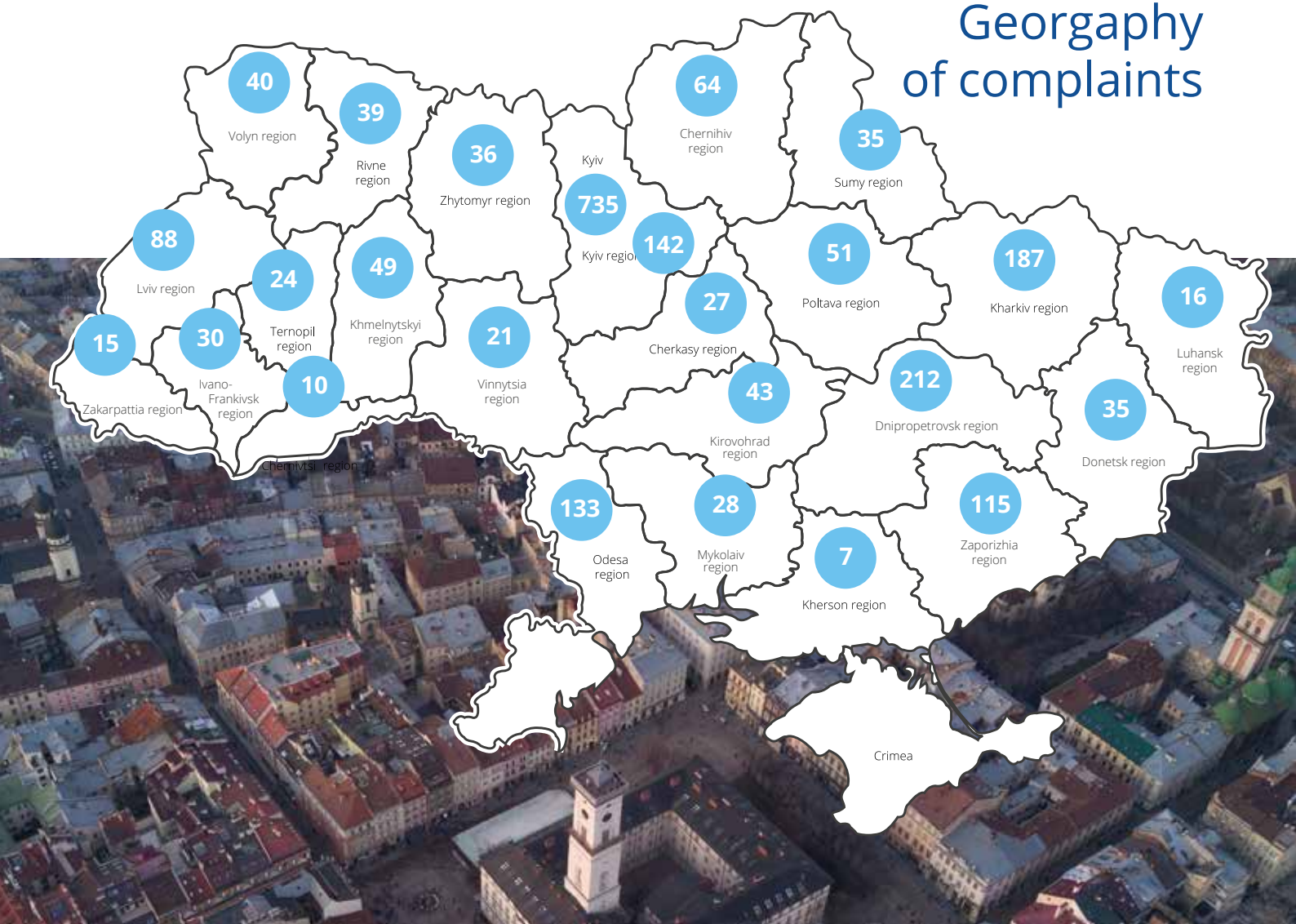
	2016	2017	2018	2019	2020	2021
Large business	217	454	493	525	449	570
Small and medium-sized business	650	1184	1299	1121	1288	1612
<b>Total</b>	<b>867</b>	<b>1638</b>	<b>1792</b>	<b>1646</b>	<b>1737</b>	<b>2182</b>



	2016	2017	2018	2019	2020	2021
Ukrainian business	683	1334	1527	1383	1515	1895
Foreign business	184	304	265	263	222	287
<b>Total</b>	<b>867</b>	<b>1638</b>	<b>1792</b>	<b>1646</b>	<b>1737</b>	<b>2182</b>

Ukrainian entrepreneurs represent a prevailing number of complainants to the Business Ombudsman. In the reporting year, 1895 local companies (+25% vs. 2020) appealed to the Council – their share reached 87%. Companies with foreign investment amounted to a smaller share of the Council's applicants – only 13%.

## Geography of complaints



We would like to express our deep and sincere gratitude to you for your assistance in resolving the issue of illegal interference in the economic activities of the company by fiscal authorities. Thanks to the coordinated and high-quality work of your team, due to timely and well-grounded appeals of the Business Ombudsman Council to the Prosecutor General's Office of Ukraine and the State Fiscal Service in Dnipropetrovsk region, threats against employees, unfounded calls and pressure of regulatory authorities were ceased. This allows to carry out our economic activity effectively guided by the principles of transparency and unconditional adherence to requirements of legislation of Ukraine, introduction of European and the highest business standards and rules of doing business.

**Oksana Purik**  
Director of KYIV-TORG LLC

## Systemic and individual recommendations identified and solved

### 2.1 Individual recommendations to state bodies and their implementation ratio

Total number of recommendations issued since launch of operations



Number of recommendations implemented



Number of recommendations subject to monitoring 160

Recommendations issued in 2021 947



We express our sincere gratitude to the Business Ombudsman Council for help, effective cooperation, balanced and professional approach to the case. This is not the first time we have turned to you for help, and this is not the first time we have received it. We want to share good news - yesterday, on January 27, 2021, our client was refunded 12 million of VAT arrears and fines collected from the state budget through the regional treasury based on a court decision. Prior to the BOC interference, we were at a dead end, each time receiving ungrounded and illegal refusals from the treasury officers to enforce the court decision. We believe that without your help and support, the process of obtaining funds would take a very long time. We wish success to the entire BOC team!

**Olena Zhukova**

Managing partner at Saivena Group

**Tetiana Kozlova**

Director of Legal Department of Saivena Group

## Government agencies whom BOC issues individual recommendations in 2015-2021 and ratio of implementation

	Issued recommendations	Implemented recommendations	Ratio of implemented individual recommendations
State Tax Service, State Customs Service, Tax Police	3244	2962	91%
National Police of Ukraine	257	199	77%
Prosecutor General's Office	175	136	78%
Ministry of Justice	140	127	91%
Local government authorities	155	108	70%
Ministry of Economy	95	85	89%
Security Service of Ukraine	65	62	95%
Ministry of Ecology and Natural Sources	52	48	92%
Ministry of Agrarian Policy and Food	45	39	87%
Ministry for Communities and Territories Development	41	36	88%
State enterprises	42	38	90%
Parliament, the Cabinet of Ministers, the President of Ukraine	35	30	86%
Ministry of Infrastructure	28	23	82%
Ministry of Finance	27	20	74%
Ministry of Health	17	14	82%
Ministry of Social Policy	16	13	81%
Ministry of Internal Affairs	14	11	79%
National Commission for State Regulation of Energy and Public Utilities	13	12	92%
Ministry of Energy and Coal Industry	11	11	100%
Antimonopoly Committee of Ukraine	12	9	75%

	Issued recommendations	Implemented recommendations	Ratio of implemented individual recommendations
Commercial and other courts	8	8	100%
National Bureau of Investigation of Ukraine	7	6	86%
National Anti-Corruption Bureau	7	4	57%
State Emergency Service of Ukraine	3	2	67%
State funds	7	3	50%
Ministry of Education and Science	3	3	100%
State Regulatory Service	2	0	0%
Communal Service	2	2	100%
National Bank of Ukraine	5	2	40%
National Council of Television and Radio Broadcasting	1	1	100%
Ministry of Defense	2	1	50%
Ministry of Digital Transformation	1	1	100%
State Border Guard Service of Ukraine	1	1	100%
Other	12	10	83%
<b>Total</b>	<b>4544</b>	<b>4027</b>	<b>89%</b>

As of December 31, 2021, state bodies implemented 89% of BOC individual recommendations. According to our estimates, it is a fairly high figure showing willingness of state bodies to cooperate in solving controversial issues of entrepreneurs. Moreover, a retrospective analysis of business appeals testifies to gradual qualitative changes in the work of state institutions.

We should mention recommendations implementation ratio of fiscal bodies - the State Tax Service, the State Customs Service and the Tax Police which fulfilled 91% of 2962 Council's individual recommendations.

Meanwhile, the following state bodies overperformed: the Ministry of Justice (91%), the Security Service of Ukraine (95%), the Ministry of Ecology and Natural Resources (92%) and the Ministry of Economy (89%).

You can find how the Council's individual recommendations are implemented by individual state bodies in the table above.



## 2.2 Implemented systemic recommendations from reports in 2021



### Systemic report

## PROBLEMS WITH CROSS-BORDER TRADING IN UKRAINE

October 2015

### Issue

Ensuring openness and transparency during the submission procedure related to foreign trade operations.

### BOC recommendation

To reduce direct contact with applicants and the number of documents that must be submitted to obtain permission for export-import.

To streamline the application process in favour of using e-information in state databases instead of hard copy documents.

### Actions taken by government agencies

The Cabinet of Ministers of Ukraine submitted to the Verkhovna Rada a Draft Law of Ukraine "On Amendments to Certain Legislative Acts Concerning the Liberalization of Administrative Services in the Sphere of Foreign Economic Activity" No.5167 of February 26, 2021. The draft legislation provides for improving the regulation of foreign economic activity by liberalizing administrative services in the field of foreign economic activity, in particular to minimize documents for obtaining a license, determining an exclusive list of grounds for refusal, providing the ability to submit documents electronically, as well as mandatory entry of information on issued licenses in the "Single Window" information system. Implementation of BOC recommendations further provided for liberalisation of foreign trade.



### Systemic report

## THE RISK OF CORRUPTION AND ATTRACTING INVESTMENT TO THE CONSTRUCTION INDUSTRY

July 2016

### Issue

Elimination of gaps and improvement of certain norms of land legislation, which regulate the transfer of land use rights.

### BOC recommendation

To propose amendments to Ukrainian land legislation to directly obligate local government authorities to resign leasing agreements for land plots with new owners of the properties following a simplified, transparent procedure.

### Actions taken by government agencies

On 02.02.2021 the Law No.0805 «On Amendments to Certain Legislative Acts of Ukraine (concerning the single legal share of the land and the real estate located on it)» as of 29.08.2019 was generally adopted in the second reading. The draft law is designed to eliminate gaps and improve certain provisions of land legislation governing the transfer of land use rights.

The recommendations package embodied in this report, set framework for the main principles of construction supervision reform, which allowed not only fulfill Ukraine's obligations towards the EU in this area, but also created new transparent conditions in construction.



### Systemic report

## NATURAL MONOPOLIES VS. COMPETITIVE BUSINESS: HOW TO IMPROVE RELATIONS

January 2016

### Issue

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

### BOC recommendation

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

### Actions taken by government agencies

On September 29, 2016, the AMCU and the National Energy and Utilities Regulatory Commission signed a Memorandum on strengthening cooperation in the markets of electricity, natural gas, heat supply, water supply and sewage. In particular, the AMCU and the National Energy and Utilities Regulatory Commission agreed, inter alia, to (i) exchange information on problematic issues in the electricity, natural gas and heat supply, water supply and sewage markets in order to be able to take prompt measures within their competence; (ii) to create an effective competitive environment during the introduction of new models of electricity, natural gas and heat supply, water supply and sewage and simplify the procedure for connecting consumer equipment to engineering networks of natural monopolies. During 2016-2020, the BOC monitored the nature, regularity and effectiveness of measures taken by the National Energy and Utilities Regulatory Commission together with the AMCU in the framework of implementation of the Memorandum to ensure full implementation of the BOC's recommendations. In the framework of additional requests and BOC's own observations, we consider this recommendation fulfilled.

### Issue

The lack of properly recorded information on the boundaries of territorial communities in the State Land Cadastre creates a basis for disputes between local governments over the territory of their jurisdiction, which is especially important in the context of decentralization reform in Ukraine. Taking into account the above-mentioned, there is a need to establish a simplified procedure for establishing and changing the boundaries of territorial communities, according to which:

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

### BOC recommendation

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

### Actions taken by government agencies

On April 28, 2021 — the Law of Ukraine "On Amendments to the Land Code of Ukraine and Other Legislative Acts on Improving the System of Management and Deregulation in the Field of Land Relations" №1423-IX was adopted.



### Systemic report

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

February 2017

### Issue

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

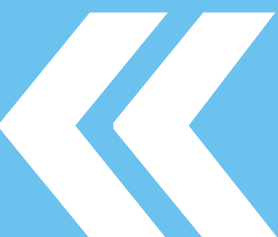
### BOC recommendation

To 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

The 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 was adopted in the first reading on July 15, 2021.

Implementation of recommendations from the report laid the foundation for a successful decentralisation reform.



We would like to thank the Business Ombudsman Council for fruitful and effective cooperation. It was thanks to the intervention of the Business Ombudsman Council's representatives that the court decision was enforced by the State Tax Service of Ukraine. We are convinced about the effectiveness of such a mechanism as the Business Ombudsman Council, which aims to protect small and medium-sized businesses, as well as to assist businesses affected by malpractice in protecting their rights and freedom of doing business or protecting from unlawful interference in their economic activity.

**Oleh Dovboshchuk**

Director of NESS PV LLC



### Systemic report

## BUSINESS FOCUS ON LABOR-RELATED ISSUES February 2019

### Issue

Reducing bureaucracy in the field of labor relations.

### BOC recommendation

To take appropriate steps to simplify the labour-related document flow and transform it into electronic format.

### Actions taken by government agencies

On February 5, 2021, the Verkhovna Rada of Ukraine adopted the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Employment of Employees in Electronic Form", which abolishes mandatory maintenance of paper employment records.

### Issue

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

### BOC recommendation

To develop a legal framework and mechanism for the «e-office» 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:

- 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 defines a list of documents to be submitted for obtaining or renewing permits;
- Free issuance of a duplicate permit in case of its loss or damage.

<https://www.me.gov.ua/News/Detail?lang=uk-UA&id=03c8e940-bbd8-4ae2-be3b-c860d05d93e8&title=UriadProponuUdoskonalitiZakonodavstvoProPratsevlashtuvannialnozemsiv>



### Systemic report

## BIG CHALLENGES FOR SMALL BUSINESSES

February 2020

### Issue

Updating the SME Development Strategy under pandemic conditions.

### BOC recommendation

To review the Action Plan to the SME Strategy and determine its relevance, priority and expediency.

### Actions taken by government agencies

Currently, the Government has approved the Resolution of the Cabinet of Ministers as of March 3, 2021 No.179, which adopted the National Economic Strategy until 2030. In turn, the National Economic Strategy until 2030 provides for measures that have not lost their relevance and expediency in connection with the completion of the SME Development Strategy until 2020.

### Issue

Facilitating SMEs' access to financing packages.

### BOC recommendation

To provide quality information and training materials on access to finance and general financial literacy, including preparing SMEs for obtaining bank financing and preparing loan applications. To make this resource widely known to the target audience.

### Actions taken by government agencies

Under the Program 5-7-9, a potential loan applicant is given the opportunity to be tested for compliance with the terms of the program, to participate in training activities to improve business planning skills, if necessary. These opportunities are provided on a separate page of the Portal for Entrepreneurs at: <https://sme.gov.ua/579start/>. Also, in order to reduce the number of loan failures and improve business planning skills, a video course on preparing a business plan for the YouTube channel in the format of tips and hints was prepared and launched. An additional video course on access to bank lending is being prepared for those entrepreneurs who are not required to submit a business plan to the bank under the terms of the 5-7-9 program.





Systemic report

## BIG CHALLENGES FOR SMALL BUSINESSES

February 2020

### Issue

Improving the credit worthiness of SMEs.

### BOC recommendation

To initiate training programs for SMEs aimed at improving access to finance through technical assistance programs. To consider regular conducting of such programs on an ongoing basis with budget and/or donor funding, for example, through regional business support centres. To avoid a formalized approach to implementing such programs (for example, when performance is assessed based on the fact of the training itself), introduce measurable and focused key performance indicators, such as quantitative indicators of SMEs' participation, the number of SMEs that have tried to or received funding after participation in training programs, and others.

### Actions taken by government agencies

Information about events and activities is published on the Portal for Entrepreneurs (<https://sme.gov.ua/events/>).



We express our sincere appreciation and deep gratitude to the Business Ombudsman Council's team for timely facilitation and assistance in the case and its resolution.

We wish you strength, creative inspiration and success in your work being vital for the Ukrainian society.

**Administration and staff of Rauf Ablyazov East European University private higher education institution**



### Systemic report

## ADMINISTERING TAXES PAID BY BUSINESS

August 2020

### Issue

The issue used to arise in case of corporate reorganizations of legal entities-VAT payers (merger, acquisition, division, separation). In such cases there was no transfer of the registration limit in the SEA VAT to their successors, although such a transfer was foreseen by the law. Failure to ensure such a transfer was caused by a lack of technical possibility, caused by peculiarities of functioning of SEA VAT software. As a result, successors were unable to use predecessors' registration limit to submit their VAT invoices and adjustment calculations for registration. Hence, registration limit recorded by predecessors was actually lost and successors often had to replenish their e-accounts in the SEA VAT with additional money to make up for the loss.

### BOC recommendation

The Council recommended that the Ministry of Finance and the State Tax Service of Ukraine take all required measures (including organizational and technical), to ensure transferring SEA VAT indicators from one VAT payer to another in case of corporate reorganization without the need for taxpayers to go to court requesting transfer of such indicators. If necessary, to implement the foregoing recommendation, the Council suggested that the Ministry of Finance and the State Tax Service of Ukraine should develop and submit to the Cabinet of Ministers of Ukraine for approval and the Cabinet of Ministers of Ukraine – approve draft amendments to Procedure No.569 and/ or other secondary legislation.

### Actions taken by government agencies

During an online meeting of the specialized expert group composed of representatives of the Council and the State Tax Service of Ukraine, which took place on December 23, 2021, representatives of the State Tax Service of Ukraine confirmed that the issue had been resolved. They explained that the technical possibility of transferring the registration limit in the SEA VAT agreed upon in the tax audit, in case of reorganization of legal entities, had already become operational, provided that the predecessor submitted Annex 4 to the VAT return with completed Table 4, and the successor – with completed Table 5. The resolution to the matter was confirmed in the Council's practice of investigating two complainants, where amount of the transferred registration limit was equal to UAH 39.6 mn and UAH 4 mn respectively.

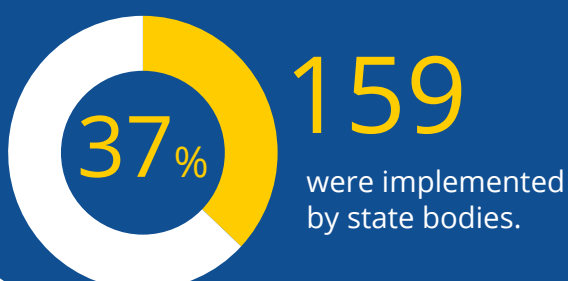
### 2.3. Recommendations implemented from systemic reports: 2015-2022.

18

systemic reports with recommendations to state bodies to improve business conditions in Ukraine published



435 presented in the reports in 2021.



It is noteworthy that systemic recommendations from two systemic reports, namely “Problems for Businesses as a Result of the Military Situation in the East of Ukraine and the Annexation of Crimea”(July 2015) and “Reducing the Risk of Corruption and Attracting Investment to the Construction Industry” (July 2016), were implemented by the Government in full.

Since 2021 annual report preparation period fell on the second half of 2022, it should be noted that **BOC systemic recommendations implementation rate increased by 47%**. It became possible thanks to the adoption of the Law of Ukraine “On the Administrative Procedure” taking into account 27 of 54 recommendations presented in the systemic report “Administrative Appeal: Current State and Recommendations» (July 2019). In this way, as of today, 50% of recommendations from this systemic report have been implemented.

2015

## Systemic report

"GETTING ACCESS  
TO ELECTRICITY"



Recommendations total

11

Implemented

7

In progress of implementation

2

No longer relevant

2

2016

## Systemic report

"ABUSE OF POWERS BY  
THE LAW ENFORCEMENT  
AUTHORITIES IN THEIR  
RELATIONS WITH BUSINESS"



Recommendations total

15

Implemented

8

No longer monitored since  
transferred to a new systemic  
report published in 2022

7

2016

## Systemic report

"NATURAL MONOPOLIES  
VS. COMPETITIVE BUSINESS:  
HOW TO IMPROVE  
RELATIONS"



Recommendations total

32

Implemented

21

In progress of implementation

6

No longer relevant

5

2016

## Systemic report

"CHALLENGES AND  
PROBLEMS IN THE SPHERE OF  
COMPETITION PROTECTION  
AND OVERSIGHT"



Recommendations total

27

Implemented

9

In progress of implementation

16

Not started

2

2016

## Systemic report

"REDUCING THE RISK OF CORRUPTION AND ATTRACTING INVESTMENT TO THE CONSTRUCTION INDUSTRY"



Recommendations total

26

Implemented

24

No longer relevant

2

2017

## Systemic report

"COMBATTING RAIDERSHIP: CURRENT STATE AND RECOMMENDATIONS"



Recommendations total

22

Implemented

10

In progress of implementation

12

2017

## Systemic report

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



Recommendations total

22

Implemented

11

In progress of implementation

10

No longer relevant

1

2018

## Systemic report

"MAIN PROBLEMS FACED BY BUSINESS IN CUSTOMS SPHERE"



Recommendations total

23

Implemented

11

In progress of implementation

11

No longer relevant

1



2019

## Systemic report

"ADMINISTRATIVE APPEAL:  
CURRENT STATE AND  
RECOMMENDATIONS"

Recommendations total

54

In progress of implementation  
(as of the end of 2021)

54



2020

## Systemic report

"BIG CHALLENGES FOR  
SMALL BUSINESS"

Recommendations total

35

Implemented

11

In progress of implementation

22

Not started

2



2020

## Systemic report

"ADMINISTERING TAXES  
PAID BY BUSINESS"

Recommendations total

55

Implemented

12

In progress of implementation

7

Rejected

23

Not started

10

No longer relevant

3



## 2020

## Systemic report

"HOW BUSINESS CAN SEEK  
EXECUTION OF COURT  
DECISIONS IN UKRAINE"



Recommendations total

26

Implemented

0

In progress of implementation

8

Not started

18

## 2021

## Systemic report

"ABUSES AND PRESSURE  
INFLECTED BY LAW  
ENFORCERS ON BUSINESS"



Recommendations total

27

Implemented

2

In progress of implementation

0

Rejected

0

Not started

25

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 Shpylovyi**

Director, Azov-Mineraltekhnik LLC

## 2.4 What's next: current systemic recommendations

Since the beginning of a full-scale invasion of the Russian Federation in Ukraine on February 24, 2022, the state has been living under martial law.

Thanks to the unprecedented solidarity of the population, resilience of business, determination of state bodies and international support, despite the ongoing war, the country continues to confidently move towards building a modern state with a European future.

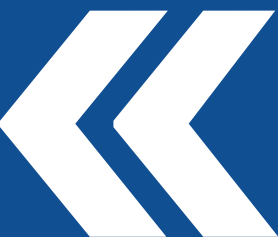
Meanwhile, priorities and directions of reforming Ukraine focused on in peacetime, have dramatically changed due to the war. Currently, the state is facing the issues of the fastest possible victory over the aggressor and effective reconstruction and recovery from consequences of the war.

The Council continues to closely monitor implementation by state bodies of systemic

recommendations set forth in reports during seven years of operations.

BOC finds it important to implement changes proposed in its systemic reports, however it is also aware of the reasons for postponing these issues.

In 2021 annual report, we would like to highlight a list of systemic recommendations, the relevance of which, in our opinion, still persists even in wartime. Eliminating regulatory deficiencies in the field of the rule of law, particularly in enforcing court decisions and administering of taxes paid by business, will allow to overcome one of the main corruption obstacles on Ukraine's way towards the EU and fulfill its European integration obligations undertaken within the EU-Ukraine Association Agreement and granted EU candidate status.



We are grateful to the Business Ombudsman Council for its active role in protecting our company against illegal actions of law enforcement bodies. The authority of your organization in society and high professionalism of your investigators helped draw attention to our situation at the highest level – in the Prosecutor General's Office.

**Tilman Oleksandr**  
Director of PE Galpidshipnik



## Recommendations to be paid special attention to:

### Systemic report

#### "HOW BUSINESS CAN SEEK EXECUTION OF COURT DECISIONS IN UKRAINE?"



- To complete formation of legislation approximating private and state enforcers mandates
- To ensure the development of the National Strategy regarding gradual elimination of those moratoria on enforcement of court decisions, the relevance of which is retained in accordance with the analysis conducted by the Ministry of Justice
- In the context of moratoria on debtors-state-owned enterprises or enterprises with a qualifying share of the state – to consider and to initiate introduction of effective alternative mechanisms to satisfy creditors' claims during the respective moratoria being in force.
- When raising the issue of extending the moratorium before the VRU, to provide for its extension only to those legal relations that took place before such an extension and conditioned actual introduction of the relevant restrictions.

### Systemic report

#### "ADMINISTERING TAXES PAID BY BUSINESS"



- To introduce amendments to Clause 56.23 of Article 56 of the Tax Code of Ukraine (TCU) to directly foresee the possibility of appeal of decisions on adherence with risk criteria and on rejection of taxpayers' data tables in accordance with the procedure set forth in that Clause. After introduction of such amendments to the TCU, – the Procedure No. 1165 should be amended accordingly.
- To approve draft amendments to the Procedure No. 1165 and/or Procedure No. 1246, which would introduce a deadline within which suspended tax invoices/adjustment calculations must be registered with the Unified Register of Tax Invoices in accordance with the court decision. Such a term should be reasonable (to allow the STS to ensure its strict following) and should not exceed 15 calendar days from the date when the court decision enters into force. After such amendments entered into force, all episodes of missing the specified deadline shall be the basis for carrying out official internal investigations by the STS and bringing guilty persons to liability.



## Cooperation with stakeholders

The inalienable element of the BOC operations is a constant interaction with stakeholders – state bodies, business community, international partners and media. Cooperation with stakeholders provides not only for conducting effective investigations in entrepreneurs' cases, drawing attention to particular systemic business issues, but also finding ways for their settlement.

### 3.1 Cooperation with state bodies

Since launch of operations in 2015, BOC signed **12 Memoranda of Cooperation with:**

- the State Tax Service
- the State Customs Service
- the State Fiscal Service
- the Prosecutor General's Office
- the Security Service of Ukraine
- the Ministry of Ecology and Natural Sources
- 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

Based on memoranda the Council established Expert groups with state bodies which became a platform for open and transparent complaints' consideration as well as improving legislation in the sphere of doing business.





In 2021 the following Expert group meetings should be mentioned:

State body	Number of meetings	Number of cases considered
State Tax Service	51	973
National Police	5	74
Prosecutor General's Office	5	101
Ministry of Justice	2	7
State Customs Service	3	10
Kyiv City State Administration	2	3
<b>Total</b>	<b>68</b>	<b>1168</b>

### 3.2 Status of the Draft Law on the Business Ombudsman Institution

In 2021, BOC continued work on promoting the Draft law on the Business Ombudsman Institution in Ukraine. Back in 2020, the Draft law received support of four parliamentary committees and was registered in the Verkhovna Rada of Ukraine (VRU). However, due to remarks from the committees, including the Scientific and Expert Department of the VRU, in February 2021, during the plenary session, it was decided to return the Draft law to the Committee on Economic Development for revision. Hence, a new version of the Draft law was prepared, taking into account the committees' comments. The new version of the Draft law was adopted by the Committee on Economic Development on April 28, 2021.

In early September 2021, the Conciliation Council of the Verkhovna Rada added the law to the voting list at the new plenary session.

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In February 2022, with the start of a full-scale Russian-Ukrainian war, the issue of securing the BOC status at the legislative level took a back seat.

At the same time, the idea of institutionalizing BOC in legislation has not disappeared. Currently, the possibility of including a part of the draft law provisions on the Business Ombudsman Institution in the new law on business deregulation is being discussed.

### 3.3 Online events with partners

In the reporting year, the Business Ombudsman Council continued interacting with the target audience organizing joint online events with its partners. Webinars have become a special platform for sharing practical BOC experience in business protection with business associations, law firms and other stakeholders.

#### Webinars with Ministry for Development of Economy, Trade and Agriculture and SMEs Development Office SME.DO

**10.02.2021**

"BOC in Action: Tax Trends"



**24.02.2021**

"BOC in Action: Interaction with Law Enforcers"



**10.03.2021**

"BOC in Action: Effective Cooperation with State Regulators"



**31.03.2021**

"BOC in Action: Special Aspects of Interaction with Local Government Authorities"



**27.05.2021**

"BOC in Action: Customs Issues"



## Webinars with Ukrainian National Bar Association

**15.02.2021**

“Public Oversight Issue in the Field of Economic Activity During Quarantine”



**16.02.2021**

“Does cooperation with unscrupulous counterparts always mean issues related to interaction with state bodies? Experience of the Business Ombudsman Council”



**12.03.2021**

“Business Issues Related to Quarantine Restrictions: BOC Experience”



**07.04.2021**

«BIG TRAVEL BOC: Kharkiv»



**14.05.2021**

“BIG TRAVEL BOC: Zaporizhia”



**26.05.2021**

«Business Complaints Related to Labour Issues: Expertise of the Business Ombudsman Council»



**28.05.2021**

“Effective Interaction of Business with Architecture and Construction Control Bodies”



**16.09.2021**

“The BOC Practice: Tax Inspections”





**28.09.2021**

"Land Issues in Entrepreneurs' Activities: the BOC Experience"



**05.10.2021**

"The BOC Expertise: VAT Invoice Registration"



**10.11.2021**

"The BOC Expertise: Criminal Proceedings in the Tax Sphere"



**08.12.2021**

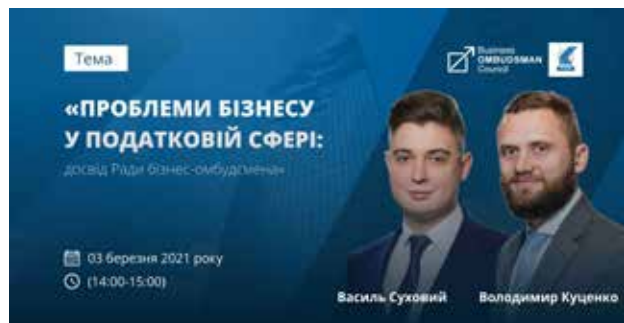
"Business Issues in the Sphere of Agriculture: the BOC Expertise"



## Webinars with Ukrainian League of Industrialists and Entrepreneurs

**03.03.2021**

"Business Issues in Tax Sphere: BOC Expertise"



**07.04.2021**

"Business Issues in Relations with Law Enforcers: BOC Expertise"



**27.05.2021**

"Customs Issues: How the Business Ombudsman Council Can Help"



## Webinars with American Chamber of Commerce

**4.03.2021**

“Blocking of Tax Invoices: What to Do and How to Prevent It?”



**31.03.2021**

«Tax Audits in 2021»



**21.04.2021**

«Blocking Registration of VAT Invoices»



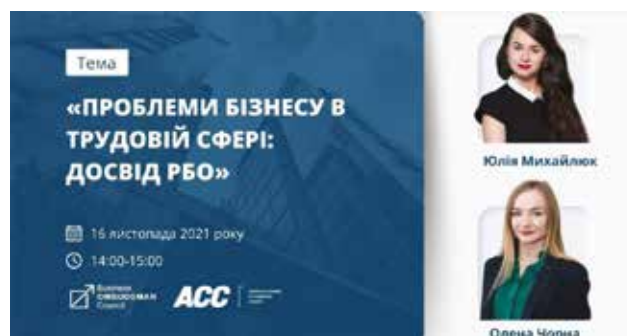
**12.10.2021**

“How to Protect Business from Controversial Partners?”



**16.11.2021**

“Business Issues in Labour Sphere: Expertise of the Business Ombudsman Council”



## Webinar with Ukrainian Solar Energy Association

**18.11.2021**

“Business Ombudsman Council – Effective Protection of Green Energy Producers”





### 3.4 Selected important events

In 2021, the Business Ombudsman and his team participated in dozens of events of both national and international level.

Among them were:

**17-19.03.2021**



Ukrainian Forum "Ukraine 30"  
**Organized by**  
Cabinet of Ministers of Ukraine  
and Office of the President of Ukraine

**19.03.2021**



National Reform Council  
Meeting chaired by the  
President of Ukraine  
Volodymyr Zelenskyy  
**Organized by**  
National Reform Council

**29.03.2021**



Meeting with the Business  
Ombudsman Institute of  
Kyrgyz Republic  
**Organized by**  
Business Ombudsman Institute  
of Kyrgyz Republic

**12-13.05.2021**



VII International Tax Forum  
**Organized by**  
Yurydychna Praktyka  
Publishing House

**18.05.2021**



Reception of the occasion of  
the 5th anniversary of Union of  
Ukrainian Entrepreneurs  
**Organized by**  
Union of Ukrainian  
Entrepreneurs

**21.05.2021**



The State Tax Service  
Collegium meeting  
**Organized by**  
State Tax Service of Ukraine



04.06.2021



Meeting with Oleksiy Lyubchenko, First Vice Prime Minister of Ukraine  
**Organized by**  
 Cabinet of Ministers of Ukraine

07.09.2021



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

07.09.2021



Business and Legal Infrastructure Forum  
**Organized by**  
 Yurydychna Praktyka Publishing House

27.08.2021



Polish-Ukrainian Economic Forum From "Sovereignty to Competitiveness. 30 Years of Cooperation"  
**Organized by**  
 Polish-Ukrainian Chamber of Commerce

02.09.2021



High Level Event for CEOs "Compliance as an Advantage of Responsible Business"  
**Organized by**  
 Ukrainian Network of Integrity and Compliance (UNIC)

02-04.09.2021



Conference "Mariupol-2030. Great Investment Opportunities"  
**Organized by**  
 Mariupol City Council and the Office of Simple Solutions and Results

20.09.2021



VI International Business Protection Forum  
**Organized by**  
 Yurydychna Praktyka Publishing House

24.09.2021



Opening of the Ukrainian-Turkish Business Council South Ukrainian Representative Office  
**Organized by**  
 Ukrainian-Turkish Business Council

06.10.2021



Meeting with the First Deputy Minister of Internal Affairs Yevhen Yenin  
**Organized by**  
 Ministry of Internal Affairs of Ukraine

08.10.2021



Meeting with the Director  
of the Bureau of Economic  
Security Vadym Melnyk  
**Organized by**  
Bureau of Economic Security

26.10.2021



Meeting with representatives  
of Polish and Ukrainian  
investors  
**Organized by**  
Ministry of Economy of Ukraine

02.12.2021



International Anti-Corruption  
Forum "Kleptocracy and Illicit  
Financial Flows"  
**Organized by**  
Prosecutor General's Office of  
Ukraine

07.12.2021



Meeting with Polish Business  
**Organized by**  
Polish Investment and Trade  
Agency

09-10.12.2021

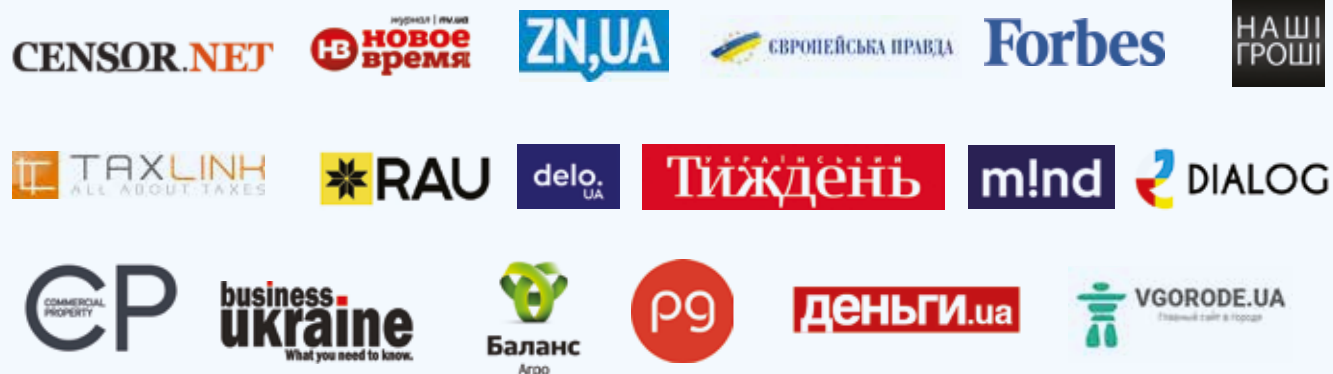


Meeting with the Business  
Ombudsman Institute and the  
Prosecutor General's Office of  
the Kyrgyz Republic under the  
auspices of the Rule of Law in  
Central Asia Program of the  
Council of Europe  
**Organized by**  
Council of Europe/  
the European Union

### 3.5 Interaction with media

In 2021, our interviews were published in prominent media outlets:

#### Business media



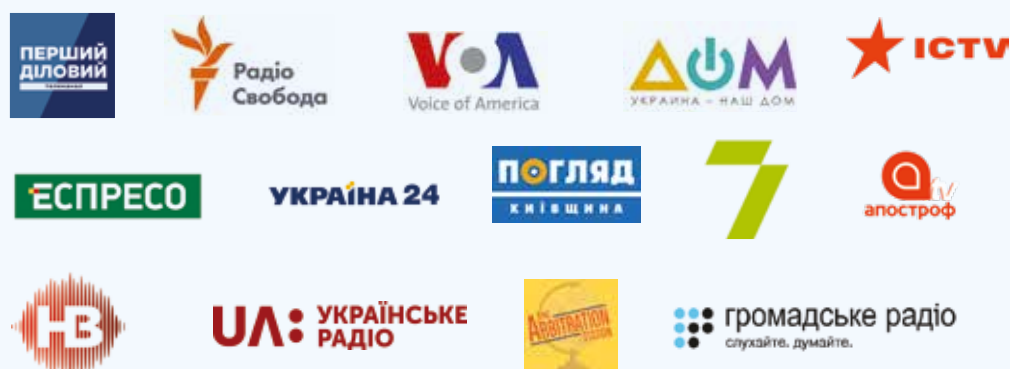
#### Information agencies



#### Legal media



#### TV and radio





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