



Business
OMBUDSMAN
Council



Q1 2023

8

Years on Guard
of Ukrainian
Business

Quarterly report

January 01 – March 31, 2023

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

In cases and feedbacks, published in the report, companies gave permission to disclose their names.

The Business Ombudsman Council is funded from the Ukraine Stabilization and Sustainable Growth Multi-Donor Account (MDA) managed by the EBRD.



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Roman Waschuk
Business Ombudsman

Roman Waschuk

Over a year into Russia's full scale war against Ukraine, the good news is that Ukrainian business – like Ukrainian society at large – has emerged tougher, more adaptable and ready to take on global challenges. The bad news is that unreconstructed parts of Ukraine's administrative and law enforcement agencies have reverted to old predatory patterns of squeezing revenue from wealth creators.

For outside observers – including that large segment of the international community looking to support Ukraine's recovery from this war – it can be hard to distinguish between corruption-fighting and corruption-inducing measures. Sometimes – knowingly or inadvertently – one can transform into the other.

In the first quarter of 2023, I presented our Business Ombudsman team's first own-initiative report on the tsunami of VAT receipt suspensions that was affecting over 40% of active Ukrainian businesses in late 2022. Billed as a bold blow against Ukraine's shadow economy, this regulatory overkill on the part of the Ministry of Finance and State Tax Service deprived thousands of companies of working capital, driving them to the brink of disaster and prompting hundreds of complaints to us. At the same time, we began to hear stories – undocumented initially – of intermediaries offering to unblock suspended tax credits for a percent of two "overhead". By April 2023, documentary and video evidence of tax extortion was

published by the National Anti-Corruption Bureau of Ukraine. The moral of this story: administrative overkill breeds, rather than reduces, corruption.

The solution? Our report, streamlined compared to previous systemic efforts, provides 10 policy recommendations and 20 technical fixes to make the VAT monitoring system more fair and transparent, while returning it to its automated roots and cutting back on opportunities for manual control of the system.

With the support of all five of our BOC a constituent business associations, and a positive reaction from the Chair of the Rada Tax Committee, we have every reason to hope that many of our report's recommendations will be implemented. But as hope is not a policy, we will be spending the next quarter actively monitoring and advocating follow-up, using both professional fora and the media to press the case for reasonable, risk-managed and predictable tax enforcement.

In addition to this systemic policy push, we've also done some collective reflecting on internal procedures, and taken pruning shears to some of our online case management forms. The idea is to free up time and mindshare for what we believe will be BOC's next major task in the near future: providing both preventive and remedial support to the national rebuilding effort that has already started, and will really take off after Victory.

1 Q1 2023 in Review

1.1 Work format

A big war continues, however the Business Ombudsman Council is only gaining pace of its work.

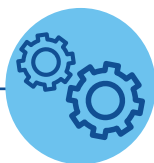
Our objective

is to help Ukrainian entrepreneurs to redress cases of state bodies' malpractice; provide maximum support to business within its mandate in order to help companies effectively counteract challenges in the country daily resisting the russian aggressor.

Key work directions:



Settlement of individual business complaints about business legal rights abuses by state bodies



Resolution of systemic business issues through providing recommendations and advising to the Government of Ukraine



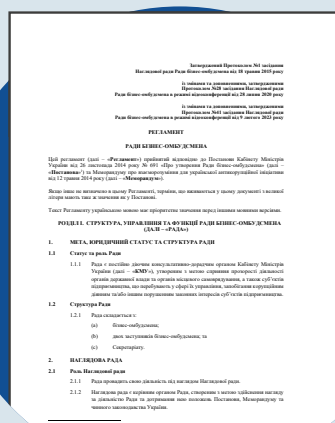
Cooperation with stakeholders in building and implementing recovery plans and initiatives

Work mode:

The team under the leadership of the Business Ombudsman continues to operate in a hybrid mode and maintains regular contacts thanks to frequent online and offline meetings.



Optimization of work processes



Having rebooted electronic Case Management System in the end of 2022 the Council fully resumed traditional investigations. Thus, during the reporting quarter (January-March) 2023 the institution functioned according to the norms of the Rules of Procedure.

In February 2023, the BOC Supervisory Board adopted an updated text of the Rules of Procedure which improved organization of the Council's work. Following the experience of the past year of ongoing war, it became a necessary step for further optimization of our activities and accessibility of both services and communication of the Council with its complainants.

Digitalization

We continue to actively implement digitalization in our operations.



A complaint to BOC can be submitted only online through a form on the website. There's no need now to submit a complaint in hard copy.



The procedure for interaction and responding to complainants' inquiries is simplified.



A BOC contact number is updated:
+380 99 237 37 37.



1.2 Key performance indicators

In January-March 2023

328 complaints received

Direct financial effect

in the reporting quarter amounted to

UAH
376
mn

136

closed cases

85

Consideration is ongoing

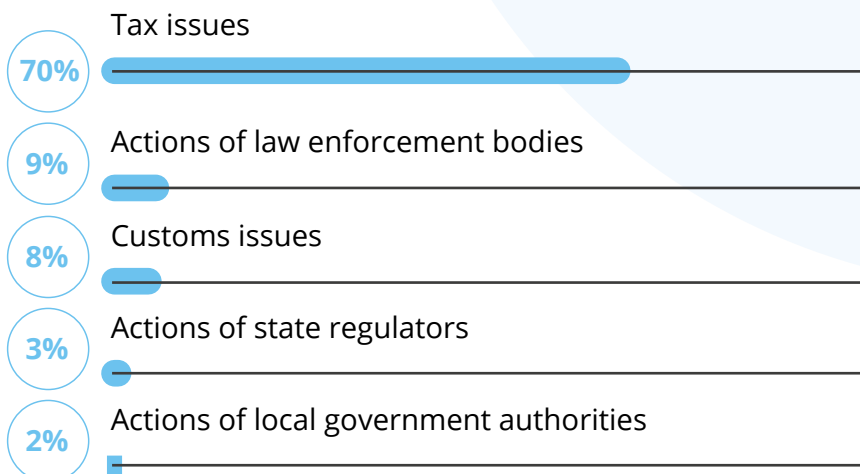
91%

of individual recommendations issued by BOC to state bodies were implemented (in total, from Q2 2015 till Q1 2023)

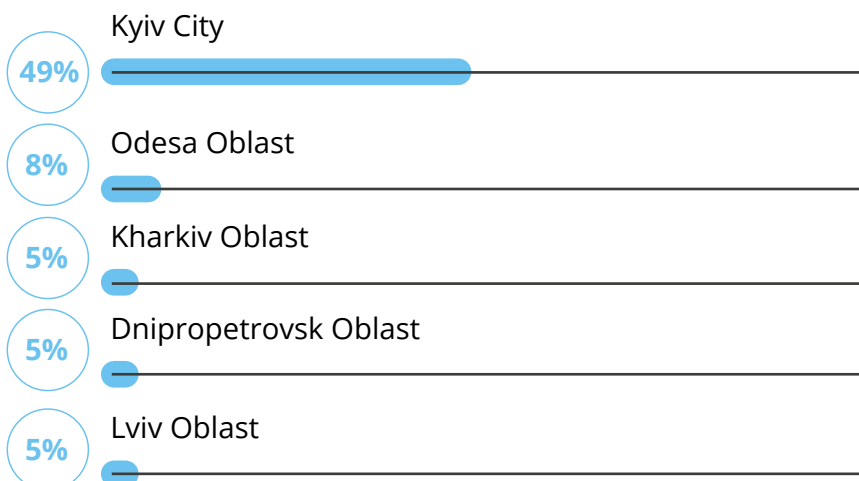
Overall, the financial impact reached

UAH **25** bn

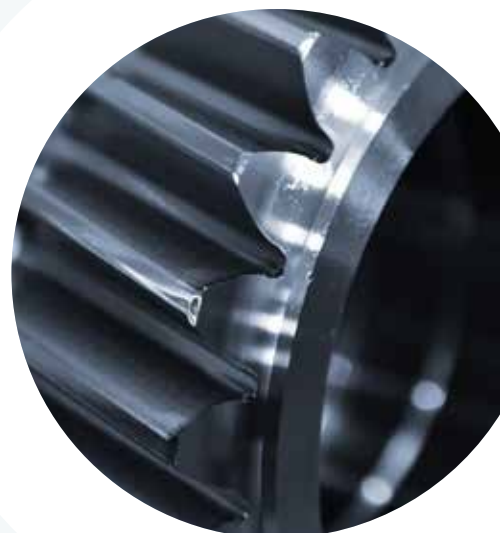
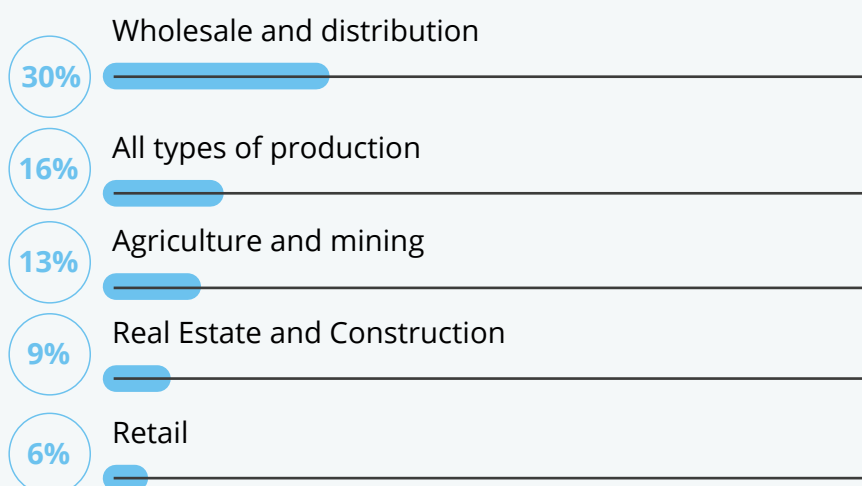
TOP-5 subjects of complaints



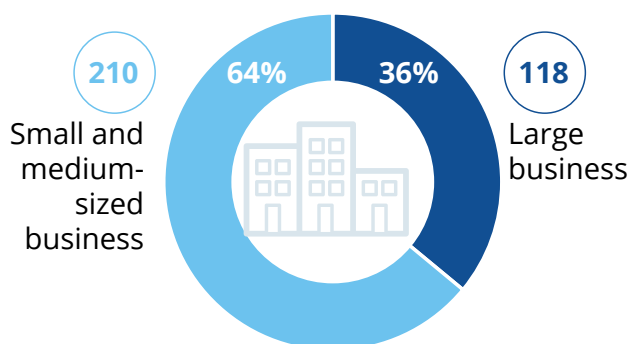
TOP-5 most active regions



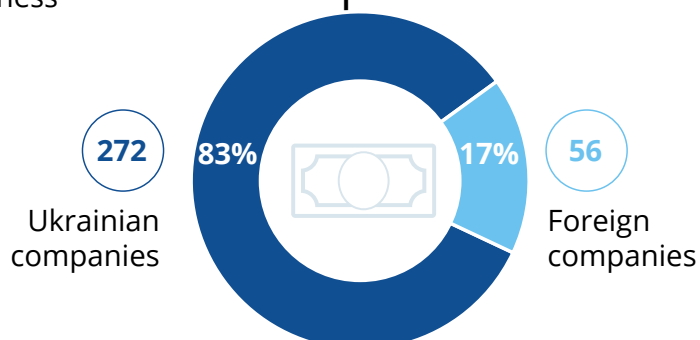
TOP-5 industries



Size of business



Origin of capital



1.3 Complaint trends

For the first time in 12 months of the full-scale invasion of the Russian Federation in Ukraine the business complaint trends to BOC became similar to the appeals structure of peaceful time.

Having left the Helpline era in the past year and having at large dealt with traditional investigations in Q1 2023, it is worth indicating the following most common subjects of complaints to the Council:

Tax issues

230

70%

- 80 VAT invoice suspension
- 53 Non-enforcement of court decisions regarding registration of tax invoices
- 42 Tax audits
- 36 Inclusion in risky taxpayers' lists
- 3 VAT electronic administration
- 2 VAT refund
- 1 Tax termination/renewal/refusal of VAT payers registration
- 13 Other

Actions of law enforcement bodies

31

10%

- 5 National Police – procedural abuse
- 2 National Police – corruption allegations
- 4 National Police – inactivity
- 1 National Police – other
- 9 Prosecutor's Office – procedural abuse
- 3 Prosecutor's Office – criminal case initiated
- 2 Prosecutor's Office – other
- 2 Security Service of Ukraine – procedural abuse
- 3 Bureau of Economic Security
- 2 National Anti-Corruption Bureau

Customs issues

25

8%

- 10 Customs valuation
- 7 Customs clearance delay/refusal
- 1 Customs criminal proceedings
- 7 Customs – other

Actions of state regulators

11

3%

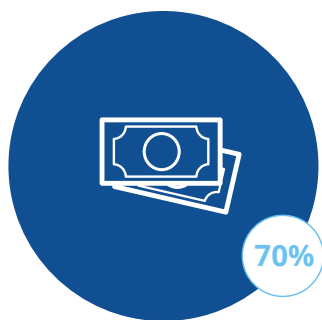
- 1 Antimonopoly Committee
- 10 Other state regulators

Actions of local government authorities

6

2%

- 1 Land plots allocation
- 5 Local government authorities – other



Tax issues

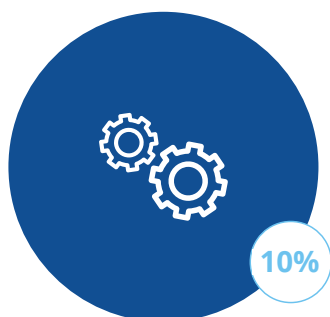
During January-March 2023 tax issues remained on top in the ranking of all companies' complaints to BOC. The amount of tax related appeals remained on the level of 70% - a similar number was observed in our rankings in

Q4 2022 (however, in absolute numbers we saw an increase in the number of tax complaints from 217 in Q4 2022 to 230 in Q1 2023).

In view of failures in VAT electronic administration system operation, and as a result the unprecedented wave of complaints on tax invoices suspension during the martial law, inclusion in risky taxpayers' lists and in particular, non-enforcement of court decisions regarding invoices registration, the Business Ombudsman brought the situation under own control. BOC on its own initiative conducted an investigation of problems related to SMKOR functioning.

Read about its nature and results on the [page 19](#) of the report.

At the same time, individual business appeals addressed to the Council concerned a problem of possibility or impossibility of timely fulfillment of the taxpayer's tax obligations. Entrepreneurs located in deoccupied territories couldn't take advantage of tax benefits due to the lack of a list of territories where hostilities were (are) being conducted. The draft law, which should regulate the issue of the list, was adopted by the Parliament in April 2023, so it is currently awaiting the signature of the President.

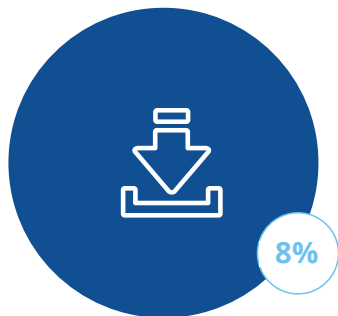


Actions of law enforcement bodies

In the reporting quarter, BOC received almost twice as many complaints about actions or inaction of law enforcement bodies as in Q4 2022 (16 vs. 33 in Q1 2023). Their total number amounted to 10% of all appeals. Complaints namely concerned actions of the following law enforcement bodies - the National Police, the Prosecutor's Office, the Security Service of Ukraine, the National Anti-Corruption Bureau and the Bureau of Economic Security. The latter has not yet started operations at its full capacity. During January-March, businesses mostly reported cases of procedural abuse and inaction on the part of the National Police and the Prosecutor's Office. Entrepreneurs most often

asked the Council to help with return of temporarily seized property or funds as a result of searches.

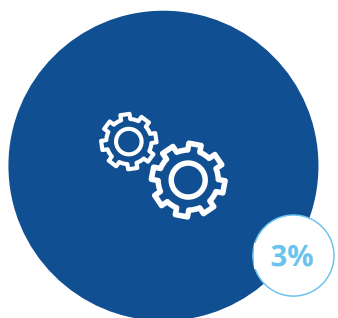
In practice, the Council has also repeatedly encountered the fact that, based on tax audit results, in case of detection of tax offences, criminal proceedings were opened and investigated also by the National Police, the Security Service of Ukraine, and even the State Bureau of Investigation. We are expecting a reboot of the Bureau of Economic Security, which will allow to implement the idea of a single law enforcement agency dealing with economic crimes by using analytical approach instead of coercive methods.



Customs issues

For many months in a row, during the martial law, the Council received almost no complaints about customs (which is explained by the exemption of imports from taxation until July 1, 2023). We felt the shift, though not a positive one, at the end of 2022, when in Q4 2022, BOC received 6 business complaints against customs authorities. At the beginning of 2023, during January-March, we observed that the number of appeals concerning customs issues increased significantly. Customs related appeals reached 8% in the general

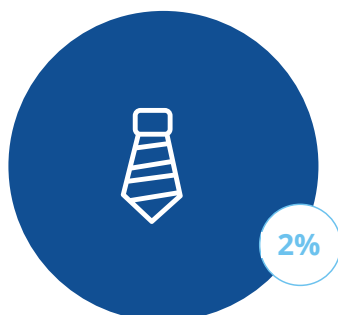
complaints' structure to the Council (although, in past years it was about 4%), and this having serious consequences for both business and the economy itself, signifies dangerous trends when every export and import operation has a meaning for the country at war. Customs valuation, as well as delays/refusal in customs clearance, remain a sensitive matter in interaction of business with the customs authorities. It is obvious sometimes it is difficult to solve these problems alone without the BOC intervention.



Actions of state regulators

The Council received 11 complaints about actions of state regulators. The companies' appeals mainly related to delays in VAT refund, when entrepreneurs had difficulties in returning funds to their accounts by the State Treasury Service. Among other things, entrepreneurs reported to BOC about violations of reasonable deadlines for consideration of applications by the Ministry of Economy

to extend the deadlines for for settlement operations on goods import. It should be noted that due to the effective interaction of the Council with the Ministry of Economy on this matter, individual complaints regarding deadlines extension for settlements for goods import have been successfully resolved.



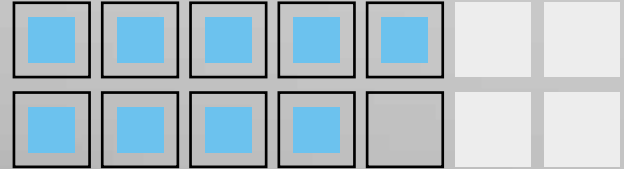
Actions of local government authorities

In Q1 2023, businesses complained the least about local governments - the Council received only 6 complaints in this regard.

1.3 Timelines of the preliminary review of complaints

In Q1 2023, the average time for preliminary review of a complaint was

9 working days



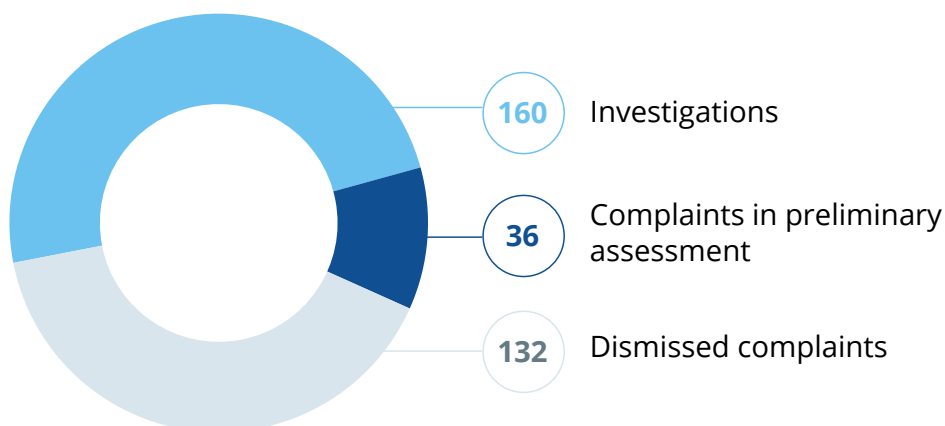
We managed to fit in our Rules of Procedure's target of

10 working days

notwithstanding the ongoing war.

1.4 Number of investigations conducted and grounds for dismissing complaints

In Q1 2023, BOC conducted 169 investigations out of 328 complaints, in other words, a half of all complaints received. 36 complaints remained at the preliminary assessment stage. The Council rejected 132 appeals as not fitting the Council's eligibility criteria following the institution's Rules of Procedure. The reasons for such a rise in dismissing complaints share is linked to an increasing flow of complaints from dishonest business as well as (at least) outstripping actions of state bodies which settle a complaint's matter prior to our preliminary review.



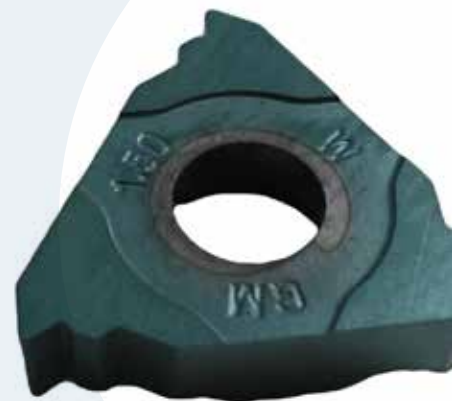
Main reasons for complaints dismissal in Q1 2023

Complaints outside Business Ombudsman's competence	59
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	21
Other circumstances where the Business Ombudsman, in his sole and absolute discretion, determines that an investigation of the complaint is not necessary	14
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	8
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	7
The party affected by the alleged business malpractice has not exhausted at least one instance of an administrative appeal process	6
If a complainant requests to withdraw the complaint, the Business Ombudsman shall cease pursuing the investigation unless he/she decides to pursue the matter in accordance with clause 6.1.2 of these Rules	5
Investigation by the Business Ombudsman in a similar case is pending or otherwise on-going	3
A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration	3
Complaints arising in the context of private-to-private business relations	2

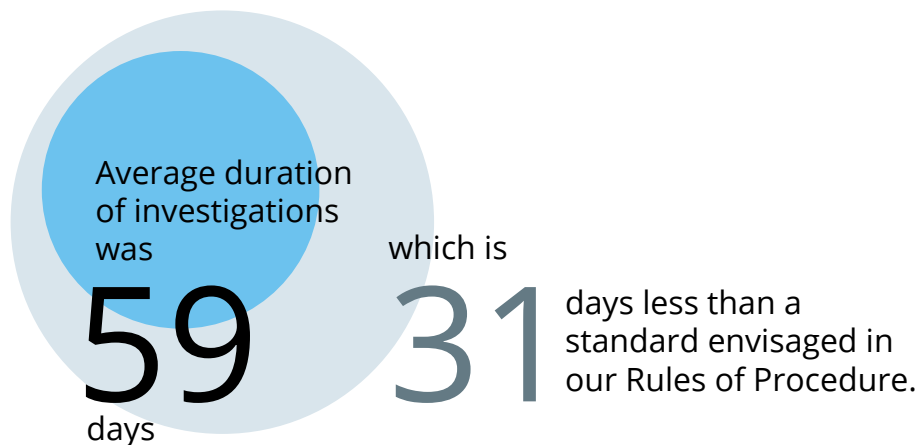


We sincerely thank you for your unindifference and active participation of the Business Ombudsman's team in considering our dispute with Dnipro Customs. It is owing to your credibility and active position that together we managed to do the almost impossible thing - to be heard by the state body and have the decisions on customs value adjustment cancelled administratively.

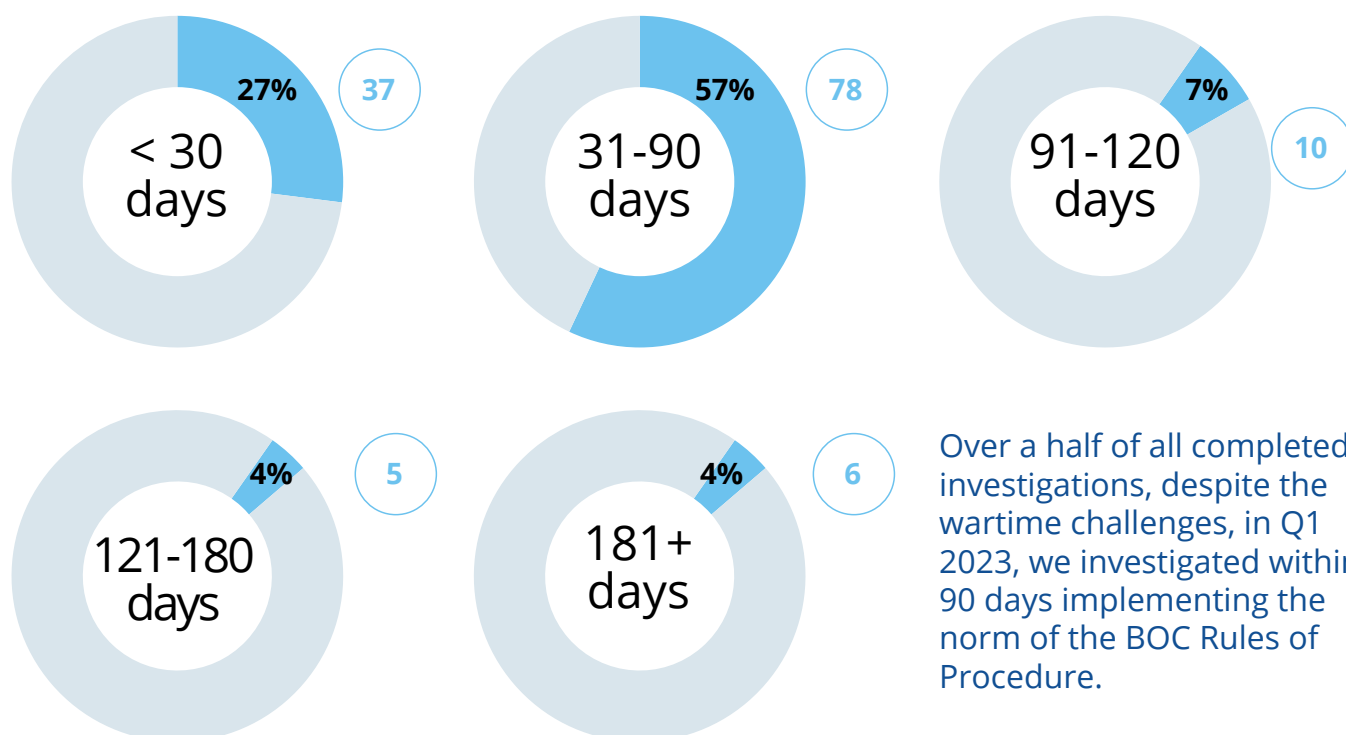
"DET-UA" LLC



1.5 Timelines of conducting investigations



Ratio of closed cases by days:



We would like to extend our great and sincere gratitude to all the Business Ombudsman Council's employees for their promptness and assistance in solving the issue of non-return of the erroneously transferred tax amount. We wish your team further success and a great victory to all of us.

Dnipro Lucky Stone LLC



1.6 Government agencies subject to the most complaints

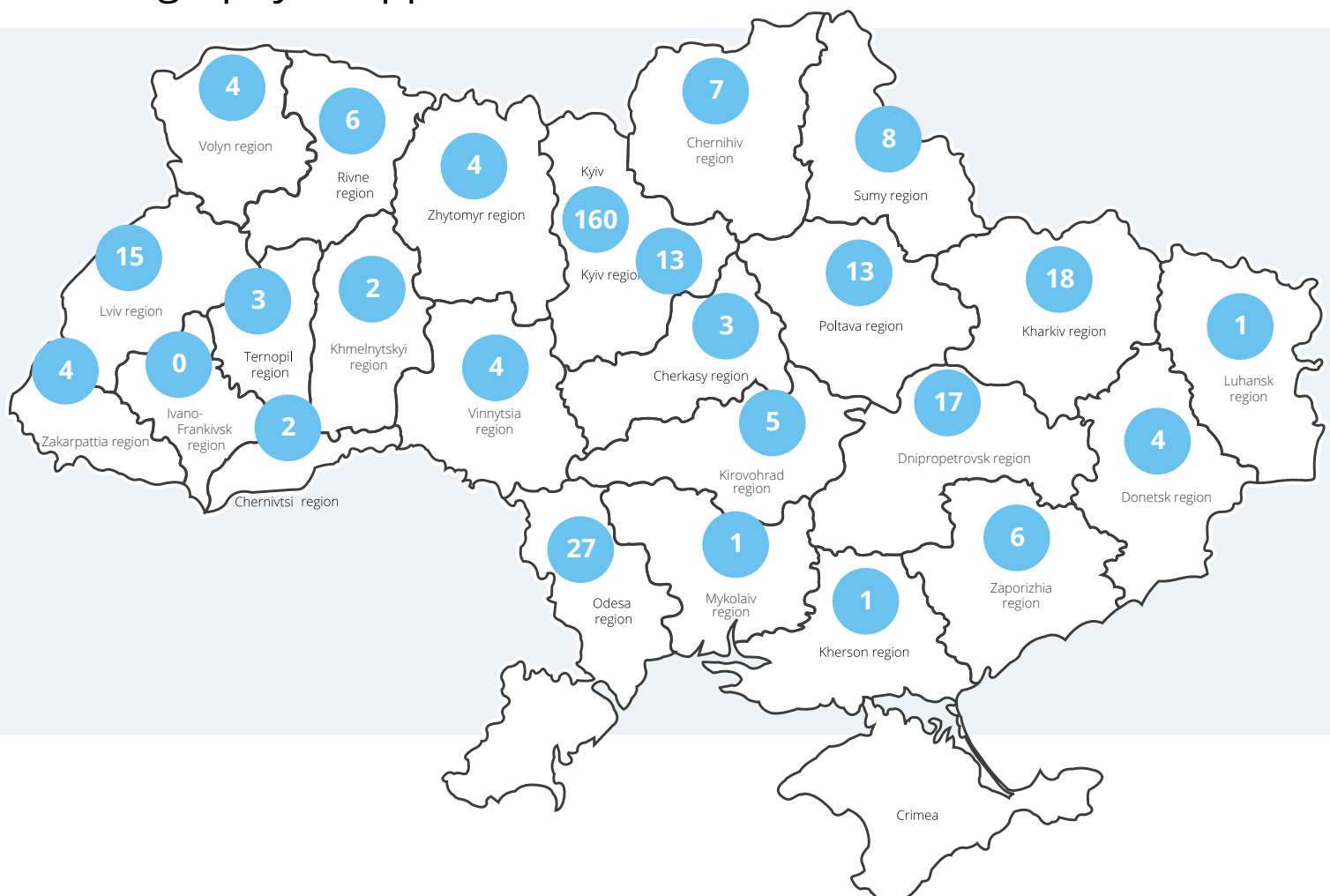
TOP-10 Government agencies subject to the most complaints

Given that companies' complaints in Q1 2023, mostly related to tax issues, it was the State Tax Service that ranked first in the list of state bodies businesses most complained about (230 complaints). After the STS the ranking is followed by law enforcement agencies - the Prosecutor's Office and the National Police - 29 complaints - this correlates with the TOP-5 subjects of appeals of the reporting quarter. We recorded that businesses challenged actions of the State Customs Service in 25 complaints, while actions of local authorities were a subject of only 6 appeals.

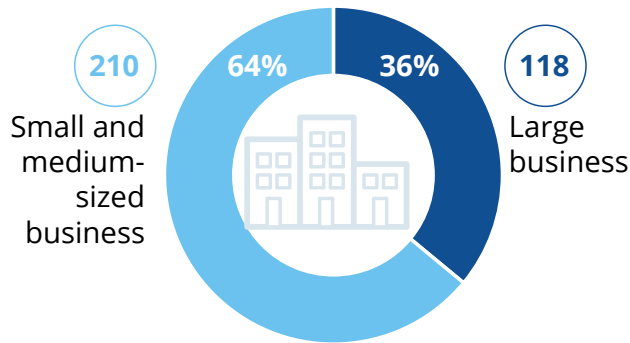
State Tax Service	230
State Customs Service	25
Prosecutor's Office	14
National Police	12
Local government authorities	6
Ministry of Economy	6
The Verkhovna Rada, Cabinet of Ministers and President of Ukraine	4
State enterprises	3
Ministry of Justice	3
Ministry of Finance	3
Other	3

1.7 Complaints portrait

Geography of appeals



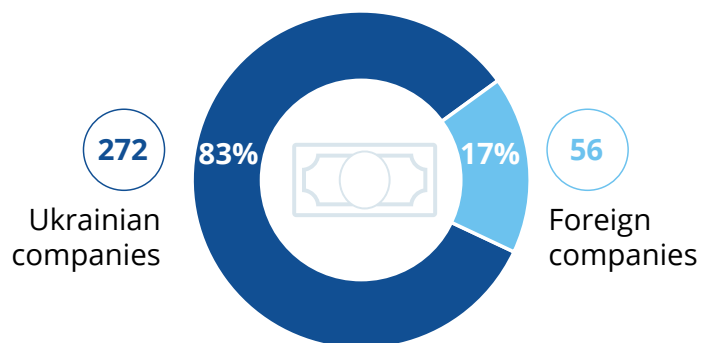
Size of business



Traditionally over a half of complaints to the Business Ombudsman Council are submitted by representatives of small and medium-sized businesses. Hence, in Q1 2023, the appeals share from SMEs amounted to 64% while large business – 36%.

Origin of capital

83% BOC complainants are Ukrainian companies. The share of foreign business is usually close to the current indicator of Q1 2023 – 17%.



Having survived the first year of the Russian Federation's full-scale aggression against Ukraine, we observed an unprecedented resilience and determination of Ukrainian businesses, in particular SMEs, to work, volunteer and implement initiatives in support of the Armed Forces of Ukraine and the population.

Ukrainian entrepreneurship is fundamental for the country's economy and is a driving force for the state recovery and reconstruction from the consequences of war.

Reconstruction processes, despite the daily threat of shelling, have already begun, and the Business Ombudsman Council is always ready to give a helping hand to Ukrainian entrepreneurs and new investors, including foreign ones, in case of abuses of state authorities.



1.8 Implementation of individual recommendations by state bodies

	Recommen- dations under monitoring from May 2015 till Q1 2023	Recommen- dations implemented by state bodies from May 2015 till Q1 2023	Number of recommen- dations issued to state bodies from May 2015 till Q1 2023
State Tax Service, Tax Police, State Customs Service	11	3303	3533
National Police	6	213	261
Prosecutor General's Office	2	145	178
Ministry of Justice	1	132	142
Local government authorities	4	115	157
Ministry of Economy	2	89	101
Security Service of Ukraine	0	62	65
Ministry of Environmental Protection and Natural Sources	0	50	52
Ministry of Agrarian Policy and Food	0	40	45
State companies	0	38	41
Ministry for Communities and Territories Development	1	37	40
The Verkhovna Rada, Cabinet of Ministers and President of Ukraine	1	30	36
Ministry of Infrastructure	1	25	31
Ministry of Finance	1	23	30
Ministry of Health	0	14	17
Ministry of Social Policy	0	12	13
National Commission for State Regulation of Energy and Public Utilities	0	6	6
Ministry of Energy	0	12	13

	Recommen- dations under monitoring from May 2015 till Q1 2023	Recommen- dations implemented by state bodies from May 2015 till Q1 2023	Number of recommen- dations issued to state bodies from May 2015 till Q1 2023
Ministry of Internal Affairs	1	11	11
Antimonopoly Committee	0	10	13
State Bureau of Investigation	0	9	12
Commercial and other courts	0	9	10
State Emergency Service	0	8	8
National Anti-Corruption Bureau (NABU)	1	4	4
Ministry of Education and Science of Ukraine	0	4	7
State Funds	0	3	3
Communal services	0	3	6
National Bank	0	2	2
Міністерство оборони	0	2	5
Ministry of Defense	0	1	2
Ministry of Digital Transformation	0	1	2
State Border Guard Service	0	1	1
National Council of Ukraine on Television and Radio Broadcasting	0	1	1
Other	1	11	15
	33	4421	4858

Since 2015 state bodies implemented 91% of BOC individual recommendations. According to our estimates, this figure testifies to gradual qualitative changes in the work of state governance and demonstrates readiness of state bodies to cooperate in solving controversial issues of entrepreneurs.

2

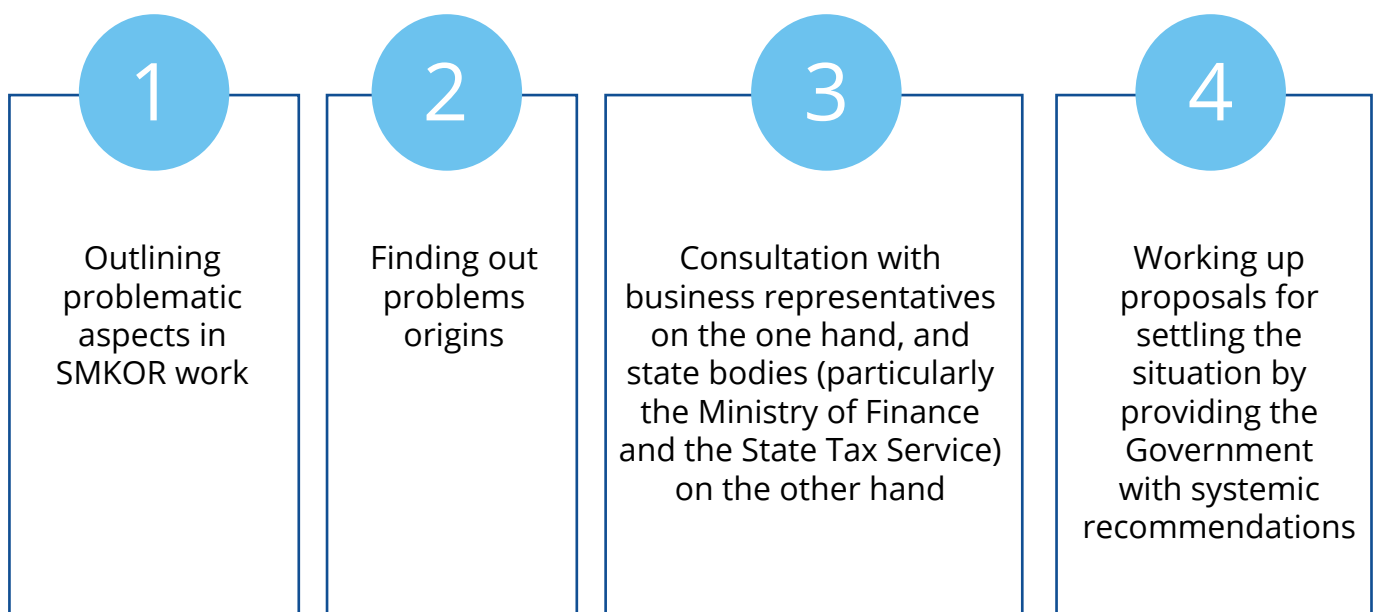
Own initiative investigation regarding problems with SMKOR and its results

With resumption of the System of automated monitoring of tax invoices' compliance with risk criteria (SMKOR) functioning in May 2022, in the third month of the full-scale war, an increase in the number of cases on tax invoices suspension already reached an abnormal level in October.

In the second half of the year, last year's tax related appeals hit the top of BOC complaints ranking, reaching 70% of total appeals. The business, being concerned about the situation threatening with complete cessation of economic activity, as well as the public and expert community demanded an impartial assessment and BOC response to problems in the electronic VAT administration system.

On December 5, 2022, the Business Ombudsman initiated the first ever investigation on his own initiative in BOC history to look into the situation.

The investigation was aimed at:



As part of the investigation, BOC conducted a thematic survey among business representatives, processed official data provided in response to a request to the STS of Ukraine, analyzed about 1.5k SMKOR-related cases investigated by the Council during the last four years and initiated a dialogue with representatives of different branches of power concerning necessary legislative amendments (particularly to Decree No. 1165).

Press event “Autumn of Blocked Tax Invoices – What Conclusions Can Be Made for Economic Spring? BOC own initiative investigation results”

In early March 2023, the Business Ombudsman Roman Waschuk presented the results of his own initiative investigation of problems with SMKOR. The investigation results were supported by representatives of leading business associations - American Chamber of Commerce, European Business Association, Chamber of Commerce and Industry, Ukrainian League of Industrialists and Entrepreneurs and the Federation of Employers of Ukraine, as well as the expert community. A reaction of Danylo Hetmantsev, Head of the Verkhovna Rada Committee on Tax and Customs issues to BOC investigation results, who supported our conclusions and recommendations was also swift.



BOC presented a report on investigation results.

Herein, the Council set forth an exhaustive analysis of problems and challenges of SMKOR system, presented key principles around which errors analysis and further system functioning should be based on and provided systemic recommendations to state bodies on how the mentioned problems could be solved.

1. Risk orientation.



Key principles:



4. Communication.



2. Legal predictability.



5. Digitalization.



3. Proportionality.



6. Business focus.



Recommendations referred to the Ministry of Finance (MinFin) and the State Tax Service (STS), in the Council's view, are meant to improve SMKOR functioning and reduce adverse consequences for honest business.

The Council recommended:

1. Introducing the genuine SMKOR automation and return risk operations criterion 1 (including coefficient of 1.5) to real risk orientation limits.
2. Performing a thorough analysis and forecast changes impact, especially possible unfavorable consequences for business before accepting any changes to TIs/ACs registration procedures.
3. Establishing (not necessarily at the regulatory level, but publicly) clear indicators-safeguards for SMKOR problems similar in scale. It is about controlling other state bodies (parliamentary control of the Verkhovna Rada of Ukraine, interference of Cabinet Ministers of Ukraine) to prevent similar situations.
4. Ensuring systematic procedures implementation for reviewing law enforcement practice based on sustainable SMKOR case-law practice formation results directly showing repeated violations of the law.
5. Providing due informing enterprises of negative decisions within SMKOR operation at the earliest possible stage.
6. Introducing an administrative appeal procedure of Regional Commissions' decisions on riskiness and tax data tables.
7. Introducing tools for informing payers about risky counterparties (to provide opportunity for payers to submit an electronic inquiry on counterparties).
8. Creating an additional "ΣDubious transactions" SMKOR indicator to be calculated as the amount of VAT on dubious, in the opinion of the tax authority, payer's transactions. Such a step will allow to differentiate consequences for business depending on the tax authority's doubts and control proportionality and their existence duration.
9. Introducing transparent and effective procedures for taking risky payers out of the list.
10. Providing payers' access to information on key indicators that can indirectly influence the adoption of a negative decision regarding them.

Monitoring recommendations implementation

Following the report publishing and receiving state bodies' and society primary reactions, the Business Ombudsman started monitoring implementation of provided recommendations. The Council already held a number of meetings with the STS, the Ministry of Finance, and the Verkhovna Rada regarding fine-tuning of changes implementation mechanism. At the end of March 2023, amendments to Decree No. 1165 regarding individual BOC report-based recommendations were published on the STS website – we gave additional comments on this during a separate meeting.

BOC will perform public monitoring of SMKOR related recommendations implementation, as well as the dialogue with relevant state bodies for improving regulation in the VAT administration area. The Council will share about the progress in upcoming reports.



Examples of successfully completed investigations

Customs service cancels a decision on incorrectness of a goods' UCG FEA code

A logistics services operator imported an extender for a crawler crane for the customer. During customs clearance, Dnipro Customs established the alleged incorrectness of the UCG FEA code, changed it to another one, which entailed an increase in customs duties.

It is of interest that during declaration of goods, the company provided the necessary list of documents to the customs and had a history of customs clearance according to the declared code.

BOC upheld the complainant's position and in an appeal to the State Customs Service of Ukraine (SCS) asked to consider his arguments regarding classification of goods.

As a result, the State Customs Service canceled the classification decision of Dnipro Customs and agreed with the imported crane extender UCG FEA code previously determined by the company.

The STS transfers mistakenly paid funds to pay off a debt

A construction company from Dnipro mistakenly paid a single tax for the fourth quarter of 2021 in the amount of UAH 20.300 to the budget of the city of Melitopol instead of Dnipro. The company submitted applications for the return of mistakenly paid funds to the Main Department of the State Tax Service in Zaporizhzhia Region three times and also asked to transfer the funds to repay the tax debt to the Main Department of the State Tax Service in Dnipropetrovsk Region. However, all the efforts were unsuccessful.

During the complaint investigation, BOC turned to the MD STS in Zaporizhzhia region and asked to properly consider the company's requests. In accordance with the provisions of the Tax Code of Ukraine, the tax authority must respond to the complainant's statement and make a refund or transfer funds to the correct account.

After the Council's intervention, the Tax Office transferred UAH 20.300 to the account of the MD STS of Dnipropetrovsk Region, and thus paid off the company's tax debt that arose due to an error.

The STS takes into account a data table of a welding wires manufacturer

A welding wires manufacturer complained to the Business Ombudsman Council because the tax authority began massively blocking the company's tax invoices. To solve the problem, the company submitted a taxpayer's data table several times, however the tax authority constantly refused to accept it.

Even before the full-scale invasion of the Russian Federation, the company exported products to Russia and Belarus. Despite the absence of this factor as a formal ground for not accepting the data table, it was settlement operations with counterparties in aggressor countries that became the reason for the mass blocking of the company's tax invoices.

BOC brought up the complaint for consideration by the Expert Group with the State Tax Service of Ukraine (STS of Ukraine). During the Expert Group meeting, one managed to find out exactly what information was missing to accept the company's data table. As a result, the complainant resubmitted the data table and it was accepted by the STS.

A company confirms the customs value of imported goods

DET UA LLC approached the Business Ombudsman Council because Dnipro Customs had adjusted the customs value of imported rubber hoses.

The first batch of goods was cleared smoothly, but the customs had remarks about the second one. The customs authority refused to accept the declared customs value of goods, allegedly because the company did not provide all the documents, particularly regarding additional expenses for transporting goods and the Ukrainian translation of the quality certificate.

While investigating the complaint, the Council found out the company provided the customs authority with a complete list of documents confirming expenses related to transportation of goods and other papers necessary for determining the customs value. BOC could not understand the reasons for adjusting the customs value of rubber hoses, the first batch of which were cleared by customs officers without any remarks. The Council asked the State Customs Service of Ukraine to impartially consider the company's complaint. As a result, DET UA LLC arguments were taken into account, and the company managed to fully confirm the declared customs value of imported rubber hoses.

A no more «risky» tire manufacturer

The tax authority included a well-known international tire manufacturer in the risky taxpayers' list.

In particular, company informed the tax authority suspended a large number of adjustment calculations.

During the investigation, the Council found out that decisions on the payer's riskiness contained only general statements and did not detail specific reasons. It is noteworthy the company successfully appealed tax decisions, however its "risky" status did not change.

BOC brought up the complaint for consideration by the Expert Group with the STS of Ukraine, as a follow-up of which the STS agreed with the unreasonableness of the decision on the taxpayer's riskiness. After the company submitted the requested documents to the tax office, it was excluded from the list of risky ones.

The STS cancels UAH 1.3 mn fine for late invoices submission

During the inspection, the tax office charged the company with a fine of UAH 1.3 mn. for allegedly violating tax invoices registration deadline.

According to the Tax Code, the company had to submit invoices for registration no later than July 15, 2022, and the complainant did so. However, the Tax Office recorded the deadline violation for one day.

The Council arrived at a conclusion that MD STS claims regarding invoices registration violation terms were unsubstantiated. According to the established judicial practice in disputes on procedural terms calculation, July 15, 2022, should be included in the permitted period of registration of tax invoices drawn up from February 1 to May 31, 2022.

The STS accepted the Council's arguments and dropped the fine worth UAH 1.3 mn. for late invoices submission. However, the complaint was only 70% satisfied, the company was going to resolve the rest of the issues in court.

A construction company returns mistakenly collected fine worth UAH 167k

The State Labor Service fined a construction company in the amount of over UAH 167k for violation of labor legislation, in particular, failure to calculate salary indexation for employees.

The company successfully appealed the decision imposing a fine in court. Nevertheless, the Enforcement Service managed to forcefully collect funds for the benefit of the state budget. The company couldn't return the money on its own.

After processing the company's complaint, BOC communicated with the State Treasury of Ukraine, the Enforcement Service and the Ministry of Justice of Ukraine.

After the BOC interference, the Ministry of Justice initiated an official inspection of the actions of the regional Enforcement Service. As a result, the Enforcement Service returned UAH 167k of a mistakenly collected fine.

The Prosecutor's Office returns temporarily seized laptops

A meat products distributor complained to the Business Ombudsman Council about pressure and non-return of property by the Dnipropetrovsk regional Prosecutor's Office.

The company reported that due to alleged tax evasion, law enforcers opened two criminal proceedings against the company. They searched the company's office and seized computer equipment and documents. Despite the court order, law enforcers did not return the temporarily seized property, and so the company was forced to suspend its work.

BOC submitted a complaint for consideration of the Expert Group with the Prosecutor General's Office and asked to immediately return the seized property to the enterprise. As a result, the regional Prosecutor's Office enforced the court decision and returned the temporarily confiscated laptops to the enterprise in full.

No drugs contained – expert examination of goods finally completed

Kyiv Customs detained the dye-concentrate imported by the company during customs clearance. It is known the company has been importing concentrate dye from an official manufacturer in Germany over 15 years. This raw material was used by the enterprise in producing components for defense equipment of the Armed Forces. Nevertheless, customs officers questioned the UCG FEA code specified in the declaration, particularly the composition of the product due to alleged presence of drugs in it. An examination of product samples was appointed, which dragged on for a long time. And the goods were kept in the customs warehouse for over a month.

Having looked into the company's complaint, the Business Ombudsman Council turned to the State Customs Service of Ukraine management team and recommended speeding up the expert examination. A week after applying to the Main Customs Office, Kyiv Customs Office completed product samples examination. As a result, the goods were successfully cleared.

4

BOC systemic recommendations to improve Ukraine's investment climate and accelerate its recovery

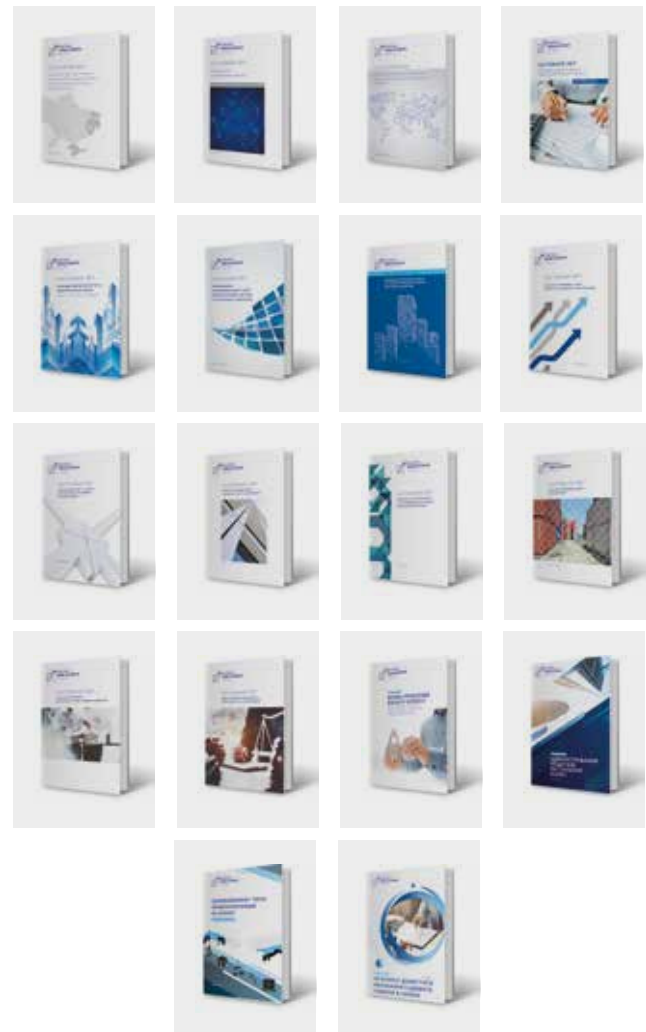
The full-scale invasion of the Russian Federation in Ukraine on February 24, 2022, considerably affected the state, its population and economy. Despite daily attacks and ongoing hostilities in the east and south of the country throughout the past year, Ukraine survived. And despite all the wartime hardships, the inevitability of the Ukrainian victory over the Russian aggressor, restoration of state borders, de-occupation of all temporarily captured territories, including parts of Donetsk and Luhansk regions and the Crimea, as well as recovery from the destruction caused, has become only more obvious.

Since its establishment, the Business Ombudsman Council has been supporting the Government of Ukraine in implementing European integration reforms and changes aimed at improving the business climate. Since 2015, BOC has published 18 thematic systemic reports, in which it issued recommendations to state bodies to remove barriers to doing business, reduce pressure on entrepreneurs from state bodies, while taking into account the need for adapting Ukrainian legislation to the EU acquis.

In the blink of an eye, the war changed the state functioning priorities, including BOC systemic recommendations implementation. Meanwhile, there was an objective need to improve our proposals in modern military working conditions, both of government officials and of the business itself.

At the beginning of 2023, BOC made a list of recommendations to the Government of Ukraine, which should become the basis for the revival of Ukraine liberated from the occupiers.

BOC advises the Government to focus on the investment climate impact through the policy of reducing costs/value of doing business, eliminating risks and barriers to competition.



We would like to stress the implementation of the following changes is relevant today:

1. **Fundamental changes in the fiscal policy and tax administration** of the state¹ are necessary², particularly taking into account (1) regulatory initiatives impact prediction for all taxpayers; (2) raising taxpayers' awareness in all aspects (information on regulatory changes; specific claims against such taxpayers and key indicators; riskiness of counterparties) before making a negative decision; (3) introduction of intermediate stages before applying negative consequences to payers, more active involvement of business in the disputed situation settlement; (4) introduction of administrative appeal of those decisions, which cannot currently be appealed this way.
2. Given the fact that the State Tax and State Customs Service lose 90-95% of cases on punitive measures against business in courts, it is necessary to ensure implementation of **procedures for reviewing the enforcement practice of state bodies based on case-law formation results** obtained from separate categories of cases or legal norms directly pointing to systemic violations of legislation by a state body^{3, 4, 5, 6}.
3. Generally, a **preliminary thorough analysis and forecasting** in all spheres of legislative and regulatory changes based on actual data of possible **regulatory changes adverse consequences** for business **should be introduced**⁷. In particular, it is necessary to calculate the approximate number of enterprises to be affected by these changes; monetary or time costs of business to settle such consequences. An inspection carried out by the State Regulatory Service of Ukraine for compliance with risk-oriented and proportionality principles should not be formal, but based on business realities.
4. The customs sphere⁸ requires **optimization of procedures to reduce corruption risks at the border**, in particular through (1) **switching customs value control from customs clearance stage to post-clearance audit** as one of the primary forms of customs control; (2) centralized **publication of decision on customs classification of goods** (as is it done in the EU), including tax authorities' decisions on documentary audits and court decisions in cases on correctness of classification⁹.
5. **To eliminate obstacles to hooking up businesses to electrical networks**¹⁰, in particular by¹¹ (1) improving the use of the servitude institution when allocating land plots for electrical grids construction and commissioning; (2) coordinating authorities with regard to new and existing land

¹ Systemic report ["Administering Taxes Paid by Business"](#)

² Systemic report ["Big Challenges for Small Business"](#)

³ Systemic report ["Administering Taxes Paid by Business"](#)

⁴ Systemic report ["Main Problems Faced by Business in Customs Sphere"](#)

⁵ Systemic report ["How Business Can Seek Execution of Court Decisions in Ukraine"](#)

⁶ Systemic report ["Problems with Cross-Border Trading in Ukraine"](#)

⁷ Systemic report ["Control Over Controllers: Status of Control Bodies Reform Implementation"](#)

⁸ Systemic report ["Main Problems Faced by Business in Customs Sphere"](#)

⁹ Systemic report ["Problems with Cross-Border Trading in Ukraine"](#)

¹⁰ Systemic report ["Getting Access to Electricity"](#)

¹¹ Systemic report ["Natural Monopolies vs Competitive Business: How to Improve Relations"](#)

development plans, to provide land plots with external electric power networks at the customer's request; (3) providing rational and transparent hook-up procedures (simplification, optimization of procedures); (4) introducing transparent pricing, for example, through incentive tariff tools (RAB regulation) for all suppliers that have not yet switched to it.

6. To help business to be informed, **to provide access to necessary information sources**^{12, 13} in particular, it is expedient **to publish publicly available court decisions execution status**; regulatory authorities' **decisions**, adopted **as a follow-up of business complaints consideration**; the results of court appeal of such decisions, etc.

7. **To expand opportunities enabling business to use international potential for restoring the country** by (1) developing a favorable regulatory framework for foreign specialists to be engaged by business, taking into consideration international standards and European practices; (2) creating a support network designed to expand business presence abroad^{14, 15}.

8. **To improve the legal environment and create new business opportunities**¹⁶ through: (1) **lifting moratoriums** inhibiting state enterprises reforms, court decisions privatization and enforcement; (2) **proportionality when applying**

punitive/restrictive measures on business (taking into account the ratio of negative consequences of business behavior with the consequences of applying the appropriate sanction to it).

9. The law enforcement sphere¹⁷ needs **protection against abuse along with ensuring awareness of participants in criminal proceedings**, in particular by (1) timely and mandatory entry of information into the Unified Register of Pre-Trial Investigations (ERDR); (2) a more modern electronic form of access of parties to information on criminal proceedings; (3) timely return of seized original documents and other property not having traces of a crime; (4) limiting the prosecution's abuse of expert examinations; (5) the right of the defense party to independently request an extension of the pre-trial investigation period; (6) provision of smooth criminal proceedings materials handover from one pre-trial investigation body to another.

10. **The antimonopoly sphere**¹⁸ needs strengthening its institutional capacity and political independence of the Antimonopoly Committee of Ukraine (AMCU) by improving and adopting existing draft laws unlocking the AMCU existing institutional potential. Apart from that, there is a need for more certainty regarding time-frames of investigations into economic competition violations.

¹² Systemic report "[Big Challenges for Small Business](#)"

¹³ Systemic report "[Administering Taxes Paid by Business](#)"

¹⁴ Systemic report "[Business Focus on Labor-Related Issues](#)"

¹⁵ Systemic report "[Administering Taxes Paid by Business](#)"

¹⁶ Systemic report "[How Business Can Seek Execution of Court Decisions in Ukraine](#)"

¹⁷ Systemic report "[Abuses and Pressure Inflicted by Law Enforcers on Business](#)"

¹⁸ Systemic report "[Challenges and Problems in the Sphere of Competition Protection and Oversight](#)"

5

Strategizing BOC activities

In the reporting quarter, BOC future activities strategizing process started after the outbreak of a full-scale invasion of the Russian Federation in Ukraine.

Challenges faced by the country during the war, our institution being no exception, demanded aligning its activities with the needs of the business climate that will develop simultaneously with the recovery of Ukraine from military actions consequences and further integration into the European Union.

The Council seeks improving its performance, inter alia, through strengthening internal procedures and operational processes digitization and optimization. BOC aims to continue improving effectiveness in solving entrepreneurs' problems in their relations with state bodies. For this purpose, we work out fresh ideas and study past experience to outline new areas of our activities.



After two internal strategic exercises the institution had (and also with participation of Supervisory Board members last year), in March 2023 we gathered together for a strategic brainstorm session again.

During the meeting our team paid attention to matters of BOC's institutional positioning and sharpening its toolkit in advocating for legal rights of business before the state.

We conducted a retrospective analysis of the BOC wartime experience after February 24, 2022 and identified areas, development of which will both boost its sustainability in the future, simplify internal processes and streamline its role in the post-war recovery period.

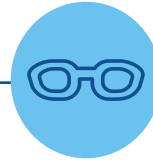
We set the following priorities for our future work:



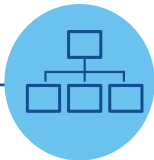
Strengthening BOC cooperation with state bodies via Experts groups



Enhancing cooperation with state bodies in the regions to resolve local companies' complaints



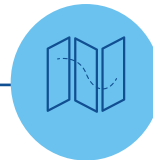
Undertaking own initiative investigations into business systemic problems



Actively promoting Council's services and its role among all the stakeholders



Further internal procedures and processes digitization



Developing educational and awareness-raising areas (preventive measures for business support - road maps, guides, webinars)



6

Cooperation with stakeholders

6.1 Expert groups with state bodies

	Number of meetings held	Number of cases considered
State Tax Service of Ukraine	3	183
The Main Department of the STS in Kyiv city	3	27
The Main Department of the STS in Kyiv region	3	6
State Customs Service	1	6
Prosecutor General's Office	1	13
Security Service of Ukraine	1	1



In Q1 2023, BOC deepened cooperation with state bodies at the regional level. The Council's investigators regularly communicate with the STS of Ukraine regional offices representatives (in Lviv, Chernihiv, Odesa and other regions) through communication platforms introduced to improve interaction of taxpayers with the tax authority.

Meanwhile, BOC has enhanced cooperation with regional Prosecutor's Offices, with which it discussed individual cases of entrepreneurs on law enforcement topics. In the reporting quarter, BOC met with Volyn, Dnipropetrovsk, and Kyiv regional Prosecutor's Offices.

6.2 Memorandums of partnership with state bodies

The first quarter of 2023 was marked for the Business Ombudsman Council both by the renewal of old ties with state bodies and strengthening of interaction with them, as well as by establishing a dialogue with new stakeholders that became part of Ukraine's reconstruction architecture.

Memorandum with the Restoration Agency

The Business Ombudsman Council signed the Memorandum on Partnership and Cooperation with the newly established State Agency for Restoration and Infrastructure Development of Ukraine (Restoration Agency).

The Restoration Agency headed by Mustafa Nayyem was established in January 2023 by a decision of the Government of Ukraine based on the State Agency for Infrastructure Projects and the State Agency of Motor Roads of Ukraine. The institution aims to implement infrastructure reconstruction projects. The BOC Memorandum with the Restoration Agency is a step towards consolidating institutions' efforts in ensuring transparent involvement of business in projects related to reconstruction of infrastructure objects destroyed as a result of the full-scale invasion of the Russian Federation into Ukraine.



Under the Memorandum, the institutions will cooperate in implementing the state policy in the field of employing measures for post-war Ukrainian infrastructure reconstruction. The

Council being a mediator in the relations between business and the state, will help reconstruction participants to counteract possible abuses by state bodies and contribute to improving conditions for business involvement in reconstruction projects.

Memorandum with NACP



The Business Ombudsman Council updated the Memorandum on Partnership and Cooperation with the National Agency on Corruption Prevention (NACP).

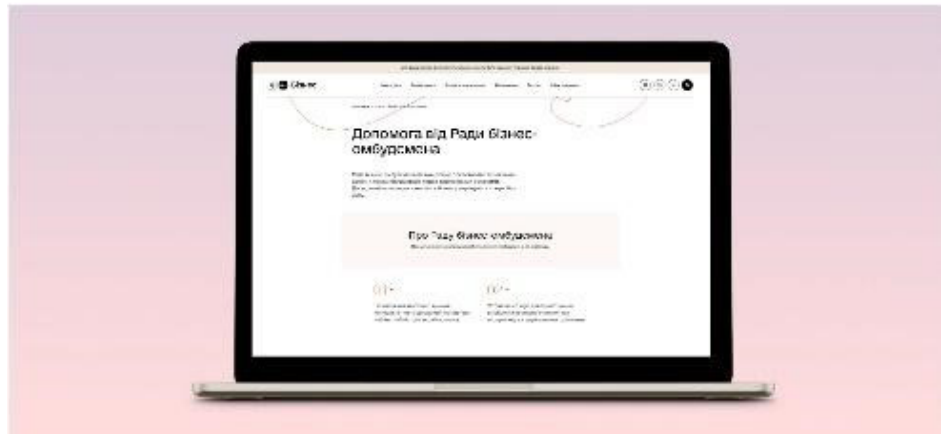
Given new realities in which Ukraine is fighting daily for its right to independent existence, the fight against corruption remains the main task not only on the way to Ukraine's further integration and accession to the European Union, but also effective recovery from the consequences of the full-scale aggression of the Russian Federation.

The Head of the NACP Oleksandr Novikov and Business Ombudsman Roman Waschuk agreed to strengthen cooperation in preventing malpractice of state bodies in relation to the private sector. Cooperation of institutions will contribute to reducing the number of cases on abuse and pressure on business, being the driving force of a working economy and post-war recovery. Under the Memorandum, every six months the Council will provide NACP with information on the most common corrupt practices in interaction of business with state bodies, local self-government authorities, and state-owned companies.

6.3 Cooperation with Diia. Business national project

In Q1 2023, the Business Ombudsman Council boosted its partnership with Diia.Business national project. An informational section "Help from the Business Ombudsman Council" has appeared on Diia.Business portal.

Visit the page at



In the section entrepreneurs can find information about:

- The Business Ombudsman Council and its organization
- Institution's areas of work
- Complaint submission form
- Examples of successful investigations in peacetime and wartime
- Brochures and guides with useful tips for business
- Frequently asked questions about BOC activities



6.4 Lecture to students of Zaporizhzhia National University

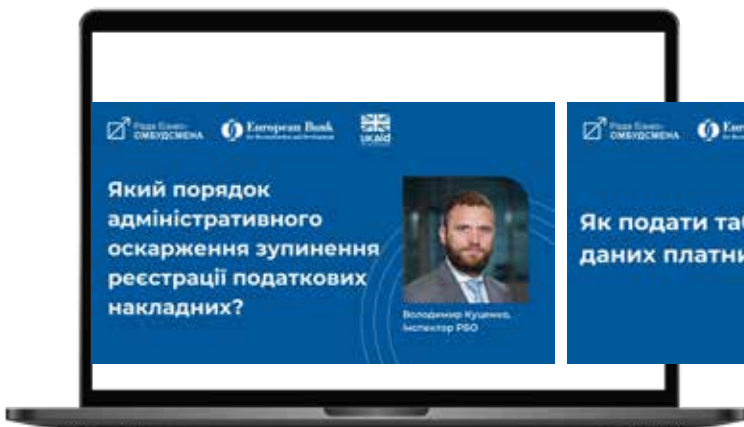


As it is commonly known, the Business Ombudsman Council is the newest governance element, which has been successfully implemented in Ukraine for the eighth year in a row. It is history, evolution and various application models of this institution that became the subject of a separate lecture "The Ombudsman Institution as an Integral Part of the Modern Model of Good Governance" prepared and delivered by Tetiana Korotka, PhD in Economics, Deputy Business Ombudsman, at the invitation of Zaporizhzhia National University.

The subject of her lecture was issues of the history of creation, evolution of models and present-day functioning of the Business Ombudsman Council in Ukraine. Taking into account that students of law, economics and sociology departments attended the lecture, the questions related to various aspects of the theory of the ombudsman institution and BOC work practice.

Raising awareness of future specialists about the best governance standards, European legislation and modern practice is an important component not only of rapid recovery, but also of the harmonious integration of Ukraine into the European Union.

6.5 EBRD communication platform for SMEs



Since the end of 2022, the Business Ombudsman Council has been actively involved in filling the EBRD communication platform for small and medium-sized businesses.



Business Guide for SMEs is an EBRD initiative launched in 2021 to support Ukrainian entrepreneurs through tough times. The platform acquired a new meaning for business with the outbreak of the full-scale invasion of the Russian Federation in Ukraine. In particular, the information offered to entrepreneurs on the platform is aimed at supporting fledgling businesses so that they could better navigate the legislation and understand peculiarities of doing business during the war.

Materials with advice from the Business Ombudsman Council prepared by its experts have regularly been published on the SME platform since January 2023. In the first quarter of 2023, four such materials were added.

6.6 Recovery Initiatives: Coalition for Peace (The Peace Coalition)



Having become a member of the Peace Coalition (The Peace Coalition), the Business Ombudsman Council continues participating in weekly meetings with key stakeholders of the initiative.

The Business Ombudsman Council is involved in the development of the **Andriivka Village Restoration Project**, which is currently being implemented by the Peace Coalition. The Council's representatives share with stakeholders their experience in establishing contacts with government organizations and local self-government authorities, advise on practical issues regarding implementation of the Project, as well as on problems related to village demining.

Jointly with the pilot project for the village of Andriivka reconstruction, a similar project

will be implemented in the reconstruction of the village of Kozarovychi in Kyiv region – it is one of the towns that suffered significant destruction during the armed aggression of the Russian Federation.

In early 2023, a restoration Project of Andriivka and Kozarovychi villages of Kyiv region was presented to the Canadian government. The Business Ombudsman of Ukraine participated in the event – he expressed his willingness to further advise and contribute to the effective implementation of the Project. The project is currently awaiting funding approval.



Photo of Andriivka bigkyiv.com.ua

7

Public outreach

7.1 Telegram Chat

The Business Ombudsman Council makes efforts to make communication with its complainants as accessible and flexible as possible. We took into account past war months experience, particularly during Helpline operation, and support the importance of prompt responding to entrepreneurs' requests.

So, in Q1 2023, BOC decided to introduce a new interaction platform with current and potential complainants.



Telegram chat works at the new Business Ombudsman Council contact number **+380 99 237 37 37.**

Chat work hours:
weekdays from
9:00 a.m. to 6:00 p.m.

Telegram communication chat

In Q1 2023, BOC decided to introduce a new interaction platform with current and potential complainants.

In March, we launched a Telegram communication chat. Here entrepreneurs can contact the Council in case of possible questions regarding an appeal submission, clarification of information regarding a complaint consideration, and also leave a request to the investigator in charge.



7.2 Events calendar

09.01.2023

Online meeting of the Government Committee on National Security and Defense and Law Enforcement Activities (chaired by Oleksiy Reznikov)

Organized by

Government Committee on National Security and Defense and Law Enforcement Activities

10.01.2023

Presentation "Enabling an Economic Transformation of Ukraine: Recovery, Reconstruction, and Modernization"

Organized by

Belfer Center for Science and International Affairs, Harvard Kennedy School

24.01.2023

Meeting with Danylo Hetmantsev, Chairman of the VRU Committee on Finance, Tax and Customs Policy

Organized by

Verkhovna Rada Committee on Finance, Tax and Customs Policy

25.01.2023

Conference "FORESITE for recovery and development of Ukrainian exports"

Organized by

GIZ in cooperation with the United Nations Development Program (UNDP Ukraine)

26.01.2023

Meeting with the Head of the State Customs Service of Ukraine

Organized by

State Customs Service of Ukraine

26.01.2023

Meeting with the EU Ambassador to Ukraine Matti Maasikas

Organized by

European Union in Ukraine

27.01.2023



Meeting with the Chairman of the NAPC Oleksandr Novikov

Organized by

National Agency on Corruption Prevention

27.01.2023

Meeting with the State Property Fund of Ukraine

Organized by

State Property Fund of Ukraine

30.01.2023

Meeting with the State Regulatory Service of Ukraine

Organized by

State Regulatory Service of Ukraine

31.01.2023



Meeting with First Vice Prime Minister-Minister of Economy Yulia Svyrydenko

Organized by

Ministry of Economy of Ukraine

31.01.2023



Chamber Event with US Ambassador Bridget Brink & DFC CEO Scott Nathan

Organized by

American Chamber of Commerce

02.02.2023

Meeting with the Deputy Chairman of the VRU Committee on Economic Development, People's Deputy Dmytro Kysilevskyi

Organized by

Verkhovna Rada of Ukraine Committee on Economic Development

03.02.2023



Meeting with the Head of the Restoration Agency, Mustafa Nayyem

Organized by
State Agency for Restoration and Infrastructure Development of Ukraine (Restoration Agency).

10.02.2023

TCUP Conference: Rebuilding Ukraine, Rebuilding the World
Organized by
Harvard Ukrainian Research Institute

20.02.2023



Presentation "Trade Facilitation in Ukraine 2022: Customs Procedures, Problems, and Business Expectations During Wartime"

Organized by
Institute for Economic Research and Policy Consulting

01.03.2023

Responsible Business – Resource for National Resilience

Organized by
International Institute for Ethics and Contemporary Issues of Ukrainian Catholic University

02.03.2023



Online debate "Post-war Ukraine: embedding liberal democracy"

Organized by
Friends of Europe

08.03.2023

Meeting with ARMA management team
Organized by
Asset Recovery and Management Agency (ARMA)

08.03.2023

Meeting with the Center for Economic Strategy
Organized by
Center for Economic Strategy

08.03.2023

Meeting with Acting NABU Director Gizo Uglava
Organized by
National Anti-Corruption Bureau of Ukraine (NABU)

09.03.2023



Meeting with the leadership of the State Customs Service of Ukraine

Organized by
State Customs Service of Ukraine

20.03.2023

Meeting of the VRU Temporary Special Commission on Investors' Rights Protection
Organized by
VRU Temporary Special Commission on Investors' Rights Protection

20.03.2023

Meeting with the Deputy Minister of Economy Oleksandr Hryban and Advantage Ukraine representatives and the USAID Competitive Economy Program Ministry of Economy of Ukraine

28.03.2023

Forum of Monetary Sovereignty
Organized by
Polish Economic Society

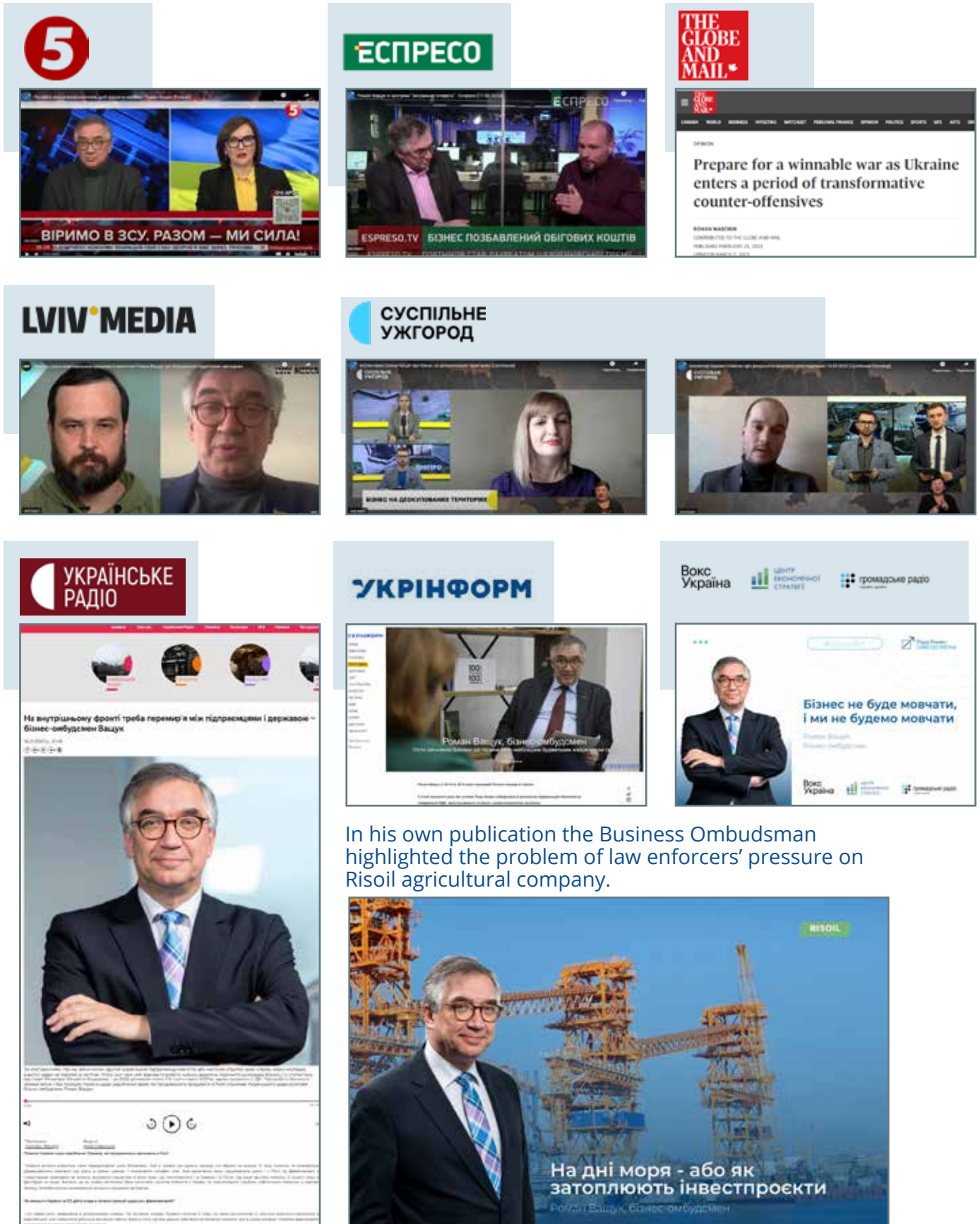
31.03.2023

EBRD & UKRAINE: Investing in Resilience, Recovery, Reconstruction. 2022 Review, 2023 Priorities and Projections
Organized by
EBRD

7.3 Interaction with the media

The Business Ombudsman and his team openly cooperate with the media, give interviews, commentaries and write publications to draw public attention to the Business Ombudsman Council activities and problems of entrepreneurs it helps to solve. BOC shares its own view on the situation, assesses the business climate and current events in the country's economic life.

In January-March 2023, we appeared in the following media:



In his own publication the Business Ombudsman highlighted the problem of law enforcers' pressure on Risoil agricultural company.



In the reporting quarter, the following mass media also wrote about BOC work activities:



УКРІНФОРМ

Forbes



hromadske

ЦЕНЗОР.НЕТ



УНІАН



TEXTY.ORG.UA

Юридична Газета
ВСЬОУКРАЇНСЬКЕ ПРОФЕСІЙНЕ КРАЄВЕ ВИДАННЯ

ЮРИДИЧНА
ПРАКТИКА
ГЛАВНА УПРАВЛІННЯ ЮСТИЦІЇ

interfax

Мінфін

AgroPortal

On March 10, 2023, Business Ombudsman Roman Waschuk, together with representatives of leading business associations, BOC Supervisory Board members, gave a press briefing in Media Center Ukraine on the results of the Council's own initiative investigation into problems with the VAT administration system.



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