

## Business Ombudsman Council's proposals on systemic issues to be resolved to improve Ukraine's investment climate and accelerate its recovery

BOC advises the Government of Ukraine to focus on the investment climate impact through the policy of reducing expenses/costs of doing business, eliminating risks and barriers to competition, in particular:

1. **Fundamental changes in the fiscal policy and tax administration** of the state <sup>1</sup>are necessary <sup>2</sup>, 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<sup>3, 4, 5, 6</sup>.
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**<sup>7</sup>. 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 sphere <sup>8</sup>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 classification<sup>9</sup>.
5. **To eliminate obstacles to hooking up businesses to electrical networks**<sup>10</sup>, in particular by <sup>11</sup>(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 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.

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<sup>1</sup> Systemic report "[Administering Taxes Paid by Business](#) "

<sup>2</sup> Systemic report "[Big Challenges for Small Business](#) "

<sup>3</sup> Systemic report "[Administering Taxes Paid by Business](#) "

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

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

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

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

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

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

<sup>10</sup> Systemic report "[Getting Access to Electricity](#) "

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

6. To help business to be informed, **to provide access to necessary information sources** <sup>12, 13</sup>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 <sup>14, 15</sup>.
8. **To improve the legal environment** and create new business opportunities <sup>16</sup>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 sphere <sup>17</sup>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** <sup>18</sup>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.

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<sup>12</sup>Systemic report "[Big Challenges for Small Business](#)"

<sup>13</sup>Systemic report "[Administering Taxes Paid by Business](#)"

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

<sup>15</sup>Systemic report "[Administering Taxes Paid by Business](#)"

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

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

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