



Business
OMBUDSMAN
Council

Q3 2023

Quarterly report

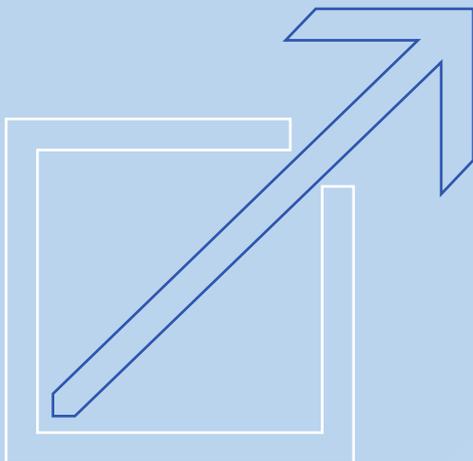
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2023



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The abbreviations “BOC” and the “Council” are used interchangeably throughout the text of the report to refer to the Business Ombudsman Council.

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



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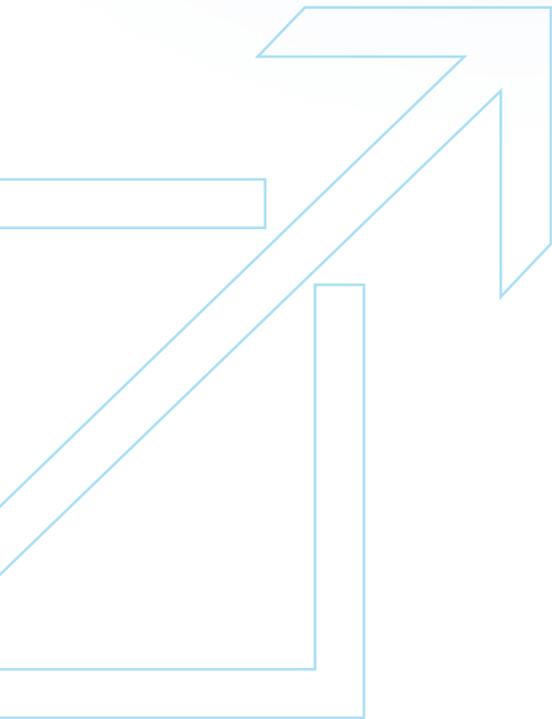


Roman Waschuk
Business
Ombudsman

Statistically and operationally, there is some good news to be found in our report on the Third Quarter of 2023: overall complaints are down, the mix has become somewhat less tax-heavy, persistent follow-up on our VAT own-initiative investigation is showing results, and work continues apace to adapt our legal and project structures to meeting the challenges of a Ukraine that is simultaneously fighting a war, starting to rebuild, and moving ahead decisively on European integration.

The adoption and presidential signature in August of Law 3311, which includes an article mentioning the institutionalization of the Business Ombudsman function, is a long-awaited step forward. Though different in scope from the full-scale law initially envisioned in 2014, its provisions provide an opportunity for our team to upgrade and streamline our foundational documents, working in collaboration with our stakeholders and especially the Cabinet office.

Not all is sweetness and light, though. The incremental return of formal tax audits, set to accelerate further later this year, has pushed complaints in that segment to the fore. Diligent inspection and a clampdown on tax optimization so aggressive as to amount to evasion – this is what the IFIs have in mind when they urge Ukraine to resume efforts to support revenue generation. What neither legitimate business nor international partners really want is the current spike in “gotcha!” fines and penalties based on formalities (typos, outdated codings) that see companies punished despite having already met their tax obligations in full. Complaints about Customs officials adjusting customs value (inevitably upward) are on the rise. Fortunately, the frequency of our communications and Expert Group meetings with Tax and Customs Services counterparts is also increasing, allowing us to bring cases to their attention more regularly and quickly.



Discussing reconstruction options with Ukrainian and international partners has been a memory-jogger regarding a major success story that we all now take for granted: construction permits. Back in 2016, we issued a systemic report on reducing corruption risks in the construction industry. Many of its recommendations were taken up during the transition from the old State Architectural-Construction Inspectorate to the new digitized State Inspectorate of Architecture and Urban Design. As a result, you'll find not a single complaint against this agency or concerning construction permits in this report – a good omen for the ambitious rebuilding plans that we've been discussing with Ukraine's Ministry and Agency for Restoration (though I personally feel "Renewal" reflects better what we're all hoping for).

So major change is possible. We just need to get the implementation right. An Ombudsman institution naturally tries to bridge the gap between Ukraine's often forward-leaning EU-inspired legislation, and the even more often risk-averse and recalcitrant public-facing officials encountered by business at the working and middle management level. So we have put our collective thinking caps on,

and will be working on a platform giving officials the comfort and reassurance they need to exercise common sense in public administration, without fear or favour. The imminent entry into force in 2024 of the Law on Administrative Procedure (more interesting than it sounds in providing more recourse options for businesses and citizens) provides an opportunity to make progress.

We are also looking to our updated Case Management System and the thousands of complaints filed and resolved within it, as a unique reality-based store of Big Data about the Ukrainian business environment. We are starting to use it not only for consistency in problem-solving, but to provide more real-time preventive or pre-emptive advice to our partners in government (living up to our status as a Consultative and Advisory Body of the Cabinet of Ministers of Ukraine), as well as to participants in the many conferences and roundtables scoping out Ukraine's way forward.

I hope that this latest report, with the new sections that we're introducing on our contributions to Ukraine's renewal and European integration, will help our many friends track and support our progress.



1 Q3 2023 in review

1.1 Key performance indicators

In July-September 2023



The financial effect
in Q3 reached

UAH
305.6
mn

The total
financial
effect
amounted
to

UAH
25
bn

TOP-3 subjects of appeals

57% Tax issues

13% Actions of law enforcement bodies

9% Customs issues

TOP-5 industries

30% Wholesale and distribution

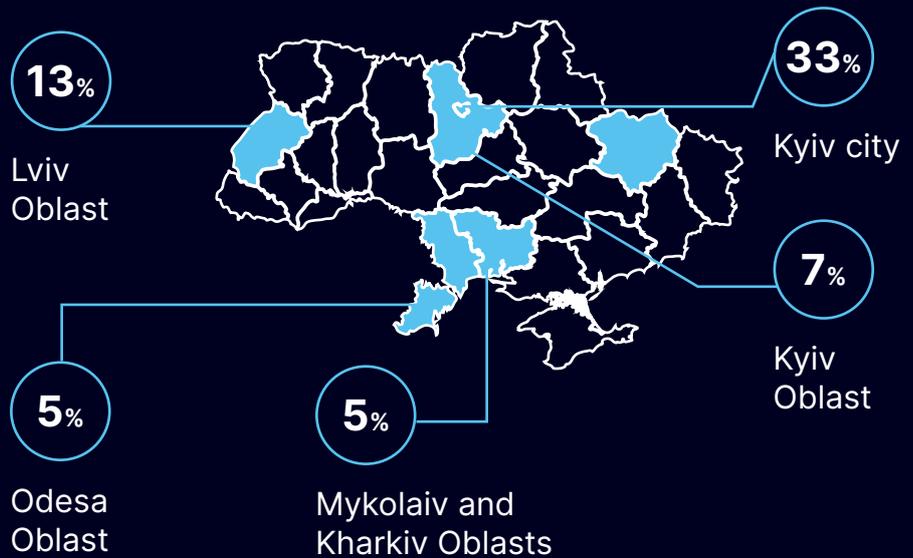
13% All types of production

13% Agriculture and mining

5% Real estate and construction

5% Private entrepreneurs

TOP-5 most active regions



Origin of capital



Business size



96%

of complainants were satisfied with BOC services in Q3.

97%

of complainants were satisfied with cooperation with BOC since launch of its operations



1.2 Volume and trends of complaints

In July-September 2023, the Business Ombudsman Council received 310 business complaints regarding abuses of state bodies. This is 51 fewer complaints than in Q2 and 18 fewer complaints as compared to Q1 2023.

Such a trend generally shows a positive dynamics of tackling business problems and taking into account the Council's recommendations to state bodies allowing to effectively overcome systemic malpractice episodes on the part of individual government agencies.

Tax issues	176
Tax audits	55
Non-enforcement of court decisions	38
Tax issues – other	27
Inclusion in risky taxpayers' list	27
Systemic VAT invoice suspension	20
Tax termination/renewal/refusal of VAT payers registration	4
Electronic VAT administration	3
Delay in VAT refund	2
Actions of law enforcement bodies	41
State Bureau of Investigation (SBI)	3
National Police procedural abuse	12
National Police inactivity	3
National Police – criminal case initiated	2
Prosecutor's Office bodies' procedural abuse	14
Prosecutor's Office inactivity	2
Prosecutor's Office – criminal case initiated	1
Security Service procedural abuse	1
Security Service inactivity	1
National Police – other	2
Customs issues	27
Customs valuation	20
Customs clearance (delay/refusal)	2
Customs payments refund	2
Customs – other	3

Tax issues

Tax issues comprise the majority of business complaints to BOC, however, the structure of this block underwent changes in the reporting quarter. In Q3, we observed a gradual decrease in the number of tax related appeals due to the positive dynamics in fixing problems with the SMKOR functioning. Thus, in July-September 2023, 176 or 58% of complaints concerned tax issues (as compared to about 70% in Q1 and Q2, 2023).

For the first time during the martial law tax audits hit the top in the complaints' ranking.

Analyzing the effectiveness of resolving "tax" cases in 2023, we faced a record number: in the first two quarters of the year, the Council managed to successfully resolve half of the complaints regarding tax audits findings appeal and have disputed notifications-decisions cancelled (55 in Q3 vs 42 in Q1, 2023).

Considering progress in implementing the Council's recommendations regarding the SMKOR adjustment based on our own initiative investigation results, the number of tax invoices suspension cases gradually decreased. Hence, in July-September, out of all the tax complaints, only 11% of complaints (20 out of 176) related to suspension, in contrast to Q1.

In 2023, there were 35% of them (80 out of 230). In general, the SMKOR-related problems (invoices suspension, inclusion in risky payers lists and non-enforcement of decisions on tax invoices registration) accounted for a little less than half of tax appeals (85 out of 176), while in the second quarter (April-June) we received 169 complaints about SMKOR (out of 230 "tax" complaints). Despite this, the situation has not yet been finally settled. You can read about the progress in implementing SMKOR related systemic recommendations by the Ministry of Finance and the STS on [pp. 16-18 of the report](#).

Finally, another noticeable category of entrepreneurs' complaints concerned other tax issues. These were individual complaints from companies fined by a tax authority, even though they took advantage of tax benefits introduced in the first months of the full-scale invasion of the Russian Federation. In addition, the Council had appeals from business oppressed by tax officials since it could not provide source documentation to which access had been lost or which had been destroyed as a result of hostilities. The Council carefully examines such complaints and makes efforts so that the tax office could find understanding with the complainant.



Actions of law enforcement bodies

In the reporting quarter, the number of complaints about law enforcement agencies' malpractice reached 13% (for comparison, in Q2 – 9%, and in Q1 2023 – 10%).

During July-September, entrepreneurs most often complained about procedural abuses of the National Police and the Prosecutor's Office. The appeals received by the Council concerned non-return of temporarily seized property or funds as a result of searches, ineffectiveness of pre-trial investigation, violations during investigative actions, launching groundless

criminal cases and disproportionality of actions of law enforcement officers in relation to entrepreneurs. At the same time, the largest number of complaints, which the Council had the competence to take up, were mainly related to non-return of temporarily seized property and the pre-trial investigation ineffectiveness, which included delays in considering petitions, conducting investigative actions, etc. This category of complaints can be resolved precisely thanks to the Expert Group format with the National Police and the Prosecutor General's Office.

Customs issues

In July-September, customs issues accounted for 9% of complaints to the Business Ombudsman (27 appeals), showing a slight increase compared to the previous quarter.

Preserving their relevance, customs issues confidently once again rank third in the TOP subjects of business complaints to BOC. Entrepreneurs complain about

problems dealing with customs valuation, as well as delay or refusal during customs clearance.

Companies are often faced with adjusting the customs value of goods allegedly due to discrepancies in documents. In such cases, the Council helps the business prove its case and confirm the declared price of the product.



“We welcome a positive result achieved in the tax notifications-decisions administrative appeal. The Business Ombudsman Council's team found additional arguments in the administrative appeal and participated in our company's complaint review. I am grateful for creativity and persistence in protecting rights of Rehau LLC and Ukrainian business on the whole”.

Rehau LLC

1.3 Timelines of the preliminary review of complaints

In Q3 2023, preliminary review of business complaints took an average of

9 working days.



We managed to meet the deadlines of our Rules of Procedure – 10 working days.

1.4 Number of investigations conducted and grounds for dismissing complaints

In Q3 2023, out of 310 complaints, BOC conducted 143 investigations. Forty-nine complaints remained at the preliminary assessment stage. The Council rejected 118 appeals as not fitting the Council's eligibility criteria foreseen by the institution's Rules of Procedure.



1.5 Main reasons for complaints dismissal in Q3 2023

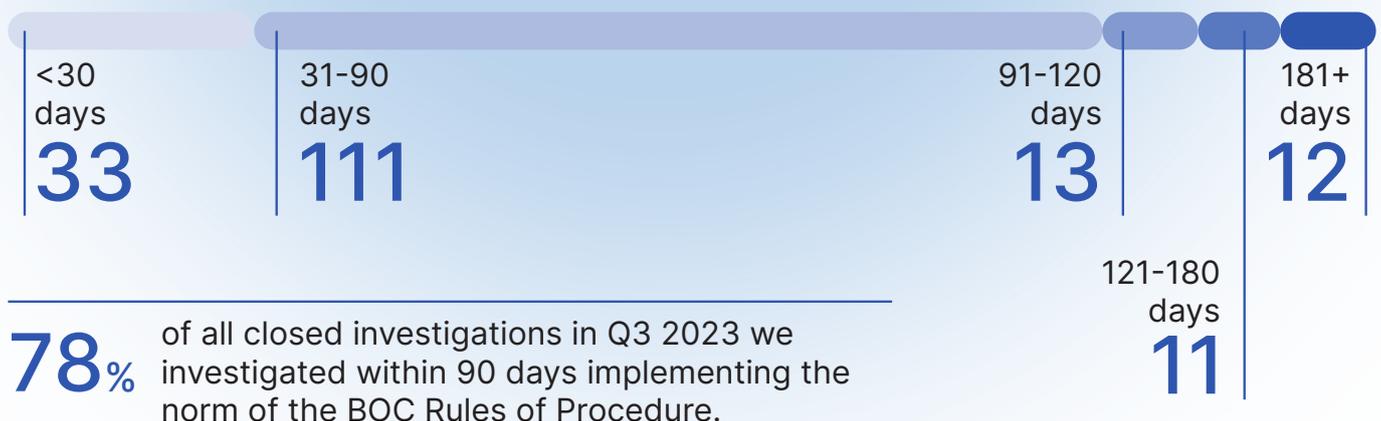
Total	118
Complaints outside Business Ombudsman's competence	72
In the opinion of the Business Ombudsman, the complaint is ungrounded, or other bodies or institutions already consider such a case	11
According to the Business Ombudsman, the Complainant did not provide sufficient cooperation	10
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	8
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	5
The complaint was withdrawn by the complainant	4
A complaint filed to the Council again after a decision was made to leave it without consideration, except when the complainant provides really new circumstances, or facts or substantial evidence	2
Other circumstances where the Business Ombudsman, in his sole and absolute discretion, determines that an investigation of the complaint is not necessary	2
The party affected by the alleged business malpractice has not exhausted at least one instance of an administrative appeal process available under the current legislation	2
A complaint relates to an issue that has already been addressed by the Business Ombudsman	1

1.6 Timelines of conducting investigations

The average duration of investigations was

77
days

which is 13 days less than the period stipulated by our Rules of Procedure.



1.7 Geography of complaints



Origin of capital

Ukrainian companies **80%**

Foreign companies **20%**

It was Ukrainian business that submitted 80% of complaints to the Council in the reporting quarter. The share of complaints from foreign businesses was only 20%.

Size of business

Large **39%**

Small and medium-sized **61%**

In the third quarter, small and medium-sized businesses made up the majority of complainants to the Business Ombudsman Council — 61%, while complaints from large companies accounted for 39% of appeals.

1.8 TOP-10 government agencies subject to the most complaints

State Tax Service	179
State Customs Service	27
National Police of Ukraine	20
State Enterprises	15
Prosecutor's Office of Ukraine	15
Local government authorities	10
Parliament, the Cabinet of Ministers, the President of Ukraine	6
Antimonopoly Committee of Ukraine	5
State Security Service	4
State Service of Ukraine on Food Safety and Consumer Protection	4
National Bureau of Investigation of Ukraine	3

In Q3 2023, business mostly complained about the State Tax Service (179 complaints) and the State Customs Service (27 complaints). The ranking is followed by the law enforcement bodies, such as the National Police (20 complaints) and the Prosecutor's Office (15 complaints).

1.9 Implementation of individual recommendations by state bodies

	Recommendations under monitoring from May 2015 till Q3 2023	Recommendations implemented by state bodies from May 2015 till Q3 2023	Number of recommendations issued to state bodies from May 2015 till Q3 2023
Total	22	4620	5047
State Tax Service and State Customs Service	8	3478	3704
National Police	4	222	268
Prosecutor General's Office	2	150	183
Local government authorities	2	118	157
Ministry of Justice	0	134	144
Ministry of Economy	1	76	86
Security Service of Ukraine	0	62	65
Ministry of Environmental Protection and Natural Resources	0	50	52
Ministry of Agrarian Policy and Food	0	40	45
State companies	0	38	41
Ministry for Communities and Territories Development	0	37	40
Parliament, the Cabinet of Ministers, the President of Ukraine	0	31	37

	Recommendations under monitoring from May 2015 till Q3 2023	Recommendations implemented by state bodies from May 2015 till Q3 2023	Number of recommendations issued to state bodies from May 2015 till Q3 2023
Ministry of Infrastructure	1	25	31
Ministry of Finance	0	23	29
State Service of Ukraine on Food Safety and Consumer Protection	1	16	18
Ministry of Health	0	14	17
Ministry of Internal Affairs	1	11	15
Ministry of Social Policy	0	12	13
National Commission for State Regulation of Energy and Public Utilities	0	12	13
Antimonopoly Committee	0	9	12
Ministry of Energy	0	11	11
State Bureau of Investigation	0	10	11
Commercial and other courts	0	8	8
National Anti-Corruption Bureau of Ukraine (NABU)	1	4	7
State Funds	0	3	6
National Bank	0	2	5
State Emergency Service of Ukraine	0	4	4
Ministry of Education	0	3	3
Communal services	0	2	2
Ministry of Defense	0	1	2
State Regulatory Service	0	1	2
Ministry of Digital Transformation	0	1	1
National Council of Ukraine on Television and Radio Broadcasting	0	1	1
State Border Guard Service of Ukraine	0	1	1
Other	1	10	13

Since launch of BOC operations, state bodies implemented 91% of the Council's individual recommendations. Such an indicator demonstrates readiness of state bodies to cooperate and uphold the Council's recommendations in solving controversial issues of entrepreneurs.

2

Problems in the VAT system:

monitoring implementation of recommendations by state bodies based on our own initiative investigation results

Having presented our own initiative investigation results on problems with the SMKOR functioning in March 2023, the Business Ombudsman Council keeps a close eye on monitoring the implementation progress of recommendations provided to the Ministry of Finance and the State Tax Service of Ukraine.



The Council recommended improving regulation in the VAT administration field.

In particular, the Council formulated its proposals to the Ministry of Finance and the STS in the form of 10 main recommendations and 20 technical ones. You can get familiar with them in the report based on our own initiative investigation results.

[Read the report](#)

1. Genuine automation and risk orientation
2. Analysis and forecasting
3. SMKOR safeguards
4. Administrative practice adjustment
5. Intermediate stages before applying adverse consequences to payers
6. Administrative appeal
7. Informing of risky counterparties
8. ΣDubious transactions
9. Riskiness of the payer: transparency, proportionality, effectiveness of procedures
10. Key indicators data availability

Long awaited [amendments to Decree No. 1165](#) were made by the Cabinet of Ministers in June 2023, which we noted in the last quarterly report. A **riskiness and tax data tables non-acceptance decisions appeal procedure** was introduced then – exactly this recommendation actively promoted by the Council since 2019, was finally taken into account.

Alongside this, implementation level of basic recommendations on SMKOR improvement remains insufficient, therefore the Business Ombudsman Council continues a dialogue with the Ministry of Finance and the STS and insists on eliminating shortcomings in the SMKOR functioning.

BOC assessment in relation to SMKOR recommendations implementation by state bodies

<p>Genuine automation and risk orientation</p> <p>50 </p>	<p>0 – strong disagreement;</p> <p>10 – there is agreement on a problem existence, but disagreement regarding the method and extreme riskiness of proposed mechanism for the state;</p>
<p>Analysis and forecasting</p> <p>40 </p>	<p>20 – big risks, but the problem needs a solution;</p>
<p>SMKOR safeguards</p> <p>40 </p>	<p>30 – agreement on a problem, the method is close to permissible, requires processing;</p>
<p>Administrative practice adjustment</p> <p>30 </p>	<p>40 – principal agreement on a problem, the method needs processing;</p>
<p>Intermediate stages before applying adverse consequences to payers</p> <p>50 </p>	<p>50 – principal agreement, partially implemented or already under legal regulation;</p>
<p>Administrative appeal</p> <p>100 </p>	<p>60 – principal agreement, significantly implemented;</p>
<p>Informing of risky counterparties</p> <p>80 </p>	<p>70 – changes accepted, but not yet entered into force // partially implemented without changes to the legislation;</p>
<p>ΣDubious transactions</p> <p>40 </p>	<p>80 – changes entered into force, but it is too early to give assessment of the result;</p>
<p>Riskiness of the payer: transparency, proportionality, effectiveness of procedures</p> <p>50 </p>	<p>90 – changes came into force and had a positive impact on the problem;</p>
<p>Key indicators data availability</p> <p>40 </p>	<p>100 – recommendation implemented.</p>

For example, in the evaluation of progress on recommendation No. 1 (genuine SMKOR automation), the Council sees a principal agreement of the State with a problem and largely positively assesses changes published by the Ministry of Finance on August 15, 2023 (not yet adopted) regarding expansion of payers' positive tax history indicators because it will lead to greater validation of TIs/AC based exactly on such automated algorithms rather than payers' tax data tables mostly dependent on a human (commission) decision.

Supporting constant communication with fiscal authorities, in the reporting quarter, the Business Ombudsman Council met with the management team of the [Ministry of Finance, State Tax Service of Ukraine](#) and the Chairman of the Verkhovna Rada of Ukraine Committee on Finance, Tax and Customs policy. The meeting was devoted to the VAT problem, BOC recommendations in this sphere and coming amendments to Decree No. 1165.

BOC notes a positive progress on the number of recommendations, particularly regarding:

- introduction of an administrative appeal of decisions on a payer's riskiness and tax data tables non-acceptance;
- improvement of analysis and forecasting functions relating to legislation amendments;
- active VRU involvement to solve problems;
- operations period limitation in TIs/ACs to consider a payer's riskiness issue (180 days);
- expansion of the positive tax history indicators list (expected in the nearest future);
- availability of data on key indicators (introducing a payer's profile) (expected in the nearest future).

We also observed positive dynamics when analyzing trends of business appeals to the Council in Q3 2023. The SMKOR-related issues accounted for slightly less than a half of tax block appeals (85 out of 176), while in Q2 we received 169 out of 230 tax complaints.

At the same time, **BOC points out that despite the decrease in the number tax invoices suspension episodes as**

compared to Q4 2022, stabilization stopped at a level 3-4 times higher from the desired one. According to the data for Q2 2023 (according to the statistics obtained from the STS of Ukraine at the request of the Council), 44,057 businesses faced suspension of TIs/ACs among 157,274 of those who submitted TIs/ACs for registration: that is 28%, and such statistics are unacceptable.



“AYU GROUP LLC would like to extend its sincere gratitude to the Business Ombudsman Council for highly professional assistance in considering the complaint regarding our company's risky VAT payer status assignment. The Business Ombudsman Council promptly and efficiently assisted in establishing productive communication with MD STS in Kyiv, which allowed us to prepare an explanation with the necessary information. As a result, we received a decision about non-compliance with risk criteria. We are grateful to the BOC for its support and help”.

AYU GROUP LLC

3

Examples of successfully completed investigations



Reservoirs maintenance: STS drops a fine worth UAH 1.2 mn for a well-known international gas stations network

As a result of the tax audit, the tax office charged a gas stations chain with a fine of UAH 1.2 mn as it allegedly sold fuel at one of Kyiv gas stations without using a cash register. Tax officials arrived at this conclusion due to the lack of fuel in the tanks when comparing its balance with the documents submitted for the audit.

The gas stations chain handed documents over to the tax authority confirming that at the time of the inspection, it was performing maintenance works on cleaning the tanks at the gas station.

The company challenged their decision on charging fines to the State Tax Service of Ukraine (STS of Ukraine).

During a joint review of the complaint with the participation of the tax authority and

the complainant, the Council drew attention to the fact that the gas stations chain had sent a notice to the tax authority about cleaning the tanks in advance.

As for the cash register use, the company had such a device installed at the gas station, but the fact of fuel sale was not proven by the tax authority. The primary documents confirmed that the company was only cleaning reservoirs, so there was no reasonable justification for the fine. Thus, the company did not violate the law on cash registers.

Therefore, the STS of Ukraine agreed with the fact that the company was cleaning the tanks and dropped the regional tax office's fine worth UAH 1.2 mn.



Salt importer from Romania – the decision to adjust the customs value dropped

The company imported salt from Romania and it was not the first time that it had encountered the customs value adjustment.

The company underwent an examination regarding imported salt price compliance with the current market situation in advance and attached a document with its results to the customs declaration.

While reviewing the documents submitted for customs clearance, the customs officer requested documents from the company relating to insurance costs and other payment/accounting papers without specifying exactly which documents should be provided. The company refused to provide additional documents, as it had provided the customs with a sufficient package of documents to determine the customs value of goods.

The customs then decided to adjust the value of goods, justifying that decision by the fact that the company did not apply for transportation and because of discrepancies between the statistical

value of goods (in the national currency of Romania) specified in the export customs declaration, and the invoice value shown in the invoice.

After receiving the complaint, the Business Ombudsman Council upheld the company and sent an appeal to the State Customs Service of Ukraine (SCS of Ukraine). Separately, BOC participated in the company's complaint review with the participation of the complainant and the customs authority. The Council noted that the company had paid for the goods in euro under the contract, so the difference in the national currency could have arisen due to fluctuations in the Romanian leu against euro. Therefore, such differences couldn't testify to imported salt declared price incorrectness.

Eventually, joint consideration of the company's complaint, thanks to BOC mediation, made it possible to positively resolve the case. The discrepancies in the documents were eliminated, and the customs dropped the decision to adjust the customs value of goods.



Benefits used. The tax authority accepts it and cancels fines

The Council at once received several complaints from Kyiv enterprises, which had been charged fines by the tax

authority, despite the fact that they used benefits. The property of the complainants is located in the city of Kyiv, and the

capital was included in the list of territories of active hostilities from 24.02.2022 to 30.04.2022. However, in each case, tax officials detected an understatement of land tax or real estate tax. As a result, the fines ranged from 500k to 1 mn hryvnias.

The Council has raised the issue of applying land and real estate tax benefits at the Expert Group with the State Tax Service of Ukraine (STS of Ukraine)

several times. In addition, for each complaint, BOC addressed a letter to the STS of Ukraine and asked to withdraw the tax notifications-decisions, because the companies did not violate the law. Separately, the STS of Ukraine considered administrative complaints of enterprises with the Council's participation.

In the end, thanks to the BOC mediation, the tax authority canceled the relevant real estate tax accruals and fines.



"Risky" supplier - buyer's tax credit saved

An agricultural company from Kyiv Oblast disagreed with the tax audit findings. According to tax officials, the company allegedly overstated the tax credit amount worth almost UAH 1 mn. That was because of a "risky" supplier and failure to confirm the reality of sunflower seed supply operations, based on the documents provided by the agricultural company.

As it turned out, due to the supplier's being "risky", tax authorities had already suspended tax invoices registration for transactions supply before. The Commission under the STS of Ukraine registered respective tax invoices. At the same time, the buyer's attempt to create a tax credit against such tax invoices encountered resistance from tax officials.

In a letter to the STS of Ukraine, the Council upheld the agricultural company's position and noted the need for forming a unified approach to the "riskiness" of the supplier both during the tax invoice monitoring procedure within the procedures provided for by Order No. 1165, and during the tax credit legality verification from the buyer. In addition, the Council noted inadmissibility of ignoring facts confirming the economic transaction as well as sufficiency of documents established as part of procedures under Procedure No. 1165 during tax audits.

The Council took part in complaint materials review with the participation of the complainant and the STS of Ukraine. Thanks to the successful mediation of the BOC, the STS of Ukraine agreed with all the arguments and canceled the contested tax notification-decision.



STS accepts the company's "lost" VAT declaration

At the end of February 2023, the Main Department of the STS in the city of Kyiv (MD STS) refused accepting the company's income tax declaration for 2022. It was all because the complainant was allegedly not an income tax payer, since he had been on the simplified taxation system since 2016, and therefore was not entitled to submit respective declarations. However, the company reported that the year before - in March 2022 it had submitted an application to waive the single tax through the e-office. Since the legislation did not set a clear time frame for considering such an application, the entrepreneur, not having received a refusal to satisfy his application within a year, expected the tax office not to have any objections, so he had switched from the simplified to the general taxation system since April 2022.

While working on the case, BOC participated in reviewing the company's administrative complaint materials and repeatedly discussed the case at the Expert Group meetings with the STS and

the MD STS. It turned out that the capital's tax officials, for objective reasons, did not timely process the application submitted by the complainant in March 2022, that is, at the beginning of the full-scale war. Therefore, the company, without knowing it itself, was further considered a single tax payer. Moreover, in the course of investigating the complaint, the MD STS also decided to exclude the company from the Single Tax Payers Register from April 2023 because of the debt.

Subsequently, the STS managed to find the application submitted by the complainant in March 2022. Since it was drawn up correctly, the STS satisfied the payer's original complaint and canceled the MD STS decision to refuse accepting the income tax return, while obliging the regional tax office to correct the information about the enterprise in the Single Tax Payers Register. This made it possible to restore justice and retrospectively switch the payer to the general taxation system from April 2022.



The STS confirms company's right to budget refund worth UAH 386k

According to the audit results, the tax office detected that the company allegedly overestimated the amount of the budget

compensation by 386k UAH. The company disagreed with the results of the tax audit and successfully challenged its results

in court. However, the tax office delayed displaying information about the budget refund consistency in the relevant register.

While investigating the company's case, BOC turned to the relevant interregional State Tax Service department for work with large taxpayers and submitted a complaint for joint consideration by the Expert Group. The Council emphasized that according to the Tax Code, the specified amount of budget compensation should be considered as agreed in the Register of

applications for the return of the budget compensation amount from the date of recognition of tax notifications-decisions as illegal and/or cancelled.

A comforting piece of news arrived later – after the meeting of the Expert Group with the BOC participation, the tax office reflected the amount of budget compensation in the amount of 386k UAH as consistent and soon the specified funds were transferred to the taxpayer's bank account.



Construction equipment supplier returns UAH 131k of customs duties and UAH 289k of VAT

A construction equipment supplier complained to the Business Ombudsman Council about the decision of Lviv Customs. It turned out that during fire bricks clearance, customs officers adjusted the customs value of goods due to discrepancies in the documents submitted for customs clearance to confirm the declared value.

The company tried to challenge actions of Lviv customs officials on its own and submitted additional documents, but the regional customs refused to change its decision.

To help the company, BOC participated in the company's administrative complaint

review with the State Customs Service of Ukraine (SCS). The SCS noted the company did not provide all the documents important for considering the complaint, so it additionally sent the company a detailed request, having suspended the complaint consideration period for 20 days. The company provided all the requested documents, particularly an invoice with explanations about its drawing up peculiarities and terms of payment for goods and expenses related to its transportation.

As a result, the SCS satisfied the company's complaint. Consequently, the company managed to return UAH 131k of customs duties and UAH 289k of VAT.



Return from occupation and to VAT and group four single tax payer status

From the first days of the full-scale invasion of the Russian Federation into Ukraine, an agricultural company from the city of Vovchansk, Kharkiv region, found itself under occupation. Subsequently, the company took advantage of tax benefits adopted by the Government in the spring of 2022 and switched to paying a group 3 single tax at the rate of 2%, which did not include the VAT payment.

After the de-occupation of Kharkiv Oblast, in March 2023, the company decided to start a partial sowing campaign. Since most of the seed material and plant protection products were purchased in 2021 with deferred payment, the company had substantial debts to counterparties. Also, approximately 40% of the land bank of the agricultural enterprise is located in close proximity to the Russian Federation border, where it had been impossible to plant crops for the second year.

Nevertheless, the company managed to agree with the counterparty on obtaining plant protection products for 2023 sunflower crop with a deferred payment, provided that the counterparty returned protection products for 2022 wheat harvest.

To return plant protection agents supplied to the company even before the war, it was necessary to register the adjustment calculation to the previously drawn up tax invoice. In practice, only a VAT payer can do it. In connection with this, there was

an objective need to return the single tax group 4 payer and a VAT payer status. The company sent the application and documents to the tax authority through the payer's e-office to confirm the group 4 single tax payer status. However, in response to the taxpayer's request, the tax office informed the company that it would be able to return to group 4 no earlier than after two calendar years, given general restrictions set for agricultural enterprises in the Tax Code of Ukraine.

The Council drew the tax authorities' attention to the fact that according to the amendments to the Transitional Provisions of the Tax Code of November 2022, the payer could independently refuse to stay in the 3rd group of the single tax at the rate of 2% and return to the taxation system in which he was before. At the same time, a two-year limit for group 4 single tax payers did not apply in that case.

The Council helped the complainant establish constructive communication with tax authorities on this issue. It turned out that at that time the regional tax authority had limited technical functionality for proper processing of the payer's application to refuse group 3 single tax at the rate of 2%. Finally, after enlisting methodical help of the STS of Ukraine, within a month, local tax officials updated the data on the company's registration as a VAT payer, and also confirmed the group 4 single tax payer status for 2023.



Ungrounded doubling of the customs value of imported tableware cancelled

Back in December 2021, the Council was approached by a Ukrainian importing company that imported various types of tableware from Bulgaria, manufactured by the parent company, i.e. an affiliated company.

At that time already, the customs office resorted to adjusting the customs value of imported tableware, increasing its value almost twice, and that was becoming systematic. The customs doubted the goods price as well as pointed on discrepancies in the documents.

The Council organized a tripartite meeting with the local customs and the importer to find out what were the reasons for the systematic adjustment of the customs value of the company's goods and how to overcome doubts of the customs.

Since the exporter-manufacturer had different registration of goods at higher prices than with the importer-subsiary, the parties agreed that the local customs would make a request through the State Customs Service of Ukraine to the National Customs Agency of the Republic of Bulgaria to check information on possible discrepancies.

In view of the full-scale invasion of the Russian Federation into Ukraine, the work on the complaint was forcibly suspended during the restructuring of the Council to consider issues related primarily to martial law.

However, with the resumption of the Council's activities in accordance with the Rules of Procedure at the end of autumn 2022, we found out that the practice of adjusting the customs value of the importer's supplies had not changed, and in some cases the amount of the increase had become even larger compared to previous periods.

At that time, the importer already had a considerable number of successful precedents for challenging decisions on customs value adjustment in court, and that number was only growing.

Then the Council directly engaged the State Customs Service of Ukraine and recommended that the importer file complaints about the latest decisions on the customs value adjustment. In addition, the Council handed the case over for joint consideration of the BOC Expert Group and the State Customs Service of Ukraine.

As a result, the customs authority explained which additional documents the importer had to provide.

In cooperation with the EU Public Finance Management Support Program for Ukraine (EU4PFM) the Council was able to find out details of the reply letter from the Bulgarian customs agency, which for unknown reasons, had never been received by the Ukrainian recipient since September 2022.

The Council immediately requested assistance from the Embassy of Ukraine in the Republic of Bulgaria, which promptly communicated with the relevant customs authority. And after a while it was possible to find the necessary materials – a letter from the National Customs Agency of the Republic of Bulgaria, which confirmed authenticity of documents from the exporter and absence of any discrepancies.

In late April 2023, the State Customs Service of Ukraine satisfied the importer's complaints and canceled the adjustment decision. In just one month, about a dozen deliveries of Bulgarian tableware to Ukraine was smoothly cleared.

According to the importer's estimates, the company managed to save over UAH 1 mn.

4 Contribution of BOC to the Eurointegration and restoration of Ukraine

A full-scale invasion of Russian Federation in Ukraine and a long war outbreak clearly outlined a European path irreversibility before the state. With the acquisition of the EU candidate status in the summer of 2022, Ukraine accelerated European integration processes and with gradual deoccupation of territories captured by the enemy issues of reconstruction and post-war restoration of affected regions which will be implemented in line with the best EU practices arose.



Since the establishment of the Business Ombudsman Council as a consultative and advisory body, it had been working side by side with the Government of Ukraine, providing support and systemic recommendations for improving business climate and harmonizing Ukrainian legislation with the EU acquis. In eight years, the Council published 18 thematic systemic reports in which recommendations for eliminating barriers when doing business were issued to state bodies. So, for example, the Council contributed to **cancelling import and export special sanctions, simplifying procedures and digitizing processes in receiving construction permits, improving**

tax, customs, and antimonopoly legislation and, in particular, adopting the law on the administrative procedure eventually introducing state bodies' decisions appeal mechanism. In addition, since 2017, BOC is represented in the **International Trade Council under the Cabinet of Ministers** being the only coordinating body for developing international trade of Ukraine and integration in the European joint market.

Given military work conditions of both government officials and entrepreneurs themselves, the Council adapts to urgent changes in the field of doing business taking into account current

business environment challenges and obligations to international partners. The Council earlier presented TOP 10 relevant recommendations in a report published at the beginning of 2023.

While monitoring implementation of these recommendations, BOC is getting ready for expanding the toolkit to support entrepreneurs and identifies three strategic areas of work meant to strengthen prospects of Ukraine in acquiring the EU membership and promote the reconstruction as soon as possible. In the following sections, we will specify the Council's activities in these areas and share operational results in the future reports.

1. European integration

Strengthening and applying the rule of law principle is a fundamental goal of Ukraine on the way to implementation its European integration aspirations. Therefore, the Business Ombudsman Council, having longtime experience in the legal field, offers the Government its expertise in Ukraine's legislation approximation to EU acquis. The institution actively joins working groups and initiatives in areas related to both developing favorable conditions for doing business and aligning them with the European standards.

In the reporting quarter, the following initiatives were in the Council's focus:

Enactment of the Law on the Administrative Procedure

The Business Ombudsman Council's systemic work towards administrative procedures improvement continues to ensure implementation of recommendations issued back in 2019 concerning administrative appeal mechanism introduction. We would like to remind, the Law on the administrative procedure was adopted by the Verkhovna Rada at the end of 2021 and it is to enter into force in December 2023.

Jointly with the SIGMA analytical center experts and the EU4PAR project, BOC is involved in the work groups at the Cabinet Ministers of Ukraine Secretariat set up to elaborate proposals of introducing amendments to the Tax Code. Such proposals have to ensure effective implementation of guarantees provided by the Law of Ukraine "On the Administrative Procedure" in relations of business with the State Tax Service authorities. By joining the proposals development, the Council aims to extensively implement and consolidate European values in the public administration field, the rule of law and good governance principle, as well as expand business opportunities in tax administration procedures.

Under no circumstances the tax sphere can be excluded from the scope of the law on administrative procedure.



Changes in customs legislation

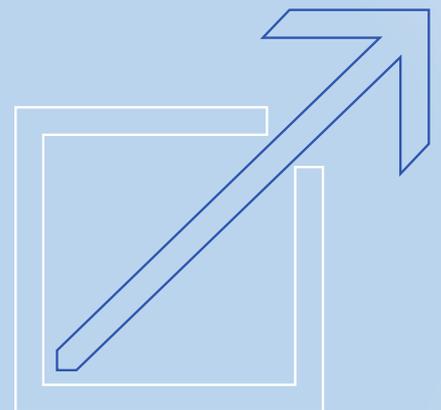
Customs legislation harmonization with the EU law as well as making amendments to the Customs Code shall ensure implementation of a significant part of the Association Agreement provisions. In addition, these amendments have to facilitate transit procedures in trading Ukrainian goods with EU countries.

Now the Council's experts are involved in the dialogue of developing relevant amendments to the Customs Code. In the reporting quarter, BOC participated in a thematic round table, organized by the State Customs Service of Ukraine. The Council gave its proposals and comments concerning peculiarities of implementing the Law No. 3229- I on NCTS system functioning (common transit).

Developing Fair Law Enforcement Principles Declaration

The Business Ombudsman Council consistently implements the European legislation norms and helps business protect its legal rights before the state. In its practice, the Council has frequently encountered the problem of law enforcement, because in numerous business disputes with state bodies, the problem lies precisely in the legislation interpretation, when a state body, exercising its discretionary powers, interprets this or that norm in its favor.

That is why the Council started developing the **Fair Law Enforcement Principles Declaration**. The purpose of this initiatives is to practically demonstrate "good governance" together with public officials and to improve legislation enforcement that has to consider good administration principles. State bodies have to follow these principles in accordance with the Association Agreement provisions. The Declaration should become a guideline by analogy with the Judge Over Your Shoulder recommendations existing in Anglo-Saxon law countries.



2. Getting ready for restoration

Cooperation with the Ministry for Restoration and the Restoration Agency



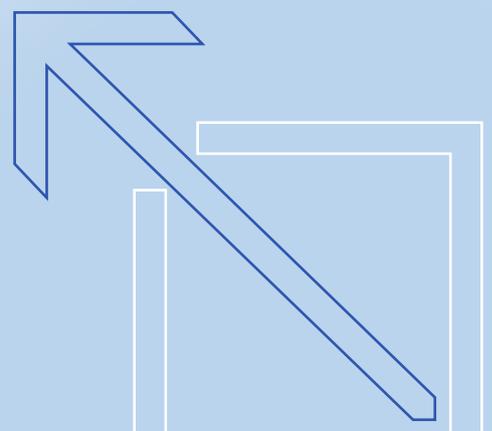
To develop transparent conditions for engaging business in recovery processes, the Business Ombudsman Council established cooperation with the State Agency for Restoration and Infrastructure Development of Ukraine (Restoration Agency). At the beginning of the year, the parties concluded a Memorandum of Partnership. The Council undertook to protect recovery process participants, in case of abuse by state bodies at reconstruction projects implementation stage.

To familiarize business with activities of the newly created Agency and current tenders, in August the Council arranged a meeting of the Restoration Agency management team with European Business Association representatives. The meeting was opened by the Business Ombudsman of Ukraine and Deputy Head of the Restoration Agency, while the discussion itself was moderated by the Deputy Business Ombudsman. Over 30 EBA member companies-representatives participated in the meeting.

Thanks to arranged discussions, the Agency received offers from participating companies on eliminating obstacles for national and international business to participate in the future recovery projects.

BOC also provides informational support to the Restoration Agency and shares damaged infrastructure restoration tender announcements using its resources.

In addition, the Council supports a dialogue with the Ministry of Infrastructure of Ukraine, now known as the Ministry for Restoration. In the reporting quarter, the Business Ombudsman met with the Minister of Infrastructure and his Deputy and discussed directions of cooperation between institutions in recovery processes adjustment and work aspects where the Council's experience could come in handy. The parties agreed on next steps for deepening cooperation. Apart from that, Roman Waschuk also took part in the first meeting of the advisory group at the Ministry which in the end of September gathered interested parties in renewal namely business from Europe, North America, Asia and Australia.



3. Business integrity and corruption prevention

Given new realities in which Ukraine is daily struggling for the right to independent existence, fighting against corruption remains a pressing obligation not only on the way to further integration and Ukraine's accession to the European Union, but also effective recovery from Russian Federation full-scale aggression consequences. Moreover, **State Anti-Corruption Strategy for 2021-2025** was legally approved in Ukraine, certain provisions of which directly fall within BOC scope of work.

Considering the current Memorandum of Partnership between institutions, the Council continues cooperating with NACP in promoting integrity ideas in entrepreneurial activities and preventing state bodies' malpractice in relation to the private sector.

In the reporting quarter, the Council joined the development of the online course "How the State Interacts: Learn, Communicate, Change", initiated by the NACP Integrity Office. In particular, the Council supplemented the theoretical part of the course with examples of state bodies' malpractice classification which our institution faced in its work.

Creating favorable conditions of doing business in Ukraine is connected not only with entrepreneurial activities effective state regulation, but also with the development of a healthy, ethical business environment, fair competition, honest payment of taxes, quality services provisioning, etc. The driver of these changes is the private sector itself, stimulation of which is one of the priority tasks for the

Government. In order to ensure better protection of business from malpractice in the tax sphere, the Council started cooperation with the NACP regarding identification of corruption risks in the proposed changes to the legislation.

Thus, in the reporting quarter BOC participated in the meeting of the NACP on implementing an intangible incentives system to stimulate business integrity. The Council also joined the panel discussions "Responsible Behavior of Business for Ukraine Post-War Recovery Period: Appeal from Civil Society" organized by EU MSCA4UKRAINE project 'Solidarity as Responsible Business Conduct: beyond Corporate Respect for Human Rights'.



5

Legislative enshrinement

of the Business Ombudsman's activities

In September 2023, the President of Ukraine signed a Draft Law No. 3311-IX on state support for investment projects with considerable investments in Ukraine. The provision on the Business Ombudsman as an advocate for the rights of entrepreneurs and a mediator in business disputes with the state was finally integrated into the law.

In eight years of BOC activities, deputies worked out a few versions of the draft law on the Business Ombudsman Institution. After all, it was necessary to regulate the Business Ombudsman activities at the state level for the institution's sustainability, strengthening its status as well as expanding opportunities to protect business.

With the adoption of the law on investment "nannies", the long-awaited by all stakeholders Business Ombudsman's status enshrinement at the legislative level finally came to life. Inclusion of the provision on the Business Ombudsman in the investment "nannies" law is a positive signal for both domestic and foreign investors in the context of not only creating more favorable business conditions, but also the process of reconstruction, which the Business Ombudsman Council has already joined.

Enshrining in the law was initiated by the Verkhovna Rada's Committee on Economic Development, particularly its Head Dmytro Natalukha, Deputy Head Dmytro Kysylevskyi, and Head of the Subcommittee on Interaction Between the State, Business and Investments Ihor Marchuk.

The following step would be updating of the relevant Resolution of the Cabmin.



6

Cooperation with stakeholders

6.1 Dialogue with state bodies

One of the key BOC tasks is to ensure an effective systemic dialogue of business with state bodies, in particular the Presidential Office and the Government of Ukraine, and to promote the establishment of more favorable conditions of doing business in the country.

In the reporting quarter, the Platform for consideration of problematic issues between business and law enforcement agencies under the President of Ukraine launched its operations. The new structure was headed by the Deputy Head of the Presidential Office, Rostyslav Shurma, and the Business Ombudsman was invited to join the coordination platform. Since its launch, the Business Ombudsman two times personally accompanied the complainants and their cases before the Commission.

In addition, in Q3, a number of meetings of the Business Ombudsman Council dedicated to current business problems and finding ways to solve them were held with government bodies.

Prime Minister
Denys Shmyhal



Ministry of Economy –
Oleksiy Sobolev,
Deputy Minister of
Economy on Digital
Development and
Transformation



The Verkhovna
Rada – Danylo
Hetmatsev,
Chairman of the
Verkhovna Rada
Committee on
Finance, Taxation
and Customs Policy



Ministry of Health



Raidership Prevention Office



State Bureau of Investigation



Ministry of Infrastructure



Bureau of Economic Security



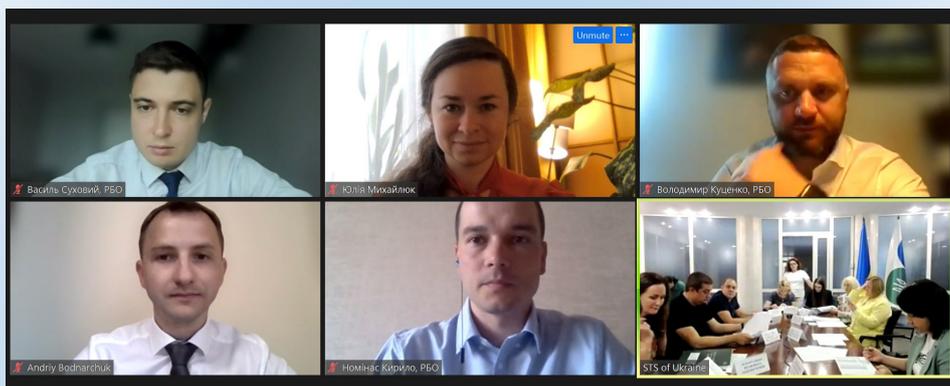
“We are very grateful to the Business Ombudsman Council’s staff for successful resolution of our complaint. After a five-month struggle for justice, we are able to resume our economic activities to continue paying taxes to ensure livelihoods of our country waging a military struggle against the aggressor for the rapid restoration of peace throughout the territory of Ukraine and the return of our compatriots to normal life as well as reconstruction of regions that suffered from military operations”.

YUNA-TRADING LLC

6.2 Expert Groups

The Expert Groups format operates on the basis of Memoranda of Partnership and Cooperation, which the Council concluded with the relevant state bodies at various times. **The Council quarterly reports on the results of the Expert Groups meetings.**

	Number of meetings (Q3 2023)	Number of considered cases (Q3 2023)
State Tax Service	3	99
Main Department of the STS in Kyiv city	4	30
Main Department of the STS in Kyiv Oblast	2	7
Prosecutor General's Office	1	12
Security Service of Ukraine	1	2
State Customs Service	2	6



The investigators regularly communicate with representatives of regional offices of the STS of Ukraine through communication platforms in order to speed up the resolution of business complaints. In the reporting quarter, BOC held working meetings with the **Main Departments of the STS in Kirovohrad, Lviv, Volyn, Kharkiv, Zaporizhia, Mykolaiv, and Odesa regions.**

6.3 Webinars project with the Entrepreneurship Development and Export Promotion Office and Diia.Business

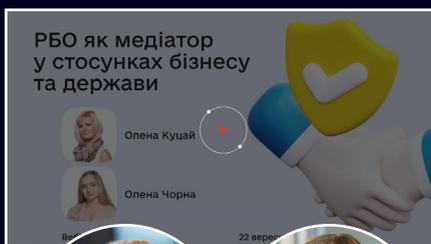
The Business Ombudsman Council is actively developing cooperation with the Entrepreneurship Development and Export Promotion Office and the national Diia.Business project.

In the reporting quarter, in partnership with the Entrepreneurship Development and Export Promotion Office and Diia.Business, the Council implemented a joint project of webinars. The project aimed to support business with advice from the Council's investigators on the settlement of common issues in interaction with the tax and customs authorities.

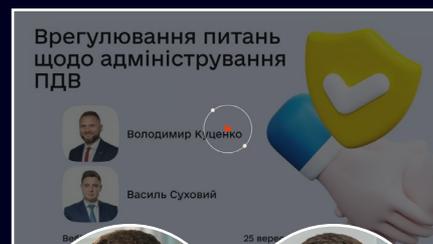


Three webinars took place within the project:

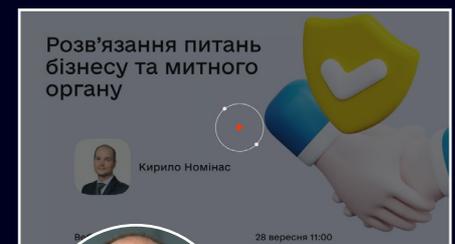
BOC as a Mediator in Business vis-à-vis State Relations



Settling VAT Administration Issues



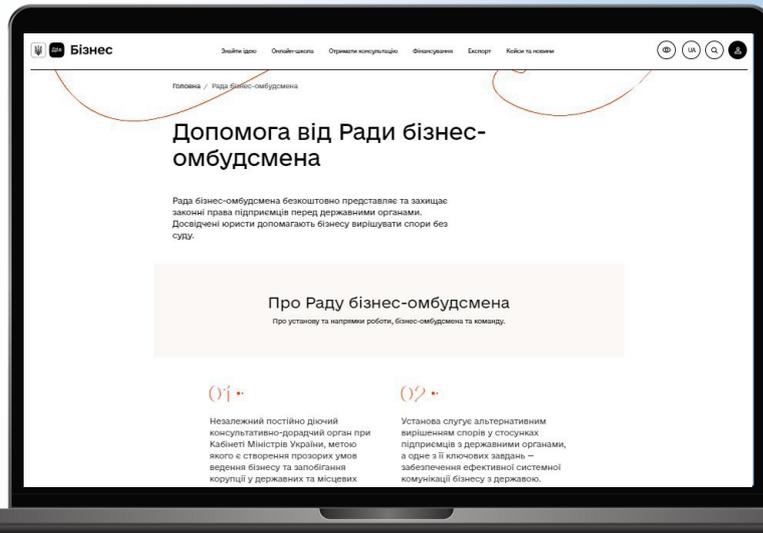
Solving Business and Customs Issues



“We are sincerely grateful to the Business Ombudsman Council for supporting Ukrainian business in such tough times for the state, for functioning of the joint Expert Group with the State Tax Service of Ukraine for a detailed analysis of the situation with the Company, for advice and recommendations provided as regards the Company's activities coverage in communication with tax authorities. We managed to prove the groundlessness of our inclusion in the risky list”.

RWS FOREST LAND LLC

It is worth reminding that BOC is presented on **the official Diia.Business web portal**.



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

In August, the Council supported the survey on the state, needs and prospects of business, performed by the Innovation Development Center, the Entrepreneurship Development and Export Promotion Office, national Diia. Business project and Advanter Group.

6.4 Interaction with ICC Ukraine

The Ukrainian National Committee of the International Chamber of Commerce - ICC Ukraine celebrated its 25th anniversary in September 2023. The Business Ombudsman was thanked for his contribution to the development of the Ukrainian economy and creation of a favorable business environment at a special event on this occasion.



6.5 Events Calendar

06.07.2023

Discussion "London Recovery Conference: Will there be projects, and the funding?"

The Center for Economic Strategy (CES) jointly with the German Economic Team (GET)

14.07.2023

Conference "Recovery of Ukraine – Energy-Efficient Construction and Economic Policy"

Ukrainian Business Council, National Business Coalition

26.07.2023



Panel discussion "New Country"
Livyi Bereh Publishing House

04.08.2023



"Winning Ukraine's Future: A Transparent and Accountable Recovery"
Conference
Ministry for Communities and Territories Development USAID SACCI project

10.08.2023



Roundtable Discussion devoted to practical legislation implementation issues when granting enterprises the status of Authorized Economic Operator (AEO)

State Customs Service of Ukraine

20.08.2023



Special event of Ukrainian Women Congress
Ukrainian Women's Congress

24.08.2023



Crimean Platform "Economic Recovery and Reconstruction of Crimea"
Government of Ukraine

13.09.2023



Business Protection Forum
Yurydychna Praktyka Publishing House

20.09.2023

Meeting of Advisory Group on Business Involvement in the Recovery Process
Ministry of Infrastructure of Ukraine

21.09.2023



XII Tax Forum
Ukrainian Bar Association

21.09.2023

Conference "Institutional changes and human capital renewal – a way to Ukraine's reconstruction"

Association of Taxpayers of Ukraine

25.09.2023

Nomination Committee meeting
Government of Ukraine

26.09.2023

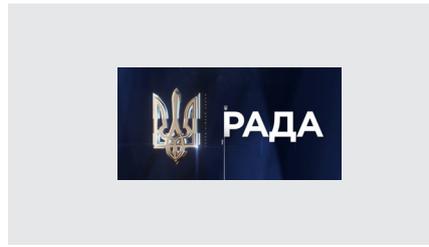
Energy of Business Forum
Forbes Ukraine

28.09.2023

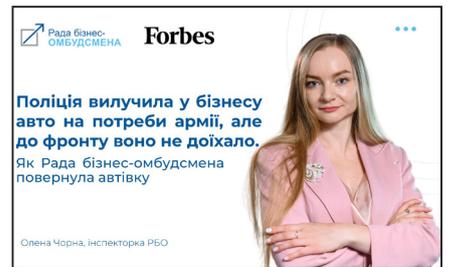
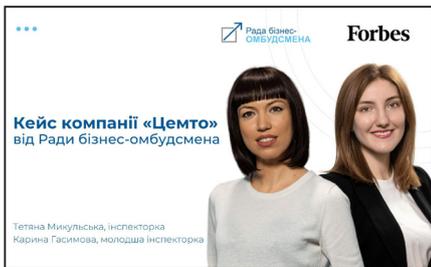


2nd EU Accession Exchange Forum
New Europe Center

TV:



Cooperation with Forbes Ukraine Forbes



Within the framework of cooperation with Forbes Ukraine, the Council launched a series of materials where it tells various stories of businesses that turned to BOC for assistance in overcoming malpractice episodes on part of state bodies.

In Q3, the Forbes published three such materials.

Cooperation with Business Ukraine



In September 2023, the Business Ukraine magazine was released for the first time since the beginning of the full-scale war. A separate page of the magazine was dedicated to the Business Ombudsman Council and its services for business.

Meeting with media

In July 2023, the Business Ombudsman Roman Waschuk met with representatives of leading Ukrainian media outlets to present the results of Q2 2023 and discuss current business problems and business climate trends.

The Council is open to communication with the media and is always willing to receive journalists in its office.

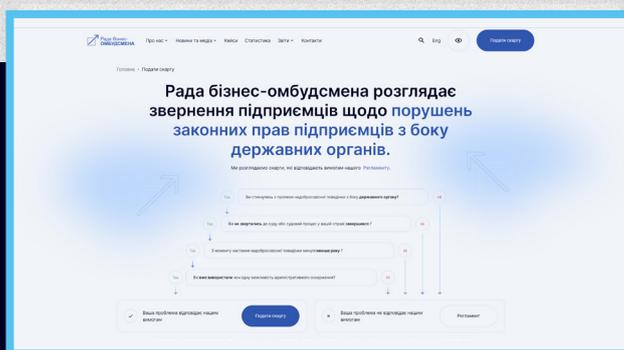
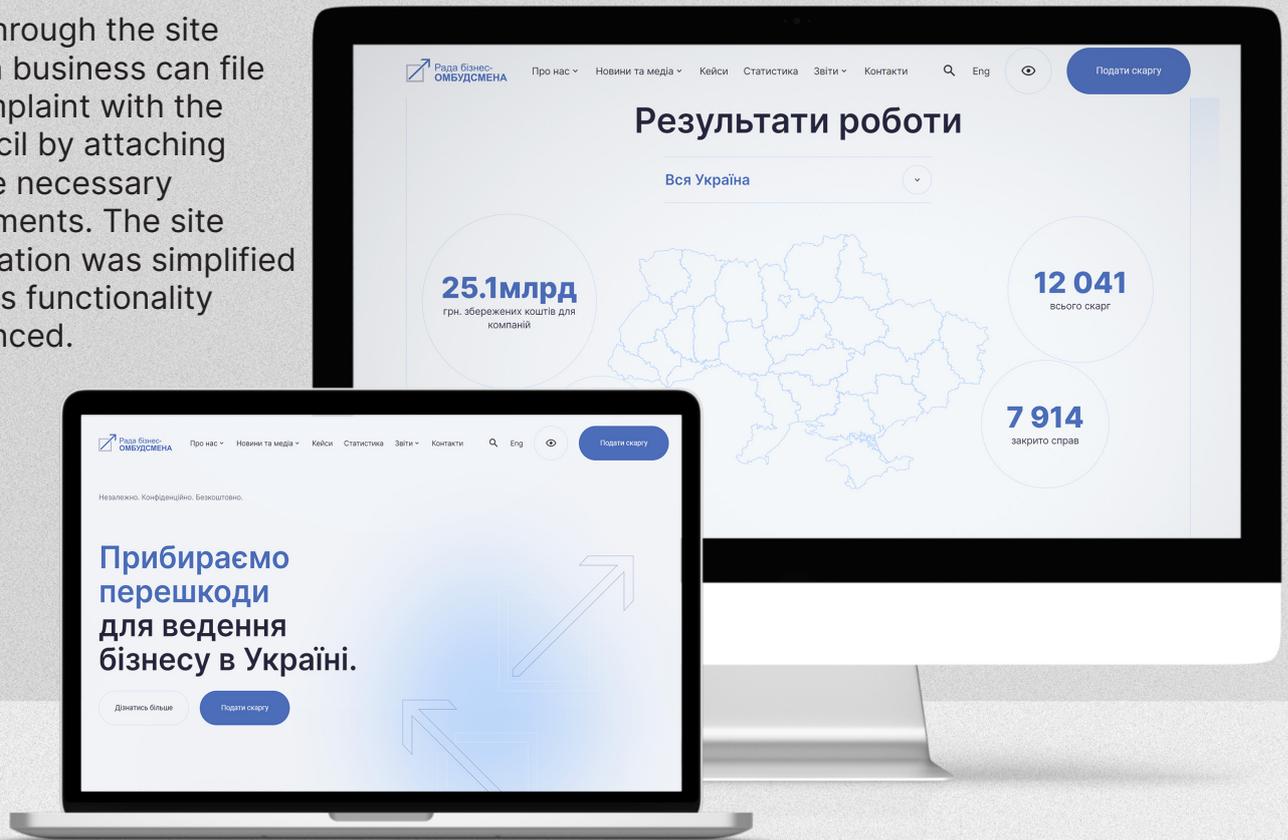


6.7 Website relaunch

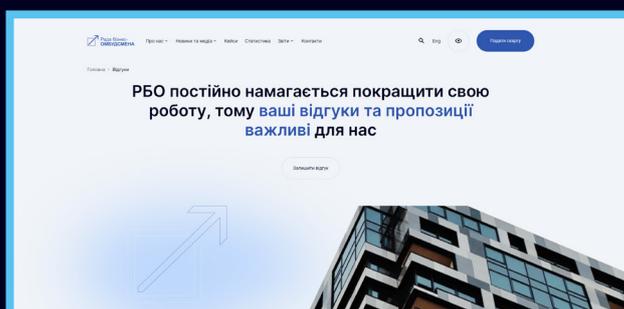
The Business Ombudsman Council has relaunched its main digital platform

boi.org.ua

It is through the site that a business can file a complaint with the Council by attaching all the necessary documents. The site navigation was simplified and its functionality enhanced.



The form for filing a complaint has been improved, as well as graphics appeared, allowing to assess the appeal's compliance with the Council's Rules of Procedure eligibility criteria.



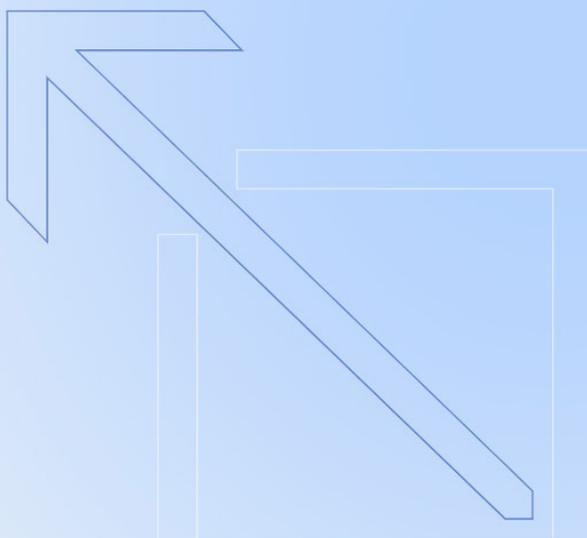
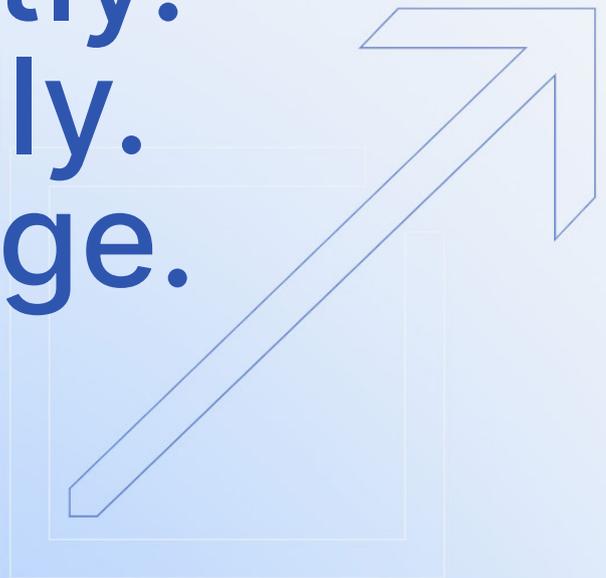
The site also gives an opportunity to leave feedback on cooperation with the Council and subscribe to the BOC newsletter.

Welcome to the updated BOC website!



Business
OMBUDSMAN
Council

**Independently.
Confidentially.
Free of charge.**



www.boi.org.ua