

Q4 2023

Quarterly report

October 1 – December 31,
2023

Report focus:
**Administrative
procedure**



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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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Foreword



Roman Waschuk
Business
Ombudsman

It's time to sum up the results of 2023, which became, on the one hand, a tough year of protracted war, and on the other hand, a year of renewed economic growth, overfulfillment of tax collections and a rapid breakthrough towards Ukraine's European integration.

For business, the past year was also a period of unpredictability in tax administration, pressure of law enforcement bodies on business and the usual problems at customs.

The VAT system remained the biggest bag of hurt for entrepreneurs. Back in March 2023, the Business

Ombudsman Council issued its own-initiative investigation report results around problems with massively suspended invoices in the System of monitoring tax invoices' compliance with risk degree assessment criteria (SMKOR). Three rounds of attempts by the State Tax Service to fix the system algorithms and pull it back from manual control through technical improvements are behind.

However, despite the fact that the worst impacts have been mitigated, as of December, over 20% of active tax payers are facing tax invoice suspension, which is three times higher

than our target level. We continue to actively monitor the situation, and by the anniversary of our report, will see whether December amendments to Decree No. 1165 will be able to reduce business frustration.

In the meantime, complaints about far-fetched tax audits become more frequent. This issue is particularly relevant for companies that suffered russian attacks and lost their primary documentation. However, even having a positive tax history doesn't mean one's problems with the tax office disappear. In fact, it sometimes looks like there is a special form of punishment for bona fide

taxpayers... Unfortunately, we are still talking about a selective approach to tax administration. Audits themselves will become a focus of the Council's own-initiative investigation we have already launched.

There's a similar situation in business relations with law enforcement. At the Expert Group with the Prosecutor General's Office, we often discuss cases when temporarily seized property or funds as a result of searches are not returned for a long time. Law enforcement problems of Ukrainian business directly derive from incorrect and poor public governance. A system in which almost every company is treated as a violator of some rule in one way or another

(despite even the most diligent compliance efforts) is a system where law enforcement has the opportunity and the temptation to take the uncooperative in hand.

That is why we have developed a framework "Declaration on Fair and Reasonable Administration", according to which state bodies should first consult and listen to business before punishing it. We keep developing these initiatives in the first quarter of 2024.

Alongside this, a significant win in the reporting quarter was entry into force of the law on the administrative procedure. The law, the adoption of which the Council has been promoting since

2019, is finally becoming a reality and provides business and citizens with more opportunities to challenge actions or inactivity of state bodies by actually establishing new procedures for appeal and remedies between the government and business.

The new year 2024 also opens up new horizons for the growing of our team with the strengthening of technical expertise required for recovery. We are grateful to our donors for it – the European Union and EBRD Multidonor Account contributors as well as to the Ukrainian business community for giving us the daily impetus to act in favour of integrity and justice.



1

Q4 2023 in review

1.1 Key performance indicators

In October-December 2023

337 complaints received

220 cases closed

The investigation of **101** cases is ongoing

The financial effect in Q4 reached

UAH

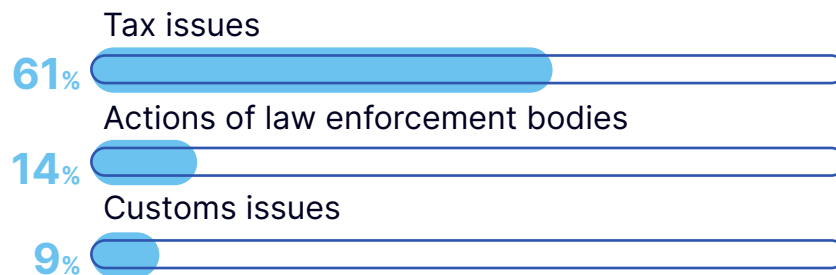
163 mn

The total financial effect amounted to

UAH

25.2 bn

TOP-3 subjects of appeals



TOP-5 industries



25%

Wholesale trade



15%

Agriculture and mining



12%

All types of production



11%

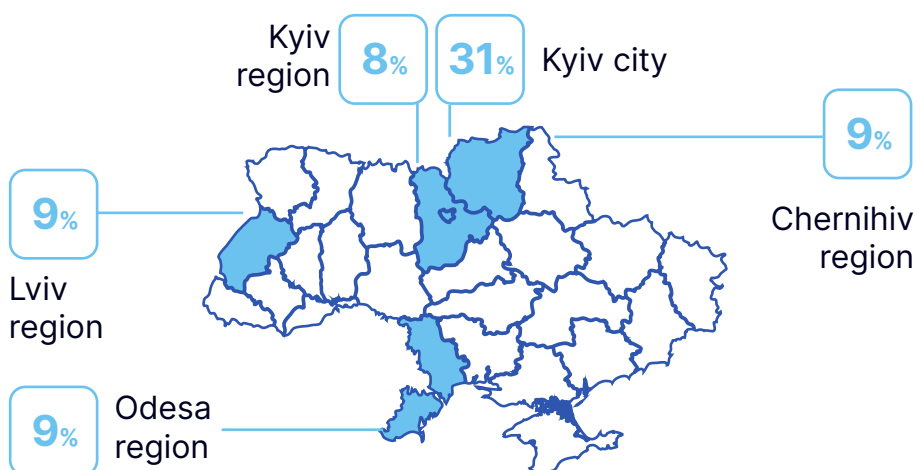
Real estate and construction



7%

Retail trade

TOP-5 most active regions



Origin of capital



Business size



In Q4, **100%** of complainants were satisfied with BOC services.



1.2 Volume and trends of complaints

In Q4 2023, the Business Ombudsman Council received 337 complaints from companies about abuses by state bodies, which is 27 more than in Q3 2023.

A growing number of complaints indicates existing problems in the Ukrainian business environment, particularly in the fiscal sphere, and state bodies' attempts to impose their will on entrepreneurs. Based on the appeals statistics, the Council focused on three main areas where one faces the most business rights abuse by state bodies.

Tax issues

206

61%

Non-enforcement of court decisions	83
Tax audits	40
Systemic VAT invoices suspension	34
Inclusion in risky taxpayers' list	19
VAT refund	6
Electronic VAT administration	4
Tax termination/renewal/refusal of VAT payers registration	2
Other issues	18

Actions of law enforcement bodies

48

14%

National Police procedural abuse	12
National Police inactivity	8
National Police – criminal case initiated	1
Prosecutor's Office bodies' procedural abuse	11
Prosecutor's Office bodies' inactivity	4
Prosecutor's Office bodies – corruption allegations	1
Prosecutor's Office bodies other	1
Security Service inactivity	1
Security Service other	1
Other law enforcement bodies	8

Customs issues

32

9%

Customs valuation	19
Administrative proceedings	2
Customs clearance (delay/refusal)	2
Customs – other	9



Tax issues

During October-December 2023, 61% of business appeals to the Business Ombudsman concerned tax issues. Although the total number of tax-related complaints showed a slight increase as compared to the previous quarter (206 out of 337 in Q4 vs. 176 out of 310 in Q3), according to the Business Ombudsman Council, business problems in the tax field remain at a rather alarming level.

Complaints of this block were mainly related to SMKOR issues: systemic tax invoices suspension, non-enforcement of court decisions on tax invoices registration and inclusion in risky tax payers' lists. Despite a slight decrease in complaints about invoices suspension with the state's efforts to improve the SMKOR system operation, a suspension trend since the fall of 2023 has still remained. Meanwhile, the number of cases regarding non-execution of court decisions that

have entered into force also increased. It is not only due to the SMKOR operation resumption, as well as courts after a long pause due to a full-scale war beginning, but also the fact that the tax authority uses the right to submit numerous repeated appeals, delaying their satisfaction for a long time.

Last year, the Council conducted an own-initiative investigation into SMKOR problems and issued recommendations to the Ministry of Finance and the State Tax Service to eliminate both inaccuracies and a human factor in the system operation. However, the expected amendments to legislation were mostly of a formal nature and did not bring significant positive changes, and the old business ills remained. We share the progress in implementing the Council's recommendations by state bodies in a separate section on pages 14-15 of this report.

In addition, in the reporting quarter, the Council focused on complaints about tax audits. Over the past months, we have seen how the companies' appeals concerning tax audits have gradually gained momentum, which was connected with the resumption of various audit types since the end of summer 2023. At the same time, the category of tax audits is the second most common subject of the entrepreneurs' complaints after SMKOR.

The rest of the appeals, falling under "other tax issues" category related to a refund from an erroneously paid tax, fuel trading license revocation, data reconciliation in the tax payer's integrated card, non-compliance with the court decision on a single tax payer registration, challenging the decision on property inventory in tax lien and trouble getting tax consultation.

Actions of law enforcement bodies

In Q4 2023, the number of complaints about law enforcement bodies' malpractice reached 14% (for comparison, in Q3 – 13%, Q2 – 9% and Q1 2023 – 10%).

Most of the companies complained to the Council about procedural abuses of the National Police and the Prosecutor's Office. The companies' complaints largely concerned non-return of temporarily seized property or funds as a result of searches, pre-trial investigation ineffectiveness, violations during investigative actions,

launching ungrounded criminal cases and law enforcement officers' actions disproportionality in relation to entrepreneurs.

Meanwhile, the Council had the mandate to take up complaints related to non-return of temporarily seized property and pre-trial investigation ineffectiveness. This category of appeals could be resolved thanks to the current Expert Group format with the Prosecutor General's Office.

Customs issues

In October-December, customs issues accounted for 9% of complaints to the Business Ombudsman (32 appeals), closing the TOP-3 subjects of appeals.

Problems of entrepreneurs in this area related to customs valuation, as well as customs clearance delay or refusal.

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.



1.3 Timelines of the preliminary review of complaints



The preliminary review of business complaints took an average of

9 working days.

Despite the ongoing martial law and security challenges, the Council's team takes efforts to process complaint materials received as soon as possible. In the reporting quarter, we managed to meet the deadline of our Rules of Procedure – 10 working days.

1.4 Number of investigations conducted and grounds for dismissing complaints

In Q4 2023, out of 337 complaints, BOC conducted 111 investigations. 36 complaints remained at the preliminary assessment stage. The Council rejected 128 appeals as not fitting its eligibility criteria foreseen by the institution's Rules of Procedure. Check out [the Rules of Procedure](#).

Investigations

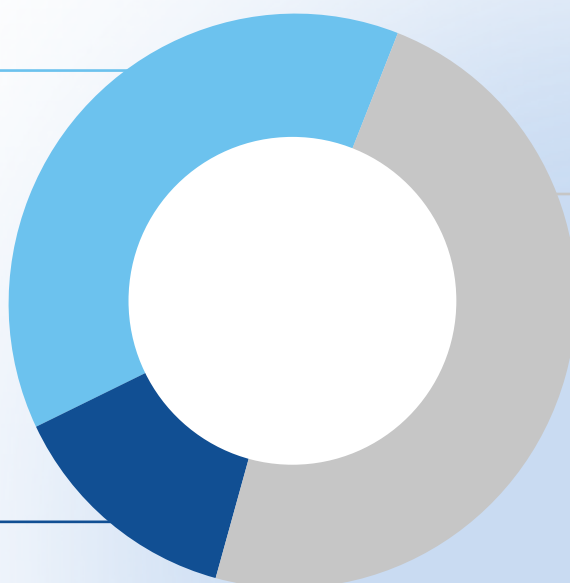
111

Complaints
in preliminary
assessment

36

Dismissed
complaints

128



1.5 Main reasons for complaints dismissal in Q4 2023

Subject of the complaint is outside Business Ombudsman's competence	65
The complaint is ungrounded or other bodies/institutions already consider such a case	18
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	17
According to the Business Ombudsman, the Complainant did not provide sufficient cooperation	7
Other circumstances where the Business Ombudsman, in his sole discretion, determines that an investigation of the complaint is not necessary	7
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	6
A complaint relates to an issue that has already been addressed by the Business Ombudsman	2
Complaints arising within private business entities relationship	1
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	1
Investigation dismissed due to complaint withdrawal by the complainant	1
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	1
The complaint was submitted by not a business entity	1
Failure to comply with the complaint form requirements	1

1.6 Timelines of conducting investigations

The average duration of investigations was

69

days,

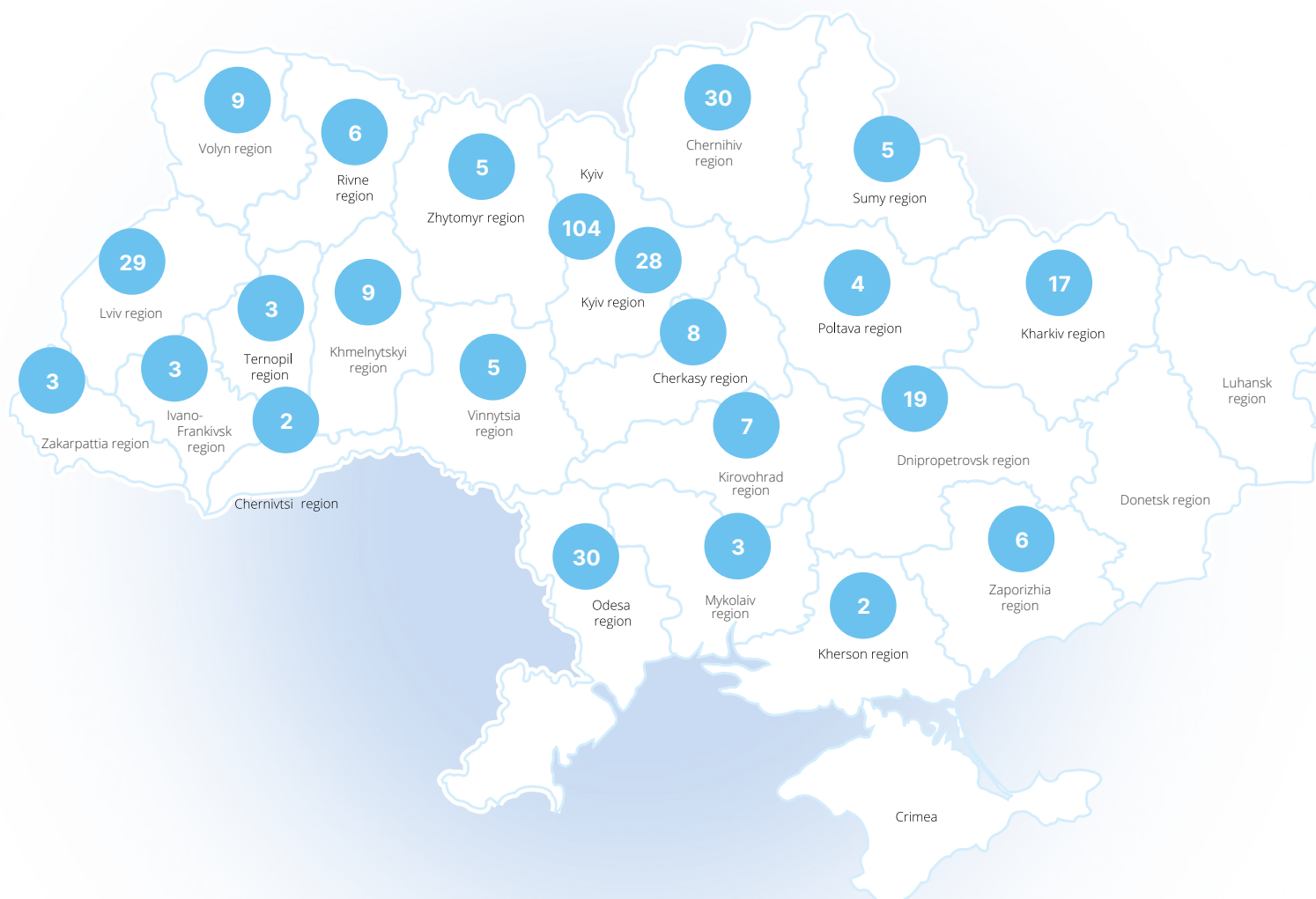
which is 21 days less than the period stipulated by our Rules of Procedure.

80%

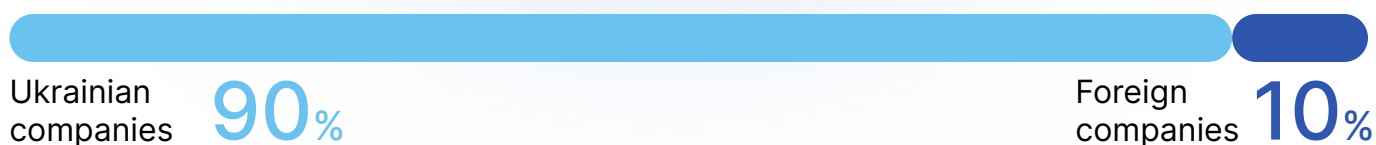
of all closed investigations in Q4 2023, we investigated within 90 days by implementing the norm of BOC Rules of Procedure.



1.7 Complainants' portrait



Origin of capital



In the reporting quarter, Ukrainian companies submitted 90% of complaints to the Council. A share of foreign business appeals was only 10%.

Size of business



Small and medium-sized businesses made up the majority of complainants to the Business Ombudsman Council with a share of 66%, while complaints from large companies accounted for 34% of appeals in Q4 2023.

2

Problems in the VAT system:

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



[Read a report](#)

Last year, the Business Ombudsman Council conducted its own-initiative investigation into problems of SMKOR and handed over a list of systemic recommendations to the Ministry of Finance and the State Tax Service to improve system functioning and reduce groundless invoices suspension.

Important amendments to Decree No. 1165 were made by the Cabinet of Ministers in June 2023, which we highlighted 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.

BOC points out a positive progress on a number of recommendations, particularly regarding:

1. introduction of an administrative appeal of decisions on a payer's riskiness and tax data tables non-acceptance;
2. improvement of analysis and forecasting functions relating to legislation amendments;
3. active Verkhovna Rada involvement to solve problems;
4. operations period limitation in TIs/ ACs to consider a tax payer's riskiness issue (180 days);
5. expansion of the positive tax history indicators list (implemented on December 9, 2023);
6. availability of data on key indicators (introducing a tax payer's profile) (partially implemented).

At the same time, a disappointing trend is that only in October 2023, the state blocked UAH 5.1 bn of companies' working capital by suspending invoices registration. This upward trend has continued for at least three months in a row. [Source](#).

Given the fact that in practice tax officials' decisions to include companies in the risky list and suspend tax invoices, often do not have a solid foundation and, besides, there are cases when tax repeatedly lodges appellate complaints about court judgements already in force, situation with fixing SMKOR remains at an unacceptable level for business.

The Council is keeping a close eye on monitoring SMKOR improvement progress and will be able to analyze the way the latest amendments to Decree No. 1165 have affected business later in the new quarter.

3

Administrative procedure:

path to a new interaction procedure between business and state bodies

In Ukraine, the idea of adopting a framework law that would establish uniform principles and procedures for interaction between citizens and state bodies appeared in the early 2000s during the Administrative Procedure Code development. At that time, however, the law was not adopted: everything was done by injecting criteria-principles in the procedural code which public authorities' decisions must comply with. However, outside the courts, within the scope of administrative practices, these criteria-

principles did not become new rules of the game, because in fact they were not mandatory for state bodies.

During various stages of the development of the law on the administrative procedure, the Council's team joined the process, using its own many years of experience in settling disputes between business and the state. The administrative appeal procedure has always been in the spotlight of the Council's attention as an effective mechanism for quick out-of-court disputes settlement with state bodies.



Read a report

Thus, in 2019, the Council presented its Systemic Report "Administrative Appeal: Current State and Recommendations" (Report), a lion's share of recommendations of which related to the adoption of the Law of Ukraine "On the Administrative Procedure" (Law) and addressed to the Cabinet of Ministers of Ukraine (CMU).

Then, within monitoring of the recommendations implementation from the Report, the Council's experts first participated in the meetings of the Working Group under the Ministry of Justice of Ukraine, which eventually resulted in [draft Law No. 3475 of May 14, 2020](#), where the legislative initiative subject was the CMU. The purpose was for the Law to become that very "general" legal act that will introduce a qualitatively new level of legislative regulation of administrative procedures and protection of the rights and legitimate interests of private individuals in relations with the state. That is, the following problems should be solved:

- Lack of entity's basic rights in relations with state bodies;
- Dominance of departmental interests in regulation, including mostly by-law regulation of procedures;
- Different approaches in different acts, areas, systems of authorities;
- Inefficiency of many procedures (including administrative appeals) or lack of their regulation.

Subsequently, the Council's experts were engaged in the Working Group of the Committee of the Verkhovna Rada of Ukraine on organization of state power, local self-government, regional development and urban planning, the result of which was Law No. 2073-IX of February 17, 2022, which became effective only one and a half year later – in December 15, 2023.

Not only the Council was waiting for this to happen, but also, without exaggeration, the entire business community. The law should make government bodies' activities more unified, transparent and predictable, while businesses should be given ample opportunities to challenge decisions, actions and omission of officials in a pre-trial procedure with the least time and

resource costs. It also became one of the most anticipated European integration laws in the business environment, because it is aimed at bringing the Ukrainian legislation closer to the European legal traditions of public administration.

Meanwhile, this long and thorny path is still not without twists and turns. Upon the Law adoption, the Expert Group for coordination of administrative services and procedures of the Directorate of Public Administration of the CMU Secretariat became the main platform for such professional discussions, where Council's representatives also have their say.

For instance, with the aim of developing a Framework Law that could be applied to the vast majority of relations with state bodies, as a result of lengthy discussions, only specific relations, particularly those arising during criminal and court proceedings state, diplomatic and military service, all-Ukrainian and local referendums, public procurement, etc. (the exclusive list is established in the Law) were finally excluded from its scope. Meanwhile, being aware of the versatile nature of relations it must regulate, it is allowed that specialized laws may establish administrative proceedings specifics for certain categories of cases, but such specifics must comply with the administrative procedure principles defined by the Framework Law.

In May 2023, the Council became aware that the CMU would discuss the issues of removing the tax area from the scope of the Law, as well as exercising state financial control and some antimonopoly categories of cases. That is, it was proposed that the administrative procedure principles established by the Law should not even cover specified areas. The Council expressed its disagreement about it, especially considering that two-thirds of cases with which the business was

dissatisfied were tax-based. After all, with the exception of cases of granting permits and conclusions on coordinated actions, business entities concentration, other additional administrative cases had not yet been removed from the scope of the Law.

In November 2023, the Council submitted its comments to a comprehensive [Draft law registered in the Verkhovna Rada of Ukraine. No. 10161 of October 18, 2023](#) regarding aligning special legislation with the requirements of the Law. Then the Council's experts analyzed amendments to over 40 laws related to the business environment and which the Council faced in its activities.

And already next month, the Council received a draft of amendments to the Tax Code of Ukraine to bring it in line with the requirements of the Law. Based on its analysis results, extensive recommendations were issued to the State Tax Service of Ukraine and the Draft law is currently being prepared by the Government.

That is, at the time when the Law entered into force in mid-December 2023, in general, the relevant legislation was still not aligned and is now creating legal collisions. Here one should bear in mind that norms of special laws are applied only if they do not contradict the administrative procedure principles established by the Framework Law. In turn, this opens significant space for business rights

protection. Nevertheless, the Council expects the collisions issue to be largely resolved during 2024.

In the meantime, the Council's partners, particularly the European Union project "Support for Comprehensive Public Administration Reform in Ukraine" (EU4PAR), are actively working in the field of educational activities around the Law. In particular, there is a dedicated website <https://adminprocedure.org.ua/>, as well as freely available [Scientific and Practical Commentary on the Law](#) and [an online course](#) on this topic.

The Council is convinced that the Law of Ukraine "On the Administrative Procedure" will positively impact the business climate, as it will enable prompt and transparent settlement of disputes between entrepreneurs and state bodies using pre-trial appeal tools. Moreover, the Council has already witnessed how local authorities did not make a negative decision for the entrepreneur regarding placing a temporary structure without a relevant hearing, and holding such a hearing became possible thanks to the Law and the Council's intervention.

Therefore, the Council's team will continue promoting practical implementation of the Law's ideas in areas where disputes between business and the state most often arise.



Thank you for taking an independent position, objectively assessing the situation, looking into all aspects and helping to make the right decision.

Dobrodiya LLC

4

Examples of successfully completed investigations



Law enforcers intensify investigation in the criminal case against agricultural company's counterparty

A Kyiv-based agricultural company complained to the Business Ombudsman even before the beginning of the full-scale invasion of the Russian Federation. The company informed the Council law enforcers delayed investigation in the criminal proceedings. The agricultural company cooperated with the counterparty and supplied it with seeds and plant protection products. The counterparty was supposed to make the final payment for the delivery by the end of autumn 2019, but it never did, and eventually launched a bankruptcy procedure. Meanwhile, the agricultural company turned to the law enforcement officers, who initiated

a criminal case. At the same time, they neither performed any investigative actions for a long time, nor even interrogated persons who could be potentially involved.

While working on the complaint, the Council appealed to the National Police of Ukraine and the Prosecutor General's Office of Ukraine and asked to intensify the pre-trial investigation in the case. The BOC had brought up the complaint for consideration of the Expert Group with the Prosecutor General's Office five times, of which three meetings already fell on the active period of the full-scale war. The Council emphasized

that the delay may have negative consequences on the effectiveness and compliance with the pre-trial investigation time frames.

In the summer of 2023, the agricultural company informed the Council about developments in the pre-trial investigation. In particular, the fact that investigators conducted the necessary interrogations, collected employees' contacts and information about the counterparty's bank accounts, particularly about the funds flow. As some progress was made in the investigation, the Council closed the case successfully.



A company's cargo successfully passes customs control

A Kemenchuk private enterprise complained that during the customs control, the Volyn customs officers did not allow 18 of the company's trucks cross the Polish-Ukrainian border. The company imported into Ukraine a complex solvent for use in industry.

Customs officials took samples of goods from each car for examination, but

purposefully delayed the investigation. Therefore, the truck load was more than 20 days, and the company paid the carriers EUR 100 per day. In addition, the enterprise also paid staff sanctions to buyers for late deliveries.

While processing the complaint, the Council's investigator turned to the Volyn Customs, directly

contacted its head and asked him to check the circumstances of the delay of the company's cargo.

It is noteworthy that on the third day after the Council's call to the customs authorities, the Specialized Laboratory issued examination conclusions to the company and all its trucks successfully passed customs control.



Arrest from the company's bank account lifted

An agricultural company from Chernihiv region approached the Council with an unusual case. The company received a fine from Ukrtransbezpeka for exceeding dimension and weight standards when transporting cargo. The company paid this fine. However, despite this, the Enforcement Service launched enforcement proceedings and arrested the company's funds. Meanwhile, the following day, since the company

paid the fine, the Enforcement Service issued a decision to lift the arrest and closed the enforcement proceedings. However, the funds in the company's bank account remained arrested. The bank demanded an order from the Executive Service on lifting the arrest, although it had already shared such a document. The complainant did not manage to solve this problem on his own for over a year.

While working on the complaint, the Council turned to the Enforcement Service and asked it to re-send the order on lifting the arrest to the bank. As a result of communication between the Enforcement Service and the bank, the company's bank account arrest was lifted.



Over UAH 2 mn of fine for an agricompany dropped

As a result of the audit, tax officials imposed UAH 1.7 mn of VAT to the agricultural company from Chernihiv region as well as a fine of almost half a million hryvnias for allegedly violating the Tax Code.

According to the tax authority, the company artificially overestimated the cost of growing grain crops in 2019, which affected the obligation to pay VAT. The tax authority claimed that the company deliberately involved another related company in the sowing campaign in order to overestimate its costs for growing agricultural products and thus reduce the VAT paid to the budget.

The Council's investigator carefully examined all the circumstances of the case. He sent a request to the

Main Department of the State Statistics Service in Chernihiv region and checked the average indicators of costs for the production of one quintal of agricultural products in Chernihiv region in 2019. Having compared the data with the complainant's production costs, BOC supported the company and shared the results of its research on the costs of growing grain with the tax office. According to the information provided by the State Statistics Service, the complainant's expenses for growing agricultural products were close to the average expenses of other agricultural companies in Chernihiv region, and the tax department mistakenly did not check this information during the audit.

Also, based on the statistical reporting of the agricultural company, the investigator was able to prove that for many years the company incurred comparable expenses for growing agricultural crops, but for some reason the tax office had questions about only one year of its activity – 2019. This further confirmed the illogic audit conclusions.

BOC took part in the company's administrative complaint consideration by the State Tax Service of Ukraine. In the end, the STS of Ukraine canceled the disputed tax notifications-decisions for a total amount of over UAH 2 mn.



How the company's VAT payer's registration was restored

Since February 24, 2022, due to temporary occupation of the city of Melitopol, a flour producing enterprise has lost access to its assets and source documents, as well as access to its bank account. Due to such circumstances, the enterprise operation was actually suspended.

The company sent an application to the tax authority in the Zaporizhzhia region on inability to fulfill its tax obligations and received a decision confirming this fact.

In the spring of 2023, the company decided to resume its economic activity and for this purpose it found premises in Kyiv

Oblast and relocated. The company managed to resume its operations only in June 2023.

Meanwhile, once the enterprise resumed its activities, it learned that its registration as a VAT payer had been cancelled. As it turned out, the tax authority canceled the company's VAT registration at a new location due to the fact that the company had submitted tax returns that showed no business transactions for twelve consecutive months.

The company lodged a complaint with the State Tax Service of Ukraine (STS of Ukraine) and also appealed to the Business Ombudsman Council.

While working on the complaint, the Council sent a letter to the STS of Ukraine and upheld the company's position, emphasizing that the tax authority had confirmed the company was unable to fulfill its tax obligations, as well as there were no VAT-taxable transactions due to the forced cessation of economic activity for reasons beyond the company's control (military actions and temporary occupation of Melitopol city).

As a result of the Council's communication with the STS of Ukraine, the company's VAT payer registration was restored.



STS renews the company's fuel trade license

The tax authority revoked the fuel distributor's wholesale fuel trade license due to absence of a company at its location (as indicated in the license).

Tax officers were unable to conduct an audit because the company was allegedly absent from the specified address. In addition, the company's managers were also absent at the time of the inspection.

While working on the complaint, the Council found out that due to regular rocket attacks, the company transferred employees to remote work mode, which was

confirmed by documents. Alongside this, the company provided the tax authority with confirmation of office lease at the location address, which was also mentioned in the Taxable Objects Register. At the same time, during the audit, the tax office did not record the fact of the company's "absence" of multimedia devices, which is required by law, and sent the inspection report and the license revocation order as soon as possible to another address next to the company's office.

The Council agreed with the fact that during the audit

tax officials committed a number of procedural violations and sent a letter to the State Tax Service of Ukraine (STS of Ukraine). The Council emphasized that state bodies' decisions should be proportionate to the situation or violation, if such was committed by business. The Council participated in the open review of the complaint with the participation of the complainant and the STS of Ukraine. As a result, the Council's arguments were accepted. The tax authority satisfied the company's complaint and renewed its wholesale fuel trade license.



Energoatom returns half a million hryvnias debt to the company

A textile company from Rivne complained to the Business Ombudsman Council that the Enforcement Service did not return money collected from the debtor to the complainant for eight months.

It is known that the Commercial Court of the city of Kyiv decided to collect debt a debt amounting to over UAH 480,000, including court fees and legal assistance costs, from SE Energoatom in favor of the complainant. Thus, SE Energoatom owed money to the enterprise for goods supply. The court issued

orders for enforcement of decisions to one of the State Enforcement Service departments (SES) in Kyiv, but there was no progress in the case with the debtor's seized funds.

While handling the complaint, the Council assumed that the Enforcement Service could postpone returning the company's funds, particularly taking into account the search of the executive service department and the seizure of the executive proceeding's materials conducted by the Economic Security Bureau. The Council also drew attention

to the fact that during the period of martial law in Ukraine, the deadlines for performing enforcement actions might be missed. At the same time, the Council believes that state bodies should be guided by the principles of reasonableness and justice. In order to find a solution to the case, the Council sent a letter to the Ministry of Justice of Ukraine and the Department of Internal Affairs in Kyiv, supporting the complainant's position. As a result, the Enforcement Service transferred about half a million hryvnias of owed funds to the textile company first in part and then in full.



The Council helps defense company cancel UAH 13,2 mn of fine for allegedly untimely import

Synergia, a design and production enterprise constantly helps the Armed Forces of Ukraine with special equipment repair and improvement. To implement one of the projects, the Company ordered a considerable number of armored plates from abroad, transferring the currency to the supplier.

The company realized that it might not have time to import armor within the general 180-day limit set by the National Bank of Ukraine (NBU), so it used a separate tool and turned

to the Ministry of Economy. The Ministry issued a conclusion on extending import transactions settlement deadline by two months, until the beginning of December 2022.

In October 2022, the imported goods crossed the customs border of Ukraine, however there was a delay in customs clearance and the armor was kept in a customs warehouse.

Not having time to complete the customs clearance of goods within the deadline, the company turned to

the Ministry of Economy. The Ministry replied that there was no need to extend the deadline for the Enterprise, because the moment of importing was the moment when the goods crossed the customs border. It would seem that the problem did not exist, and the importer could safely complete customs clearance while other factors causing the delay were being eliminated.

Suddenly, at the end of May 2023, the territorial department of the State Tax Service of Ukraine

(STS of Ukraine) conducted an unscheduled on-site inspection of Synergia regarding currency legislation compliance. The reason for the inspection was information from the servicing bank that it had not completed currency supervision on its part in accordance with the NBU Instruction.

According to the tax authority, the Company violated the settlement deadlines, for which the company was charged a fine of UAH 13.2 mn! The penalty amount was almost half of the money paid to the foreign supplier for armor plates.

After receiving the inspection report, the Company again appealed to the Ministry of Economy. The Ministry of Economy did not change its position that the deadline had not been violated in that situation, and noted instead that the moment of importing and the moment of currency supervision completion must be differentiated.

The company contested the penalty charge to the STS of Ukraine, and also enlisted the Business Ombudsman Council support.

The STS of Ukraine held a complaint hearing attended by Enterprise representatives and Council investigators. The Council also sent written proposals to support the defense company.

Relying primarily on the established position of the Supreme Court, the Council noted that the moment when the goods crossed the customs border of Ukraine did not depend on the necessity to go through all the customs clearance procedures of the said goods, completion of which gave the right to be further used by the owner at his or her discretion. In disputes regarding meeting deadlines in such circumstances, it was necessary to refer specifically to the import transaction moment, i.e. to the date of crossing the customs border, regardless of further customs clearance.

The Council also upheld the position of the Ministry of Economy. In this situation, the provisions of the Laws "On Currency and Currency Transactions" and "On Foreign Economic Activity" should be differentiated from the Instructions issued by the NBU as

the currency supervision body over authorized banking institutions. The relevant provisions of the Instructions strictly regulate the moment of the bank's currency supervision completion over residents' compliance with settlement deadlines rather than the moment of the import transaction completion.

The STS of Ukraine comprehensively investigated the circumstances of the case as well as law enforcement specifics. The Tax Office did not allow the Company's legitimate interests to be violated and ultimately satisfied the complaint. The STS of Ukraine agreed that the decisive point in such cases is the initial moment of the goods being under customs control - the moment when they physically cross the customs border of the state. Since the company made the delivery without violating the settlement deadlines, the Tax Office dropped the fine worth UAH 13.2 mn.

5

Contribution of BOC to European integration, good governance and overcoming consequences of the russian military aggression

The Business Ombudsman Council is not limited to considering business complaints, but also as the private sector integrated platform, contributes to integrating Ukraine into the European community, implementing good governance standards and overcoming consequences of the russian military aggression against Ukraine.

I. European integration

Deregulation and reducing barriers for doing business

BOC team representatives participated in discussions under the auspices of the Ministry of Economy regarding deregulation in various business areas. In particular, the Council's experts participated in the development of sections on labor relations, tax control, foreign economic activity, etc.

Restoring CMU working bodies

The Government of Ukraine, while preparing for the accelerated European integration processes, is restoring working bodies of the Cabinet of Ministers of Ukraine (CMU) in the main areas of legislation adaptation. In particular, with the aim of developing proposals for reforms and improving the regulatory field, the Intellectual Property Council was set up, to which BOC was also invited.

The International Trade Council, in which BOC has been represented since 2017, clarified its composition. Its task is to solve interdisciplinary issues of trade policy aimed at adapting regulatory norms to the relevant EU standards.

Good public administration

In December 2023, the Law of Ukraine "On the Administrative Procedure" became

effective, bringing tectonic changes and introducing a qualitatively new interaction procedure between the state and business in many public life areas. The adoption of the Law of Ukraine "On the Administrative Procedure" is a significant step towards European integration of Ukraine and establishment of the pan-European good administration principle in practice.

The Law of Ukraine "On the Administrative Procedure" is designed to provide businesses and citizens with more opportunities to challenge actions of state bodies. Meanwhile, such a Law has not fully worked yet due to the necessity of amending sectoral legislation. At the same time, the Council continues working regularly with experts from SIGMA analytical center and the EU-funded EU4PAR project as part of the Working Group under the Secretariat of the Cabinet of Ministers of Ukraine to amend the Tax Code and a number of other laws.

At the end of the year, the necessary amendments (developed with the participation of the Council) to more than a hundred laws were supported by the Verkhovna Rada in the first reading. However, among such amendments there were no changes in the tax sphere. Therefore, the Council continues promoting

the need to introduce guarantees about the administrative procedure in the Tax Code and works with experts on the relevant Draft law proposals to expand business opportunities in tax administration procedures, since such issues are constantly in top-3 issues of the biggest concern for businesses.

Apart from the legislative work, the Council's team developed the Declaration of Fair and Reasonable Administration to be used as a guide and a practical tool for applying provisions of the Law of Ukraine

“On the Administrative Procedure” to real cases and settling disputable situations.

The Declaration draft was sent to key ministries defining state policy related to business interests, the Office of the President of Ukraine and a number of foreign partners to receive feedback and suggestions for the text of the declaration, which is planned to be signed as a social contract between business and the state. It is worth noting that the pre-drafted text of the Declaration was positively assessed by key stakeholders.

II. Post-war recovery

Currently, the Government of Ukraine is consistently preparing the environment both for recovery planning and participating in the Ukraine's structural reconstruction processes.

Public-private dialogue

In November, the Business Ombudsman took part in conferences on the recovery of Ukraine in Warsaw, Poland and Toronto, Canada.

- FIT 4 UKRAINE Conference was held within the framework of Rebuild Ukraine 2023 International exhibition on November 15, 2023 with the support of Ukraine Invest.
- Rebuild Ukraine Conference took place on 21-22 November 2023 with the support of Canada-Ukraine Chamber of Commerce.



The Business Ombudsman assured Ukrainian and international investors of constant support from the Business Ombudsman Council helping entrepreneurs establish a dialogue with the state and resolve systemic issues.

Memorandum of Cooperation

In order to introduce clear, reasonable and transparent rules for working with the private sector, the Deputy Prime Minister - Minister of Restoration Oleksandr Kubrakov invited the Business Ombudsman to enter into a Memorandum of Understanding and Cooperation officially signed on December 14, 2023.



The purpose of this Memorandum is cooperation and consolidation of efforts to ensure transparency in implementing recovery activities during the martial law and post-war reconstruction of Ukraine,

improving conditions for engaging business in their realization.

To ensure this cooperation, BOC will attract a group of various qualification specialists and prepare strategic areas of cooperation. It is expected that this support will also be provided by BOC to strengthen Business Advisory Group under the Ministry for Restoration.

Compensation for damages caused by military aggression



On November 27, the Business Ombudsman took part in the Conference on Justice and Accountability for the War in Ukraine held in

the Belgian parliament in Brussels, Belgium. He touched on the issue of compensation for losses caused to enterprises and their owners and discussed legal complications that will accompany compensation processes.

Asset management of sanctioned enterprises



The Business Ombudsman Council management team held a meeting initiated by the Head of ARMA – Asset Recovery and Management Agency – where they agreed on a dialogue on urgent matters within ARMA competence.

III. Integrity and corruption prevention

Promoting business integrity standards



Business Ombudsman of Ukraine Roman Waschuk took part in All-Ukrainian Anti-Corruption Forum “Integrity – the Future of Ukrainian Society” organized by the

National Agency for Corruption Prevention (NACP), the EU Anti-Corruption Initiative and USAID SACCI project. At the forum, the government, business representatives and local community leaders discussed challenges faced by Ukraine in reconstruction process.

As part of the ongoing partnership with the National Agency for Corruption Prevention (NACP), BOC team provided consultations and materials for the Online Course for Civil Servants. The training module, developed by BOC, was aimed at explaining the Council’s work principles, investigation tools and mediation.

When investigating corruption risks in the tax sphere, NACP asked for BOC expertise and held a round table on the topic “Tax Invoices Suspension: Corruption Risks and Ways to Overcome Them”, where it presented a relevant study. It is noteworthy that many conclusions of this

study resonated with or referred to BOC own-initiative investigation into SMKOR problems handed over to the Ministry of Finance and the State Tax Service to improve the system functioning and reduce ungrounded invoices suspension.

Cooperation with the OECD to bring Ukraine closer to membership in this organization



As you know, BOC, jointly with the OECD, is a permanent independent member of the Executive Committee of the Ukrainian Network of Integrity and Compliance (UNIC) created in 2017 with the support of the Business Ombudsman Council, the OECD and the EBRD. The purpose of establishing the UNIC community is to promote integrity of doing business to improve Ukraine’s business environment. In November 2023, the Deputy Business Ombudsman Tetiana Korotka was re-elected for the next term by the Network General Meeting.



The Business Ombudsman Council is a permanent panelist in the OECD high-level discussion on finding solutions to strengthen business integrity. Tetiana Korotka, the Deputy Business Ombudsman, presented the Council at the OECD regular meeting devoted to the network development and discussion with colleagues about the gaps and needs of the Eastern Europe and Central Asia regions. The next regional challenge for business integrity is the EU integration. Currently, Ukraine, Moldova, and the Balkan countries are actively negotiating on the EU membership, other countries of the region are also going their distance, which requires significant changes in approaches to strategic planning in business as well as an appropriate compliance system formation. The driving force for all processes was Russia’s military aggression against Ukraine and risks for other countries in the region.

6

Cooperation with stakeholders

6.1 Dialogue with state bodies

One of BOC key tasks is to ensure effective systemic dialogue of business with state bodies, particularly with Office of the President and the Government of Ukraine, and to promote creating more favorable conditions for doing business in the country.

In the reporting quarter, the Business Ombudsman and his Deputy met with the First Vice Prime Minister – the Minister of Economy of Ukraine Yuliia Svyrydenko and the Deputy Minister of Economy Oleksii Sobolev. The purpose of the meeting was to deepen dialogue and cooperation of the Business Ombudsman Council with the Ministry to resolve systemic problems of Ukrainian business both during the martial law and in the future post-war recovery. The Business Ombudsman agreed with the Minister to strengthen interaction between institutions in solving business problems, particularly at the regional level.



6.2 Expert Groups

Expert groups format functions under Memorandums of Partnership and Cooperation, signed by the Council with respective state bodies in different times. The Council quarterly reports on Experts Groups meetings results.

	Number of meetings in Q4 2023	Number of cases considered in Q4 2023
State Tax Service	3	170
The Main Department of STS in Kyiv City	4	25
The Main Department of STS in Kyiv region	3	6
Prosecutor General's Office	1	8

Expert Group with the State Tax Service



Expert Group with MD STS in Kyiv City



Expert Group with the Prosecutor General's Office



6.3 Regional visits

Dialogue with the regions of Ukraine, particularly with local government authorities is an indispensably important dimension of the Business Ombudsman Council's activity. Communicating with local business enables us to better perceive their problems, taking into account martial law challenges. Meanwhile, expanding and consolidating the Council's ties with local authorities contributes to effective solving of individual complaints in various areas.

In the last quarter of 2023, the Business Ombudsman Council made two regional visits.

Poltava

In December 2023, the Business Ombudsman of Ukraine Roman Waschuk visited Poltava.



In Poltava the Business Ombudsman met with Poltava Regional Military Administration management team. During the meeting Poltava business needs were discussed and it was agreed to strengthen the Business Ombudsman Council's cooperation with Regional Military Administration to resolve problematic entrepreneurs' issues in their relations with the state.



The Business Ombudsman, in particular, held two meetings with local entrepreneurs:



Roman Waschuk met with Poltava business associations representatives and talked about business protection opportunities against state bodies' abuses.

In Diia.Business regional center in Poltava Roman Waschuk delivered a presentation about the Business Ombudsman Council for small and medium-sized enterprises of the city and region for entrepreneurs to know more about the institution's services.



While in Poltava, the Business Ombudsman together with his team visited the former institution's complainant – Aurora multimarkets network support office.



Ivano-Frankivsk



The Deputy Business Ombudsman Tetiana Korotka visited Ivano-Frankivsk.

She participated in “Ivano-Frankivsk Region – a Reliable Partner” international forum organized by Ivano-Frankivsk Regional Military Administration.

Tetiana Korotka met with local business representatives, as well as Ivano-Frankivsk and Zakarpattia Oblasts heads of military administrations.

At the forum she presented the Business Ombudsman Institution and told about its free services to settle problematic entrepreneurs’ issues in their relations with state bodies.



A close interaction with regions remains a priority for BOC. We will keep you updated about new regional visits in our next operational reports.

6.4 Meeting with Swiss business



For the first time since the beginning of full-scale invasion, the Business Ombudsman and his Deputy have met with Swiss business community in Ukraine. The meeting was organized with the assistance of the Embassy of Switzerland in Ukraine.

The Business Ombudsman assured Swiss investors they could count on the Business Ombudsman Council's assistance in case of controversial issues with state bodies.



6.5 Events calendar

10.10.2023

Extraordinary general member meeting

Organized by:
UNIC

11.10.2023

Fourth Ministerial Roundtable Discussion for Support to Ukraine

Organized by:
World Bank

17.10.2023

Meeting of Business Ombudsman Council with Zaporizhzhia business devoted to State Service of Ukraine for Food Safety and Consumer Protection (SSUFSCP) issues

Organized by:
Business Ombudsman Council

20.10.2023



Tax and Business Talks

Organized by:
Ukrainian Advocates' Association

20-30.10.2023

Nomination Committee meeting

Organized by:
Government of Ukraine

27.10.2023

Press conference "Business in Ukraine Through Entrepreneurs' Eyes"

Organized by:
International Association of Polish Entrepreneurs in Ukraine

31.10.2023

Meeting with Acting Head of SSUFSCP Serhii Tkachuk

Organized by:
Business Ombudsman Council

02.11.2023

Conference "Equity Financing to Aid Recovery"

Organized by:
American Chamber of Commerce

03.11.2023

Conference "Martial Law: Tax Challenges"

Organized by:
Yurydychna Praktyka Publishing House

06.11.2023

Meeting with Maura O'Sullivan, the EU Advisory Mission (EUAM) Ukraine's Deputy Head

Organized by:
Business Ombudsman Council

09.11.2023

Meeting of Canada's International Trade Committee

Organized by:
House of Commons, Canada

10.11.2023

The revival of business loans in Ukraine. Will this trend be sustained?

Organized by:
Center for Economic Strategy

11.11.2023



WELDI session with Elina Svitolina, a professional athlete, the best tennis player of Ukraine, United24 ambassador, the founder of Elina Svitolina Foundation

Organized by:
American Chamber of Commerce

13.11.2023

Launch: Basel AML Index 2023

Organized by:
Basel Institute of Governance

15.11.2023



XVIII International Forum "Polish-Ukrainian Business Days"

Organized by:
Ukrainian Business Association in Poland

22.11.2023



Presentation "Dialogue Between Business and Government through BOC"
Organized by:
Business Ombudsman Council jointly with USAID and Electronic Republic NGO

30.11.2023

Discussion "How Much Constructive Capital Is There in Ukraine and Why It Is Important" study presentation
Organized by:
Center for Economic Strategy

08.12.2023

"Entrepreneur of the Year" award
Organized by:
Forbes

08.12.2023

Meeting with the Association of employers' organizations in Odesa Oblast
Organized by:
Association of Employers' Organizations in Odesa Oblast

12.12.2023

Reception on the occasion of the 30th anniversary of the European Union diplomatic presence in Ukraine
Organized by:
Delegation of the European Union to Ukraine

13.12.2023



Get Business Festival
Organized by:
Delo.ua Publishing House, Ekonomika + Holding

19.12.2023



Event dedicated to the Advocates Day
Organized by:
Ukrainian Advocates' Association

21.12.2023

Discussion
 "Macroforecast-2024: How GDP, Prices and Exchange Rates Will Change"
Organized by:
Center for Economic Strategy



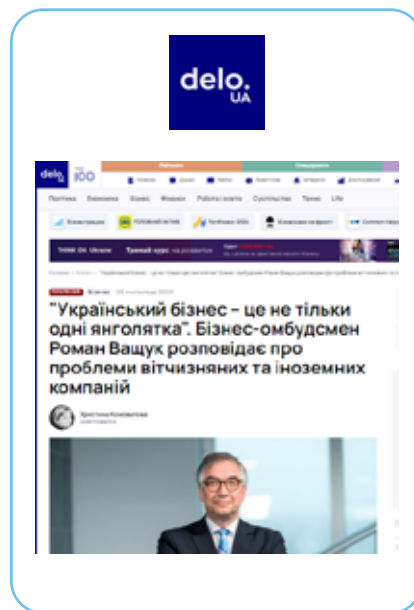
Thanks to Business Ombudsman Council's active involvement, Kernel Group Enterprise, namely Poltava Oil Extraction Plant PJSC, managed to solve the problem of registration of the right to the land plot on which the company's power plants are located. No registered right to use the land plot created significant obstacles to the enterprise's business activity since the beginning of 2022. Unfortunately, the problem was ignored by Poltava City Council. However, it had been only six weeks since the company's appeal to the BOC to convening Poltava City Council session and, most importantly, a positive resolution of the company's land issues.

Poltava Oil Extraction Plant PJSC

6.6 Cooperation with media

The Business Ombudsman Council actively cooperates with the media. The Business Ombudsman and his team give interviews, comments and write publications to attract attention of the public to the institution's activities and systemic problems of entrepreneurs that require urgent solution. BOC shares its own views at the situation, gives business climate assessment and the country's economic life current events.

Online and print media

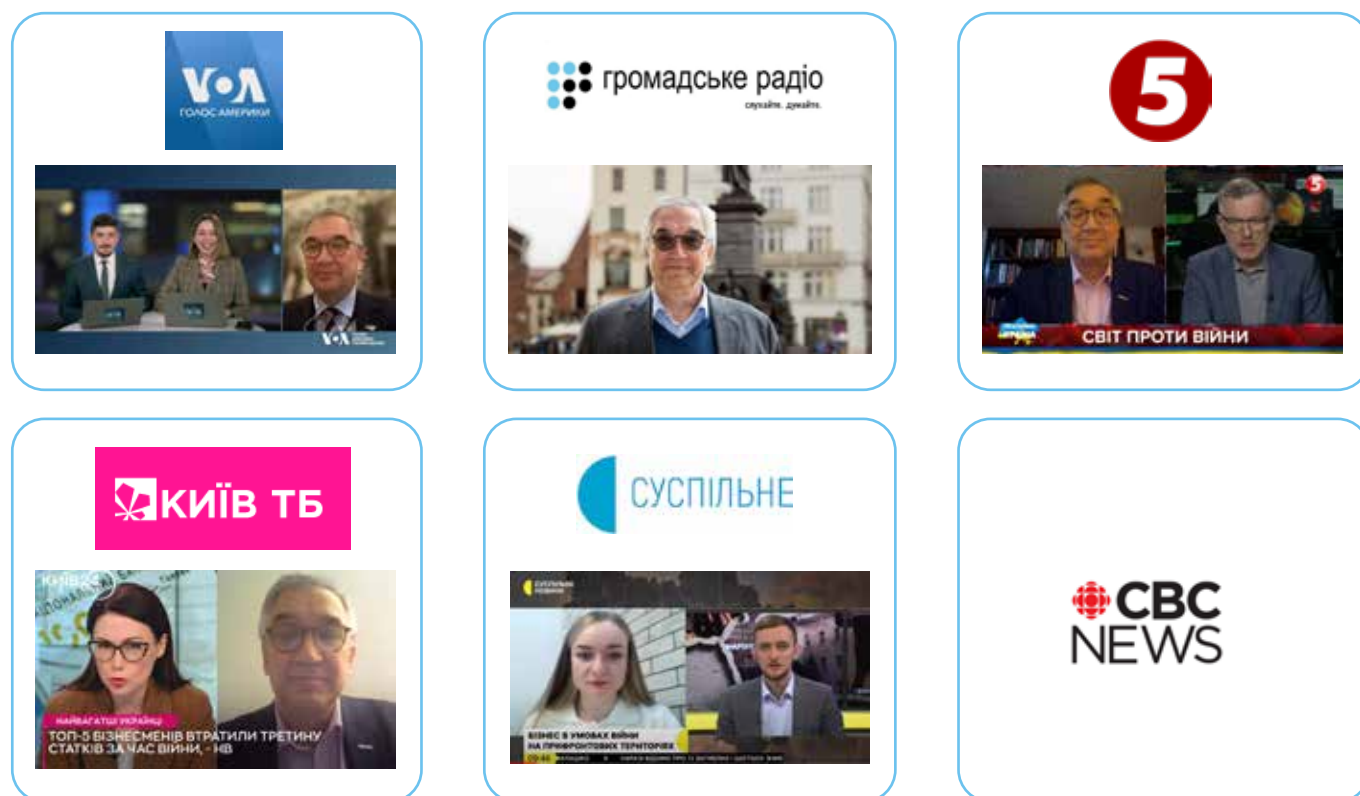


We also gave comments to UNN and The Kyiv Independent.

UNN

K

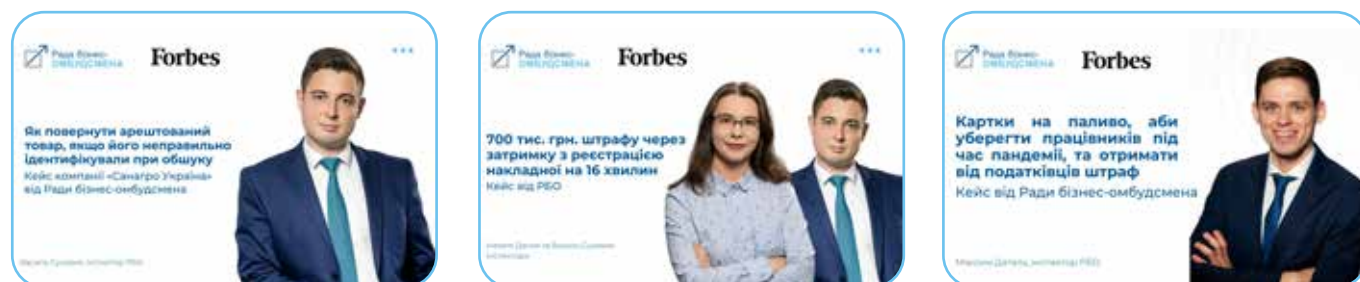
TV and radio



Cooperation with Forbes Ukraine

Within cooperation with Forbes Ukraine, the Council launched a series of materials in which its investigators tell different stories of business which turned to BOC for help in overcoming state bodies' malpractice manifestations.

In Q4 2023, three such materials were released in Forbes.



Press conference

“Border Blockade: Challenges, Consequences and Prospects Through the Prism of Polish-Ukrainian Economic Cooperation” (14.11.2023)

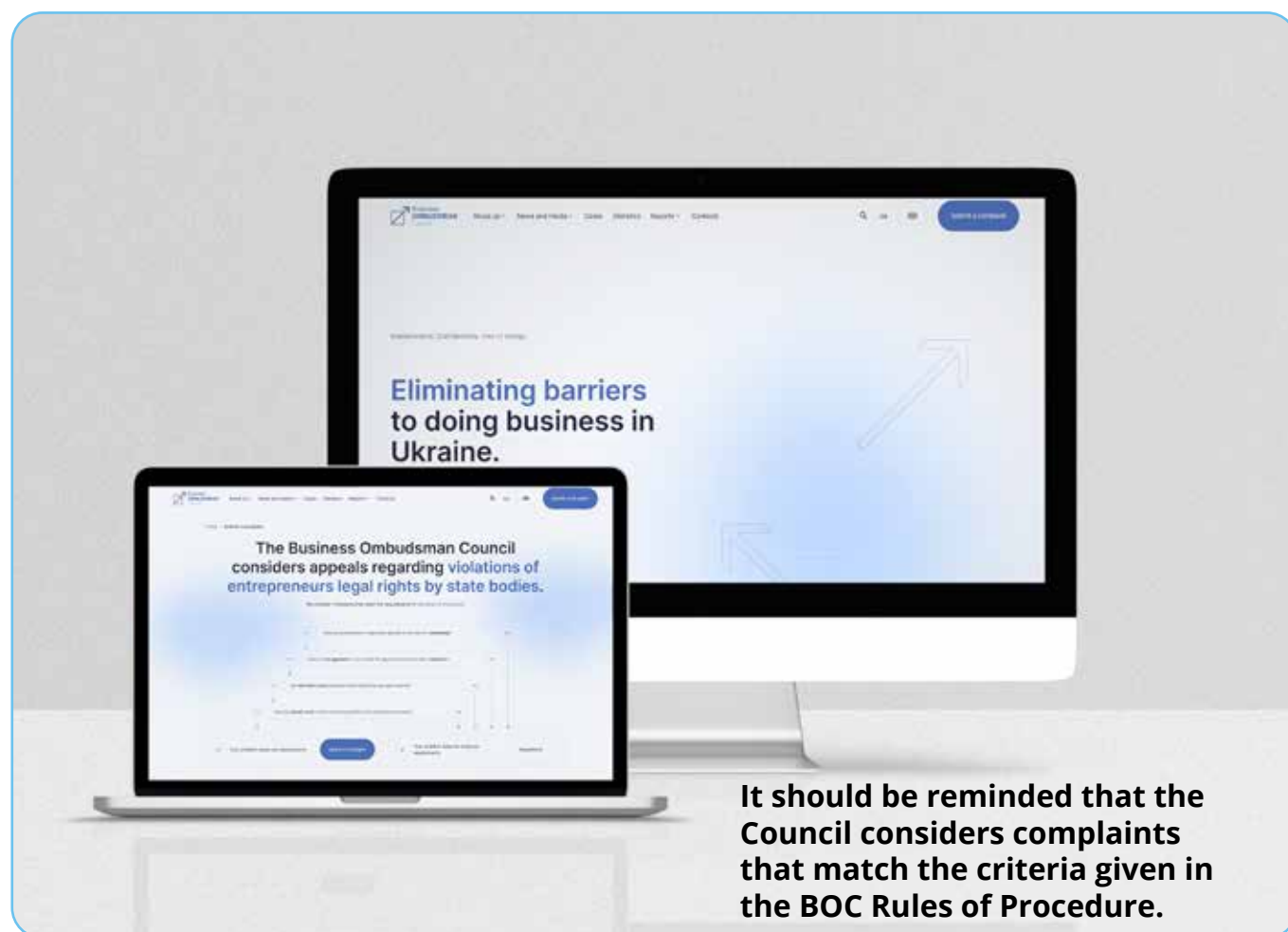
In Warsaw, during the press conference the Business Ombudsman together with the Head of the Ukrainian Business Association in Poland discussed trade and economic cooperation issues between Ukraine and Poland and the ways of solving the situation at the border.



6.7 Website

Since October 2023 the updated website of the Council was launched: boi.org.ua

Business can submit a complaint through the website by attaching all necessary documents. You just need to click “Submit a complaint” button.



Business which appealed to BOC can leave feedback on cooperation with the Council and subscribe to the BOC newsletter.

[Submit a complaint](#)



Our company is grateful for professional and prompt assistance. The Business Ombudsman Council's activity in these extremely tough times is of historically important significance. Helping to defend the legal rights of taxpayers is no longer just about business, it is about the fate of Ukrainians and their families. As long as such independent institutions work in Ukraine, we will all have hope for the future of our state as a legal one.

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