



Business  
**OMBUDSMAN**  
Council

Q1 2024

# QUARTERLY REPORT

January 1–March 31, 2024

## Report focus:

**Cooperation with OECD  
for public-private partnership  
and recovery strategies**



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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

This is our ninth quarterly report since the full-scale invasion in February 2022, prepared in the third year of what has become a war of attrition. Ukraine, its economy and government have been receiving unprecedented (if sometimes halting) financial support from international partners, while being expected to draw on its own revenues to fund the military.

Against such a dramatic strategic background, you might expect maximum state understanding and support for a business community that has shown remarkable resilience and persistence in powering a modest economic bounce-back – against all odds. So it is disappointing to note that progress in improving the business climate – especially on fiscal issues – has been incremental and uneven.

In this first quarter of 2024, we were drafting and finalizing an own-initiative investigation into the workings and impact of Ukraine's tax audit system – a leading generator of business complaints submitted to us in recent months. In our consultations with business associations and the Ukrainian Network for Integrity and Compliance, the message we heard was consistent: in an environment where audits are expected to generate reassessments and fines to meet shadow quotas, compliance does not pay. In fact, it can annoy auditors who have to jump through hoops to justify giving a company a clean bill of health.

With the State Tax Service reluctant to quash minor, and especially high-value major, penalties on administrative appeal,

tens of thousands of tax disputes are punted to the courts annually. There, they can spend two or more years beyond our ombudsman jurisdiction – until final decisions are rendered. In dozens of cases every month, that's where our investigators re-enter the picture: following up and insisting on STS implementation of court rulings – in a situation where over half of decisions (over 90% in sub-areas such as VAT invoice suspension) are rendered in favour of companies, and involve forgoing or refunding budget monies.

Late January saw a confluence of issues on the criminal justice side of our mandate: "MazepaGate" blew up, just as we were preparing to co-host the first roundtable bringing together Ukrainian business associations with the country's Prosecutor General, Andriy Kostin. In what turned out to be a very animated discussion, the procedural, reputational and financial impacts of ill-founded searches and criminal investigations were brought to official attention.

A presidential decree with urgent recommendations for Ukrainian law enforcement agencies was issued soon thereafter. The decree foresees audits of both criminal cases affecting business, and the SMKOR system for VAT invoices (the subject of our BOC 2023 own-initiative investigation report). The thoroughness and credibility of these audits will a litmus test for the business community concerning the seriousness of the authorities in addressing longstanding fairness, due process and predictability concerns.

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# Q1 2024 IN REVIEW

## 1.1 Key performance indicators

In January-March 2024,  
the Business Ombudsman Council

received **345** complaints

**162** cases  
closed

The investigation of **109** cases is  
ongoing

The financial effect in the first  
quarter reached

UAH

**197.2** mn

The total financial effect  
amounted to

UAH

**25.4** bn

### TOP- 3 subjects of appeals



**60%** **207**  
Tax issues

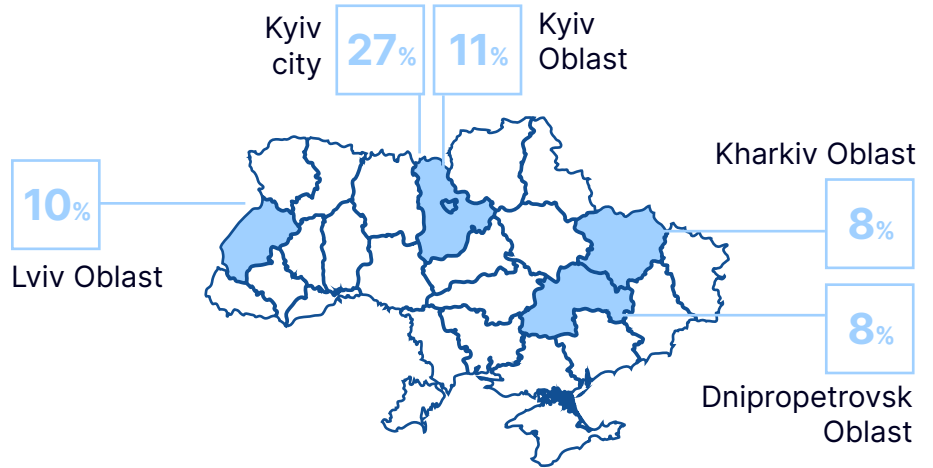


**14%** **48**  
Actions of law  
enforcement bodies



**7%** **23**  
Customs  
issues

## TOP-5 most active regions

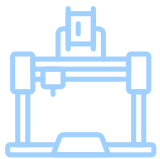


## TOP-5 industries



**24%**

Wholesale trade



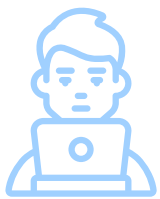
**13%**

Production



**12%**

Real estate and Construction



**10%**

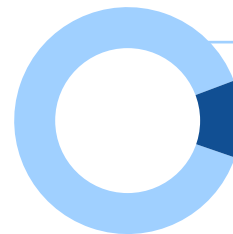
Individual entrepreneurs (FOP)



**9%**

Agriculture and mining

## Origin of capital



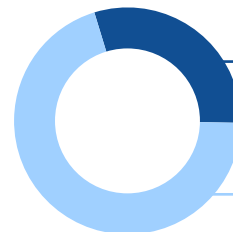
**89%**

Ukrainian companies

**11%**

Foreign companies

## Business size



**30%**

Large business

**70%**

Small and medium-sized business



In Q1 2024, the satisfaction level of complainants with BOC services was

**100%**

(based on answers received in feedback forms).

## 1.2 Volume and complaints trends

In January-March 2024, the Business Ombudsman Council received 345 complaints from companies about abuses of state bodies, showing an increase in the number of complaints. This is 8 more appeals compared to Q4 2023 and 35 more compared to Q3 2023.

Business is still concerned about tax and customs issues, as well as law enforcement officers' malpractice, so this is what TOP-3 of Q1 2024 looks like.

<b>207</b>	<b>Tax issues</b>
57	Non-enforcement of court decisions on tax invoices registration
46	Tax audits
33	Systemic tax invoices suspension
31	Inclusion in risky taxpayers' list
30	Other
7	VAT refund
2	Electronic VAT administration
1	Tax termination/renewal/refusal of VAT taxpayer's registration
<b>48</b>	<b>Actions of law enforcement bodies</b>
9	National Police – procedural abuse
3	National Police other
2	National Police – criminal case initiated
2	National Police – inactivity
6	Prosecutor's Office – procedural abuse
4	Prosecutor's Office bodies – inactivity
4	Prosecutor's Office bodies – other
3	Security Service of Ukraine – procedural abuse
2	Security Service of Ukraine other
1	Security Service of Ukraine – criminal case initiated
8	Bureau of Economic Security (BEB)
3	State Bureau of Investigation (SBI)
1	State Border Service
<b>23</b>	<b>Customs issues</b>
11	Customs valuation
9	Customs other
1	Customs administrative proceedings
1	Customs clearance delay/refusal
1	Customs excessive payments refund



## Tax issues

Complaints on tax issues traditionally lead the ranking of appeals to the Business Ombudsman. In Q1 2024, their number amounted to 60% (207 complaints), remaining almost at the same level as compared to the previous quarter (206 complaints). Meanwhile, the number of complaints on tax issues decreased in contrast to the second half of 2023, when, in the wake of problems in the electronic VAT system, tax-related appeals, according to the Council's statistics, reached 70%.

Despite the fact that the number of complaints about SMKOR went down from 66% (136 complaints) last quarter to 58% (121 complaints), in January-March 2024 this block remains the main subject of concern and administrative appeal of business. We are talking about non-enforcement of court decisions on tax invoices registration, their systemic suspension and inclusion of taxpayers in risky lists. In particular, the last category has become "viral" for many taxpayers, because there are frequent cases of classifying companies as risky only because of getting a "risky" status by their counterparties. Last year, the Council conducted its own-initiative investigation into SMKOR business problems. The Council issued recommendations to the Ministry of Finance of Ukraine and the State Tax Service on regulating the system functioning. Since then, the institution has been regularly monitoring changes in the system and reporting on progress in quarterly reports. BOC shares its latest observations on SMKOR improvements on pp. 21-22 of the report.

In January, SMKOR was included in the list of problematic business issues in Presidential Decree No.21/2024, with the decision "to conduct an audit of the risk monitoring system and criteria for blocking tax invoices and the procedures and criteria for their unblocking." In a letter in February, the Council offered the Ministry of Finance and the Ministry of Economy its expert support in conducting such an audit. From the interim responses of the ministries, it appears that neither the parameters nor even the initial date of this audit have been determined.

In the reporting quarter, the second place in the ranking is occupied by business complaints on tax audits. A gradual increase in the number of complaints on this subject evoked a considerable resonance and the need to investigate the feasibility of tax audits in the format in which they exist. That is why, during the first quarter of 2024, the Business Ombudsman Council conducted a new own-initiative investigation dedicated to the tax audits phenomenon. We will tell about its results in the next report.

In the end, the complaints about the so-called "other issues" related to cancellation or extension of fuel wholesale licenses, land tax assessment, introduction of changes to the integrated taxpayer's card, the write-off of non-existent debt by the tax authority, return of erroneously collected funds and delays in giving tax advice.





## Actions of law enforcement bodies

January was marked by the adoption of the National Security and Defense Council of Ukraine decision “On Urgent Measures to Ensure Economic Security During the Legal Regime of Martial Law” on January 23, 2024 (enacted by the Decree of the President of Ukraine dated January 23, 2024 No. 21/2024), which recommended Prosecutor General’s Office, among other things, not only to conduct an audit of restrictive measures taken against business entities in criminal proceedings within a three-month period and to determine the expediency of their further application, but also to refrain from conducting procedural actions in criminal proceedings for three months, if such application can block legal entities’ business activities.

This decision was made due to pressure on business. That is why already on April 24, 2023, during a joint meeting of the Prosecutor General’s Office and the Council held within the framework of the topic “Prosecutor’s Office and Business: a Dialogue About Legality” with leading business associations representatives, the Business Ombudsman emphasized provisioning binding force to Prosecutor Standards.

If we compare the number of business complaints about law enforcement bodies’ malpractice in the reporting and previous Q4 2023, they remained at a similar level of 14% (or 48 complaints).

During January-March 2024, entrepreneurs mostly complained about procedural abuses and inactivity of the National Police and the Prosecutor’s Office. Thus, appeals concerned disproportionality of measures applied by law enforcement bodies to businesses during criminal proceedings, non-return of temporarily seized property during searches, etc.

The Council notes a gain in the number of complaints against the Bureau of Economic Security (BEB). The functioning of BEB in its current form mismatches the declared ideas of creating a single transparent body for investigating economic crimes. The Council consistently supports renovation of the BEB, taking into account the business community and international experts requirements, and regularly speaks about its reboot at public events and in communication with MPs and government officials.



## Customs issues

In January-March, the number of customs-related complaints slightly diminished – the Council received 23 appeals, which accounted for 7% of the total number of complaints (compared to 32 appeals, which made up 9% of the number of complaints in the first and fourth quarters of the previous year). At the same time, despite a drop in the number of complaints, customs issues continue to be among the TOP-3 subjects of appeals to the Council.

A significant number of appeals related to customs value adjustment issues when importing goods, delays in customs clearance of goods, but there were also issues of refusals in customs clearance of exports of certain categories of goods.

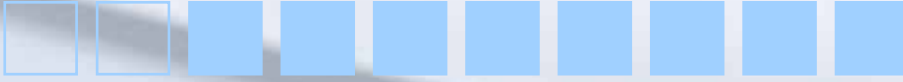
The Council also held a working meeting of the Expert Group with the State Customs Service to resolve complex and systemic customs-related issues. When working with the customs, the issues of difficulties of data exchange between the State Customs Service of Ukraine and the State Tax Service of Ukraine bodies, as well as the possibility of completing customs clearance for goods delivered as humanitarian aid at the beginning of the full-scale invasion of russia, were also on the agenda.

## 1.3 Timelines of the preliminary review of complaints

In Q1 2024, the preliminary review of business complaints took an average of

8

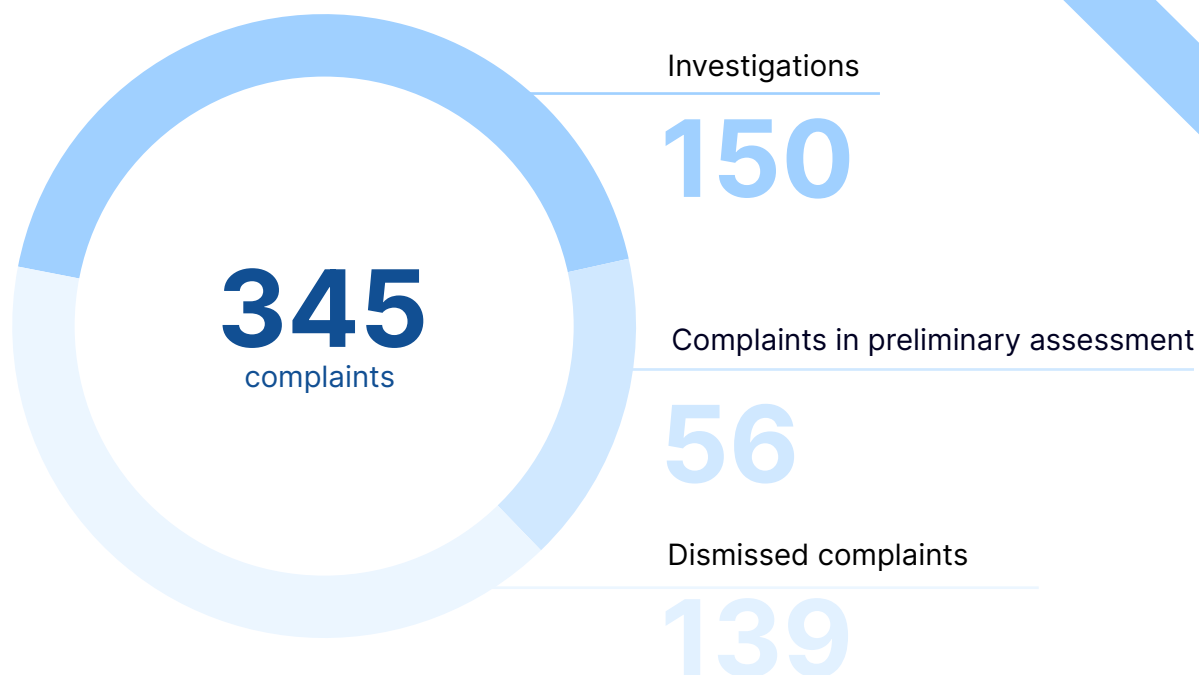
working days.



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

## 1.4 Number of investigations conducted and reasons for declining complaints

In Q1 2024, out of 345 complaints, BOC conducted 150 investigations. 56 complaints remained at the preliminary assessment stage. The Council rejected 139 appeals due to not meeting complaint criteria contained in the institution's Rules of Procedure.



## 1.5 The main reasons for dismissing complaints in Q1 2024

77	Subject of complaints is outside Business Ombudsman's competence
15	In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation
11	The complaint is ungrounded, or other bodies/institutions already consider such a case
10	Other circumstances where the Business Ombudsman, in his sole discretion, determines that an investigation of the complaint is not necessary
9	Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or any other similar decision was made
3	Complaints in connection with the legality and/or validity of any court decisions, judgements and rulings
3	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
3	A complaint relates to an issue that has already been addressed by the Business Ombudsman
3	A complaint was withdrawn by the complainant
2	The party affected by alleged malpractice has not exhausted at least one instance of an administrative appeal process available under the current legislation
1	Complaints arising in the context of private-to-private business relations
1	An investigation of a similar case by the Business Ombudsman is pending or otherwise ongoing
1	A complaint filed upon expiration of one year from alleged malpractice event occurrence

## 1.6 Timelines of conducting investigations

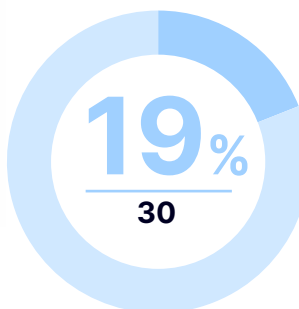
The average duration of investigations was

**77** days,

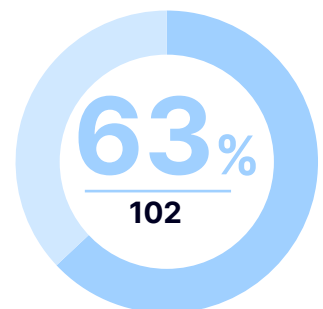
which is 13 days less than the period stipulated by the Rules of Procedure.



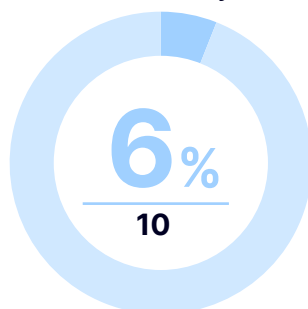
<30 days



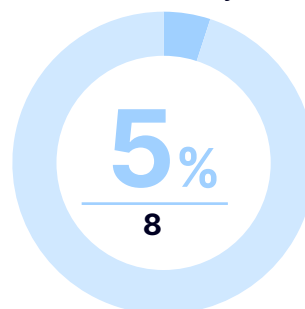
31-90 days



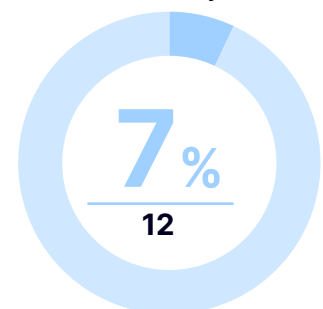
91-120 days



121-180 days



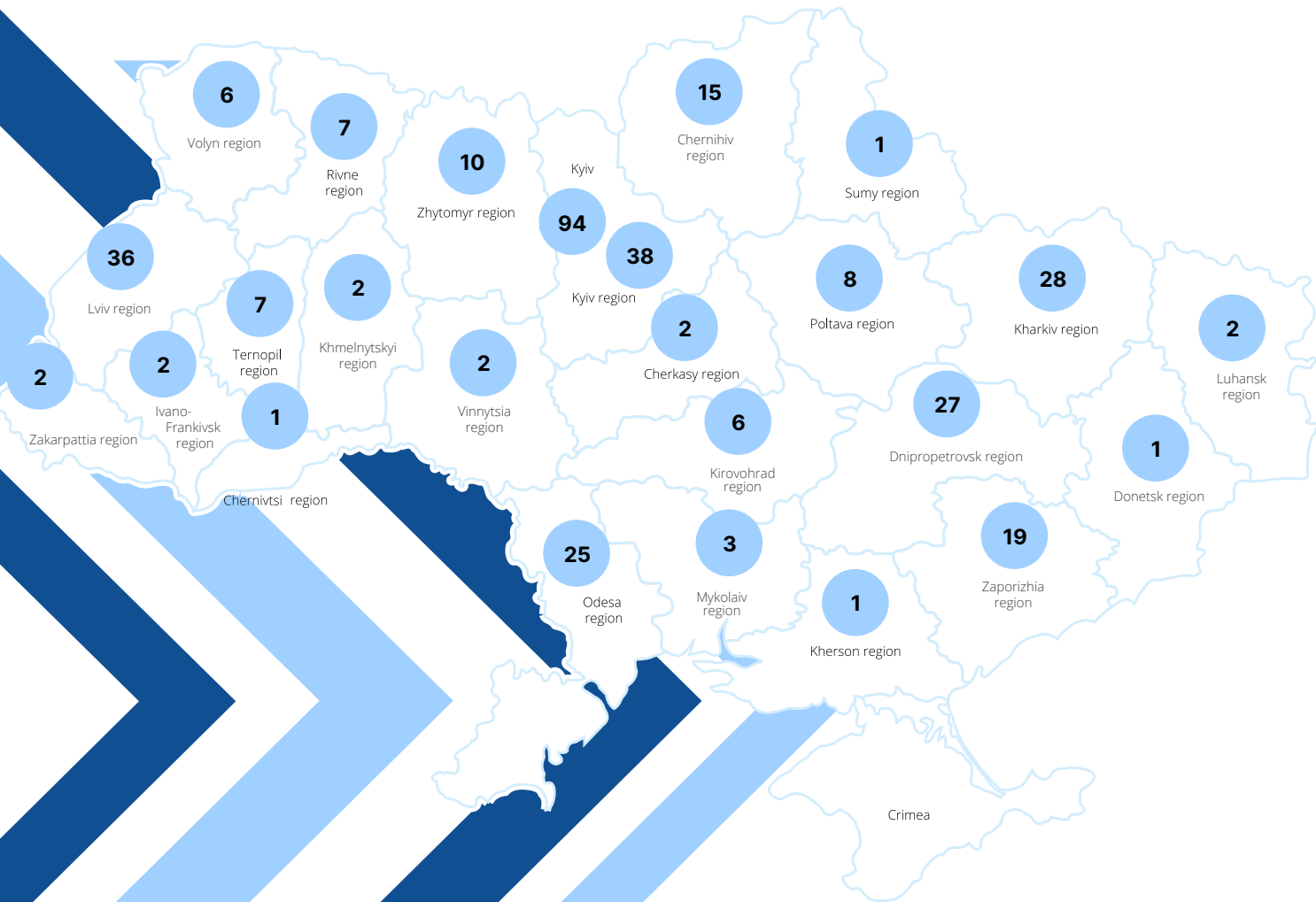
181+ days



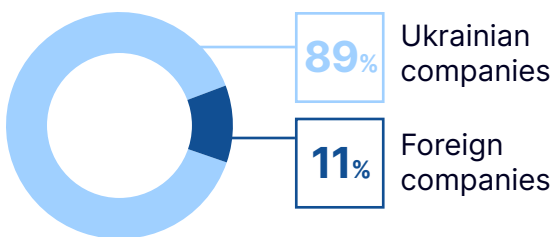
**81%**

of all closed investigations in Q1 2024, we investigated within 90 days, thus fulfilling the norm of BOC's Rules of Procedure.

## 1.7 Complainants' portrait

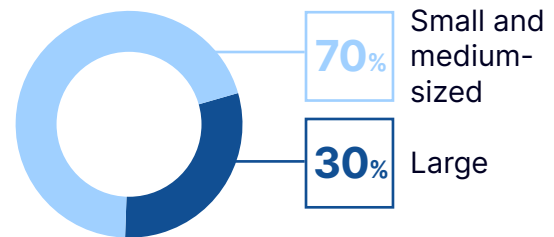


### Origin of capital



Analyzing the complainants' portrait, we make sure once again that the vast majority of complaints are submitted to the Council by Ukrainian businesses – 89% in the reporting quarter. The share of complaints from foreign businesses was 11%.

### Size of business



70% of complaints were submitted to BOC from small and medium-sized businesses. Appeals from large companies accounted for only 30% in Q1 2024.

# PROFESSIONAL ADVANCEMENT OF BOC TEAM IN MEDIATION



Being equidistant from state bodies and independent by its nature, the Business Ombudsman Council has been using alternative dispute resolution tools in solving business problems with state bodies since the first day of its establishment. In its work, the Council adheres to the principles of confidentiality and impartiality allowing it to be a trusted neutral party in settling disputes.

Taking into account that mediation as a civilized ADR mechanism is becoming widespread in Ukraine and a special Law on Mediation was adopted in 2021, the Council's team deepened its qualifications in this area in the reporting quarter. Based on the training results at the Ukrainian Mediation Center [kmbs], 16 specialists – both investigators and employees of BOC Operations and Communications Departments received mediator certificates.



### For reference:

Mediation is a process of alternative resolution of disputes between the parties in the presence of a neutral third party mediator, which helps to reach mutual agreement in solving the problematic issue.

Based on the completed course results, the Council team aims to expand its toolkit in order to offer complainants a one more effective way of out-of-court dispute settlement between business entities and state bodies or state-controlled companies.



# EXAMPLES OF SUCCESSFULLY COMPLETED INVESTIGATIONS

## Tax office returns UAH 5 mn of VAT to the company



A building materials manufacturer from Kremenchuk approached the Business Ombudsman Council, because the tax office reduced the budget refund amount it claimed by UAH 5 mn and accrued a fine worth UAH 260k.

The company challenged tax notifications-decisions in court. According to the court decision, the MD STS in Poltava Oblast had to restore the company's right to UAH 5 mn claimed for a VAT refund. However, the tax authority did not enter data on the agreed budget refund amount into the VAT refund applications Register.

Given the ongoing war and a reducing number of orders for construction, the company planned to use the funds subject to budget refund to save jobs and pay workers' salaries. However, tax officials' inactivity regarding non-return of the budget VAT refund threatened the enterprise's further existence.

After receiving the complaint, the following day the Council wrote a letter to the State Tax Service of Ukraine and asked, in accordance with the court's decision, to enter information about the agreed budget refund amount into the Register. The Council reminded that according to the Tax Code, after the court's decision had entered into force, the tax office was obliged to reflect the agreed VAT amounts in the Register on the following working day after receiving the decision.

Besides, in order to resolve the issues raised in the Council's letter, a video conference between the STS and BOC was held, as a result of which it was reported the VAT amount worth UAH 5mn was agreed and sent to the State Treasury of Ukraine bodies, which was reflected in the Register of applications.

Thus, with the Council's facilitation, the MD STS in Poltava Oblast yet entered data on the agreed VAT amount into the Register. The complainant confirmed the return of UAH 5 mn of VAT to his account and thanked BOC for assistance.

## Company returns UAH 1.9 mn of registration limit



A Kyiv-based company turned to the Business Ombudsman Council back in 2021, having an issue with the capital's tax office. In 2019, tax officials canceled the company's VAT certificate. As a result, the registration limit amount in the electronic VAT administration system (SEA VAT) was reduced by almost UAH 1.9 mn.

Later, the court took the company's side and canceled the tax authority's decision. Now, the STS in Kyiv city was obliged to execute the court's decision. Yet, the company independently managed to have the tax authority return it to the VAT payers register. At the same time, the situation couldn't be resolved at that point, because the tax office still had to adjust the VAT registration limit amount in the SEA by returning the same UAH 1.9 mn written off when the certificate was canceled. As it later turned out, the lack of the necessary software became an obstacle to resolving the issue.

After processing the complaint, the Council upheld the complainant's position and officially communicated with the State Tax Service. Over ten times, the Council discussed the issue of STS in the format of an Expert Group, and also held several working meetings with the participation of the taxpayer.

Thus, according to the Tax Code provisions, in case of cancelling the decision to revoke the VAT payer registration, the registration limit amount shall be recalculated within three working days after the date of the decision to renew the VAT payer status in the system. However, as it turned out, for a long time the STS lacked the tools to take this action technically, and practical resolution of this issue was delayed for almost three years. It is noteworthy that the Council issued recommendations to the Ministry of Finance and STS to arrange a technical update of indicators in the SEA VAT in the systemic report "Administering Taxes Paid by Business" (2020). For our taxpayer the STS implemented technical solutions that allowed updating all the payer's indicators in the SEA VAT.

The case was closed successfully. In the meantime, the Council has already received new complaints, where STS planned to use algorithms developed during processing the mentioned complaint to renew lost indicators in SEA VAT as a result of a similar situation.

## State Bureau of Investigation returns car company's seized property and funds



A car importer complained to the Business Ombudsman Council because law enforcement officers did not return the property seized as a result of the search.

It is known that in November 2021, the State Bureau of Investigation (SBI) conducted a search of the house of the company's CEO, during which they seized two laptops and USD 265k in cash. In addition, the search was also performed in the company's office, where the law enforcement officers also seized the company's equipment. In December 2021, the investigating judge refused to arrest temporarily seized property, and therefore the law enforcement officers had to immediately return it to the complainant. However, they did not do it, and the jurisdiction of the case changed several times. Meanwhile, the company unsuccessfully appealed to pre-trial investigation bodies and the Prosecutor General's Office.

While investigating the case, during June-October 2023, the Council repeatedly sent letters to the Prosecutor General's Office, Kyiv City Prosecutor's Office, the Main Directorate of the National Police in the city of Kyiv, the Chief Investigation Department of the SBI and the Territorial Directorate of the SBI in the city of Kyiv and requested to immediately return temporarily seized property to the complainant as required by the court ruling. The Council emphasized that, according to the ruling conclusions, the seized items did not contain evidence in criminal proceedings, so it was obvious that property retention by law enforcement officers violated the company's rights. The Council twice submitted a complaint for consideration of the Expert Group with the Prosecutor General's Office, thanks to which it was finally possible to achieve a result. The SBI returned temporarily seized equipment and USD 265k to the company's CEO.

## STS returns UAH 24.3 mn of registration limit to the supermarket chain



The Council received complaints from two FMCG retail players with a similar scenario.

The complaints related to the failure of the tax service to recalculate the registration limit for cargo customs declarations for which VAT was paid. Since May 2022, one of the companies has been on the simplified taxation system as a single taxpayer of the third group at a rate of 2%. While being on the simplified taxation system, the company continued importing goods paying VAT.

In August 2023, after the state canceled preferential tax conditions, the supermarket chain returned to the general taxation system with paying VAT.

Meanwhile, the company discovered that the registration limit for the VAT amount paid for customs declarations issued while being on the simplified system, was not reflected contrary to the



provisions of tax legislation, particularly para. 9-1.2.1, subsection of Chapter 8 XX of the CCU.

After analyzing the legislation, the Council confirmed that while staying on the single tax of the third group at the rate of 2%, the registration limit amount for which the company had the right to register invoices should have increased.

Another company was not on the simplified taxation system, meanwhile, due to technical and communication reasons, information on 16 customs declarations and adjustment sheets was not transmitted to the Tax Service.

The Council brought up cases for consideration of Expert Groups with the State Tax Service and the State Customs Service.

As a result, thanks to the effective work of Expert Groups and BOC facilitation, the Tax Office reflected the registration limit amount of the supermarket chain in SEA VAT in the amount of UAH 21.6 mn. according to 112 customs declarations. The STS authorities also recalculated the registration limit of the hypermarket on the second complaint for the VAT amounting to UAH 2.7 mn. according to 16 cargo and customs declarations.

## Certificate for export of fish products and invoices for UAH 1.5 mn: a story of Albacor LLC



One of the biggest fish and seafood importers in Ukraine successfully exporting fish products in the EU and the USA – Albacor LLC turned to the Business Ombudsman Council with two complaints at a time.

The company got a refusal from the State Service of Ukraine on Food Safety and Consumer Protection in Zaporizhia Oblast to issue a health certificate for fish products export. The state consumer protection service reported that nothing was known about the company's production facilities and in addition noted that the latter ignored its requests.

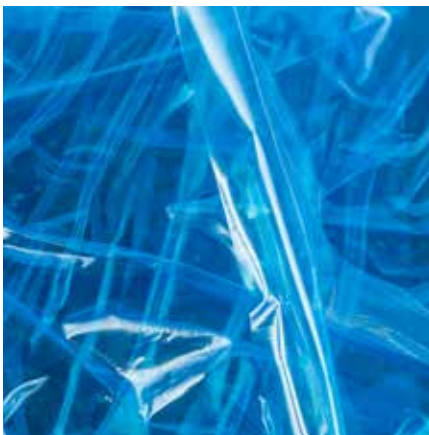
At the same time, the enterprise got trouble with the tax authority: the State Tax Service did not enforce the court judgement on VAT invoice registration amounting to UAH 1.5 mn. Such a situation made the company ask the Council for help to unlock its operation and restore cooperation with international partners as soon as possible.

Taking into account that during 2022-2023 business complaints related to delay in issuing or preparing permissive documentation, particularly, from Zaporizhia Department of the state consumer protection service, became more frequent and systemic, the Council could make sure of during a separate meeting with Zaporizhia entrepreneurs. The Council sent the state consumer protection service a letter and had a personal meeting with its head. BOC emphasized that due to actions of the regional state consumer protection service thousands of enterprise's employees could lose their job, while artificial obstacles to issuing a permission certificate to the company being a well-known fish products exporter in the world market, negatively affected the image of Ukraine. Besides, the Business

Ombudsman brought up the complaint for consideration of the Commission for considering problematic business issues with the State under the President of Ukraine. Simultaneously, a meeting of the Council's Expert group with the State Tax Service of Ukraine was held, where an issue of non-enforcement of the court decision was discussed.

Eventually thanks to BOC persistent communication with state bodies the two company's complaints got positive outcomes: the State Consumer Protection Service management in Zaporizhia Oblast issued the certificate for fish products export to the company, and STS enforced the court decision on VAT invoice registration for the amount of UAH 1.5 mn.

## Long fight for data tables: a story of Odesa company



An Odesa company, which manufactures various products from polyethylene and polypropylene, complained to the Business Ombudsman Council that the regional tax office did not accept the tax payer's data table.

The complainant has been submitting data tables since the end of 2022, but the Commission of the regional level under the STS in Odesa region (Commission of the regional level) refused to accept them each time for various reasons. In particular, in the first refusal to take into account the data tables, tax officials indicated that the types of activities given in the table did not correspond to the company's existing fixed assets. Later, the reason for the data table non-acceptance was existing tax information, which indicates that the company carries out risky operations. In the last refusals, the Commission of the regional level referred to paragraph 14 of the Decree No. 1165, which contains a general provision on the need to submit a table of data with an explanation, which indicates the type of activity, with reference to the tax and other reporting information of the taxpayer.

While processing the company's complaint, the Council turned to the communication platform of the STS in Odesa region and organized a meeting with its responsible officials. As a result of the meeting, it was found that the reason for not accepting the complainant's data tables was the negative VAT value and the lack of payment of income tax. The tax office reported that the prerequisite for taking into account the data tables is that the company must show positive dynamics in paying the specified taxes within the next 3 months from the date of the meeting.

The complainant provided the Council with an explanation and the supporting documents specifying that the negative value of VAT had a justified origin, namely formed due to the import of production equipment and raw materials for the production of goods.

2 months later after the meeting with the regional STS office, the company showed positive dynamics in reducing the negative value of VAT, and, following the Council's recommendations, the complainant resubmitted the data tables. However, based on the results of their examination, the regional tax office once

again refused to accept them, this time the reason was that the company cooperated with a supplier, which, in the opinion of the STS, was a risky one. The complainant explained that cooperation with this counterparty took place long before it was recognized as risky. Therefore, such a situation clearly demonstrated the problem of virality of the risky status of tax payers, that a whole chain of other supposedly risky taxpayers can be artificially spun through one risky counterparty.

Since the administrative appeal of decisions concerning non-acceptance of data tables had already been introduced at that time, the Council recommended the complainant to use this opportunity. At the same time, previously (before the company submitted a complaint to the central level commission), the Council decided to discuss the complainant's situation at the meeting of the Expert group with the State Tax Service of Ukraine (STS of Ukraine).

Considering that at the meeting with STS, the latter had no objections against the complainant's activities, the company, following the Council's suggestion, appealed to the central level commission about the tax decision on non-acceptance of data tables.

The result was ultimately positive – STS satisfied the company's complaints and accepted the data tables. In addition, the complainant informed the Council that, after BOC became involved in solving its problem, its tax invoices were registered with no obstacles. In particular, the company revealed that while the Council was supporting the company and investigating the case, it managed to register invoices for UAH 2.2 mn.

## Ivano-Frankivsk City Council issues a permit for placing retail outlet



An enterprise from Ivano-Frankivsk complained to the Business Ombudsman Council. The company won a state grant for business development. As part of the project implementation, the company had to obtain a permit for placing a retail outlet from Ivano-Frankivsk City Council Department of Urban Planning and Architecture (City Council Department). However, the City Council, having received the application in June 2023, only a few months later refused issuing such a permit to the company due to errors in the submitted documents. In September, the complainant submitted a revised package of documents to the City Council Department through Administrative Services Provision Centre (TSNAP) to obtain a permit. However, the local government authority did not consider documents with corrected errors.

Having accepted the complaint in December 2023, the Council turned to Ivano-Frankivsk City Council Department and asked to immediately and impartially, according to the procedure of the Law "On the Administrative Procedure", study the complainant's full package of documents and make a legal decision.

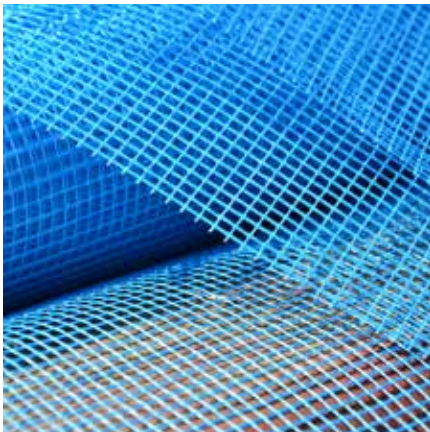
The Council's intervention had a considerable impact on the Department's representatives: the parties managed to

communicate effectively and understand the situation online. During the joint review of the company's complaint, thanks to the Council's mediation, the City Council Department and the complainant agreed on the algorithm of further actions for the company to receive administrative services. In particular, the City Council Department had to formalize its objections to the complainant's package of documents, while the complainant – to re-apply using a new form, having preliminarily agreed on an offset to the adjacent area of the educational institution and gas networks.

Already in January 2024, the City Council Department informed the company how it should adjust the outlet layout.

In the end, the company submitted an updated package of documents, and in February, the City Council Department issued the long-awaited permit for placing the retail outlet.

## Lviv Customs drops the decision to adjust the customs value of goods



A private enterprise from Lviv Oblast approached the Business Ombudsman Council. The company reported that Lviv Customs adjusted the customs value of imported fiberglass mesh (country of origin – China).

The company submitted all the necessary documents to the customs, particularly, the foreign economic contract, invoices and bills of lading. The customs also demanded additional documents from the company, which the complainant quickly provided. However, it did not resolve the situation, as the customs reported a lack of information on identical imported goods and accordingly adjusted the customs value of goods and refused clearing them. The company challenged the customs officials' decision to the State Customs Service (SCS) and asked BOC for assistance.

The Business Ombudsman Council took part in a video call with the participation of the State Customs Service and Lviv Customs to jointly consider the circumstances of the case. In addition, the Council brought up a private enterprise's complaint for consideration of the Expert Group with SCS, where the Deputy Business Ombudsman also participated.

In the end, during the joint review of the complaint, the private enterprise agreed with the customs that it should add to the documents a conclusion on value characteristics of goods, prepared by a state specialized expert organization. The company provided the requested conclusion. Finally, a positive result was achieved. Lviv Customs dropped its decision to adjust the customs value of the fiberglass mesh. With the Council's facilitation, the complainant managed to defend the customs value he indicated and pay only those taxes he had to pay. In case of customs value adjustment, the VAT amount would be UAH 116k more.

After closing the case, the company informed the Council the following batch of goods had been delivered already without adjusting the customs value.



## 4

# PROBLEMS IN THE VAT SYSTEM:

## monitoring the implementation of recommendations by state bodies based on the results of BOC own-initiative investigation



Own-initiative investigations are a new format of processing systemic business problems launched by the Business Ombudsman Council at the end of 2022. Thanks to it, the Council's investigators are able to dive deeper into the roots of problems of the biggest concern for entrepreneurs and develop custom recommendations for state bodies to solve them.

The first Business Ombudsman Council's own-initiative investigation into VAT system problems not only allowed to bring the situation of abnormal mass tax invoices suspension to the nationwide level but also to start a dialogue with the state to settle it.

From the moment of presenting its own-initiative investigation results in March 2023, the Council keeps a close eye on monitoring changes in the VAT system and periodically meets with the Ministry of Finance and the State Tax Service to discuss opportunities eliminating shortcomings in SMKOR for fiscal bodies to find a common language with business.

### During this period, we noted the following important changes:

- administrative appeal of decisions on riskiness of a taxpayer and refusal to accept data tables was introduced (BOC recommendation issued in the report on the administrative appeal procedure in 2019, was taken into account);
- analysis and legislative changes forecasting functions have been improved, which is evidenced not only by the absence of surges in tax invoices suspension (as it was in October–November 2022), but also by the gradual decrease in the number of suspended tax invoices despite periodic legislation improvement;
- the Verkhovna Rada was involved, which ensured receiving direct feedback regarding business proposals;
- the form of decisions about riskiness of the taxpayer and non-acceptance of tax data tables has been improved;
- the period during which transactions are taken into account when considering riskiness of the payer has been limited (180 days);
- a positive tax history indicators list has been expanded;
- work on the taxpayer's profile has started;
- regional communication platforms and hotlines for taxpayers and civil society institutions have been created.

## At the same time, despite serious efforts of fiscal authorities to improve SMKOR work algorithms, the situation is still far from the best scenario for business.

As mentioned above, indeed, the number of TIs/ACs suspended by SMKOR is gradually decreasing:

January	<b>0.83%</b>
February	<b>0.75%</b>
March	<b>0.68%</b>

Meanwhile, in value terms, trends could be better (although March dynamics look very promising):

January	<b>2.30%</b>
February	<b>2.33%</b>
March	<b>1.87%</b>

Invoice suspension still affects approximately 10% of VAT payers (according to the STS statistics), with a downward trend from 10.31% in January to 9.68% in March 2024.

## Despite the fact that the number of business complaints to the Council about SMKOR went down to 58% (121 complaints out of 207) in January-March 2024, we still see room for improvement in the approach of the tax office to business, in particular:

- Complaints continue including cases of unsubstantiated inclusion of enterprises in risky payers' lists, particularly based on risky counterparties, while the elementary analytical work is usually not carried out.
- When accepting data tables, the main driver is the tax burden without taking into account economic aspects and the fact that data tables exist primarily for processing and manufacturing enterprises.
- The decision to refuse tax invoices registration, as before, does not have a sufficient basis resulting in their successful appeal in courts.

According to BOC, tax authorities should add an analytical approach to researching tax information on taxpayers. At the same time, in order to avoid oppression of businesses compliant with tax legislation norms, especially entrepreneurs who are able and ready to quickly correct their mistakes, we urge

the State Tax Service and the Ministry of Finance **to treat taxpayers more carefully in accordance with the good governance (administration) principle.**

**Therefore, the Council urges the fiscal authorities pay special attention to areas important for the SMKOR adjustment:**

- Administrative practice adjustment (taking into account stable judicial practice on SMKOR issues)
- Analysis and forecasting of the impact of legislative changes regarding SMKOR
- Riskiness of the payer (compliance with the principles of transparency, proportionality, efficiency of procedures when qualifying a taxpayer as risky)
- Availability of data on key indicators (openness of information and constant communication with taxpayers)

**The Council calls on the Ministry of Finance and the State Tax Service to take decisive action to transform the SMKOR for entrepreneurs to get rid of unreasonable prosecution by fiscal authorities and focus on current economic activities. The Council will report on further progress in resolving business tax issues in upcoming reports.**

Despite the efforts of the Business Ombudsman Council to join the SMKOR audit process, which is provided for by the Presidential Decree No.21/2024, the Council has not yet been included in the relevant working group. At the moment, neither the method, nor the approximate audit commencement date is known.

## 5

# COOPERATION WITH OECD

## for public-private partnership and recovery strategies

With thirty-seven of the world's most developed countries as members, the Organization for Economic Co-operation and Development (OECD) provides an environment in which governments can compare their experience, seek answers to common problems and develop high economic policy standards. For over 50 years, the OECD has been a trusted source of evidence-based policy and economic data analysis, drawing on Europe's post-World War II recovery. Currently, the OECD has actually turned into a body for coordinating social and economic policies of leading industrial countries.

Ukraine began cooperation with the OECD in 1991. The organization has become a valuable partner of Ukraine in promoting and implementing reforms in accordance with international standards, among which are unwaveringly important elements on the path to Ukraine's European integration and acquisition of OECD membership: fight against corruption and the private sector development.





## OECD contribution to establishing and developing BOC

After the Revolution of Dignity in 2014, the OECD, jointly with the EBRD, the Government of Ukraine and business, became the founders of the Business Ombudsman Council as a unique institution independent of government bodies and protecting legitimate rights of businesses, promoting the rule of law and global good governance best practices.

As a member of the BOC Supervisory Board, the OECD constantly engages the institution in platforms discussing the topic of combating corruption in Eastern Europe and Central Asia, promoting the ideology of integrity in business and governance, as well as successful implementation of the Business Ombudsman Council model in Ukraine, which has been working continuously for nine years, despite challenges and wartime crisis.

## BOC contribution to the process of joining Ukraine to the OECD



In October 2022, Ukraine started negotiating on joining the OECD. As with the European Union, Ukraine's prospects are quite clear: sectoral changes and reforms, as well as anti-corruption infrastructure development. Ukraine's accession to the Organization should give a positive signal to the international community as regards investment security and business development prospects.

For the OECD, the Business Ombudsman Council has long been a platform capable of facilitating a consolidated dialogue with the private sector and Ukraine's leading companies.

In February 2024, the Business Ombudsman Council hosted high-ranking guests from the Organization for Economic Cooperation and Development, who came to Ukraine to discuss recovery-related business needs and opportunities. As part of the visit of OECD, Secretary General Matthias Kormann, William

Thompson, Head of the OECD Eurasia Division, Gregor Virant, Head of EU SIGMA programs, and the management team of the OECD representative office in Kyiv visited the BOC office.

On behalf of the Business Ombudsman Council, the OECD delegation was received by Tetiana Korotka, the Deputy Business Ombudsman, as well as invited leaders of the Ukrainian League of Industrialists and Entrepreneurs, the American Chamber of Commerce, the Chamber of Commerce and Industry of Ukraine, the European Business Association, the Federation of Employers of Ukraine, and the Union of Ukrainian Entrepreneurs.

During the meeting, the participants discussed the situation in the private sector, the OECD-Ukraine Country Program details, and exchanged views on prospects, problems and opportunities in the recovery process.

## Consultations with the OECD on tax supervision

Within its own-initiative investigation into tax audits, the active investigation period which fell on the first quarter of 2024, the Business Ombudsman Council initiated consultations with the OECD on trends in tax audits resumed from the second half of 2023. The Council

shared with OECD experts the preliminary text of the report prepared based on the results of a study of the inspections phenomenon. The positive news was the approval of the BOC's new own-initiative investigation and its findings to be presented to the public.





## OECD Integrity Week in Paris

In the reporting quarter, the Business Ombudsman and his Deputy participated in the Global Anti-Corruption and Integrity Forum organized by the OECD. This annual leading event in the world of combating corruption and promoting best practices brought together about 4,000 online and offline attendees. Within the Forum, BOC representatives participated in a number of official consultations and events.

The Business Ombudsman Roman Waschuk took part in the OECD consultations on “Tackling Bribery Solicitation” as one of the leading speakers. The Business Ombudsman devoted his speech to the problem of encouraging business compliance by the state. The event was held in the form of consultations, where stakeholders from the public and private sectors, as well as

civil society, academia and international organizations from different regions, economic sectors and experience offered good practices and innovative tools to combat solicitation of bribes. Debate was held in thematic rounds on key provisions of the 2021 OECD Anti-Bribery Recommendation section.

Apart from that, Roman Waschuk and Tetiana Korotka participated in the Workshop on assessing corporate anti-corruption compliance measures which brought together stakeholders from the public and private sectors, as well as civil society and scientific community to analyze approaches and methodologies for assessing corporate anti-corruption compliance measures and studying the problems encountered in evaluating these measures effectiveness.

## Declaration on Fair and Reasonable Administration

The Declaration on Fair and Reasonable Administration, the Business Ombudsman Council has been working on for the past few months, has been the subject of analysis by the Organization for Economic Cooperation and Development (OECD) SIGMA Program supporting public administration reforms in Europe. This step became necessary along the way of completing consultations with stakeholders, with whom the Council discussed the Declaration as the new document regulating B2G relations. The basis of the Declaration is a system of behavior principles between the state and business, taking into account European good administration standards.

Following favorable feedback from government authorities and stakeholders, the OECD gave a highly positive assessment of the Declaration and confirmed its compliance with best practices.

The OECD’s experience in supporting countries in post-war reconstruction, as well as a sustainable partnership with Ukraine, will help strengthen Ukraine’s economic potential. In turn, the Business Ombudsman Council will continue cooperating with the OECD to share experience in protecting and developing the private sector, promoting the ideas of integrity, as well as good governance.

## 6

# COOPERATION WITH STAKEHOLDERS

## 6.1 Meeting of the Business Ombudsman Council and the Prosecutor General's Office with leading business associations



For nine years in a row, the Business Ombudsman Council has been acting as an independent institution for resolving complex issues in B2G relations. The Council offers its platform for establishing a dialogue between entrepreneurs and state authorities and helps the parties reach an understanding as a mediator.

Hence, in order to address current business issues in the law enforcement sphere, on January 24, 2024, with the assistance of the Business Ombudsman of Ukraine, the Business Ombudsman and the Prosecutor General met with leading business associations.

The meeting became a platform for discussing urgent problems of business in interaction with law enforcement agencies, in particular during martial law. As long as the meeting was held after a high-profile arrest of the businessman Ihor Mazepa, it helped to build a bridge between the Prosecutor General's Office and the business community to exchange views on violations of the legal rights of businesses by law enforcement officers during investigative actions in criminal proceedings.

Among the participants of the meeting were representatives of the European Business Association, the American Chamber of Commerce, the Ukrainian League of Industrialists and Entrepreneurs, the Chamber of Commerce and Industry of Ukraine, the Federation of Employers of Ukraine, the Union of Ukrainian Entrepreneurs, the Association of Residents of Diia.City, UNIC, the Association of Taxpayers of Ukraine, the Ukrainian Bar Association, CEO Club Ukraine and the Ukrainian Business Council. Halyna Yanchenko, People's Deputy and Head of the Verkhovna Rada Temporary Special Commission on Investors Rights Protection, also joined the meeting.

As a result of the meeting, the Business Ombudsman Council and the Prosecutor General's Office agreed to actively cooperate in order to prevent cases of undue pressure on business and to introduce quarterly meetings of the Prosecutor General with business associations to discuss problematic issues.



## 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 Q1 2024	Number of cases considered in Q1 2024
State Tax Service (STS)	3	174
Main Department of STS in Kyiv city	1	5
Main Department of STS in Kyiv region	2	7
Prosecutor's General Office	2	22
State Customs Service	2	15

### Expert Groups with State Tax Service



### Expert Groups with Prosecutor's General Office



## 6.3 Meeting with the EU ambassadors



With the support of the EU Ambassador to Ukraine Katarina Maternova, the Business Ombudsman of Ukraine Roman Waschuk and his Deputy Tetiana Korotka met with the ambassadors of the European Union in February 2024. They presented the activities of the Business Ombudsman Council, which has been protecting business rights in Ukraine for nine years.

At the meeting with the ambassadors of the EU states,

which was held at the EU Delegation to Ukraine, Roman Waschuk outlined the key directions of the institution's work and, using examples, he spoke about the problems faced by entrepreneurs, as well as the way the Council solves systemic business issues in cooperation with the Government of Ukraine and partners.

Roman Waschuk thanked the EU states, which constantly support the

Business Ombudsman Council operation and make it an effective model of free legal assistance for both Ukrainian and foreign businesses operating in these turbulent times in Ukraine.

During the reporting quarter, the Business Ombudsman and his Deputy also maintained working contacts with diplomats of foreign countries, particularly Austria, Finland, the USA and Canada, with whom they discussed the restoration of Ukraine.

## 6.4 Australian contacts



The Business Ombudsman makes efforts to promote the mission of the Business Ombudsman Council in protecting business and attracting investors not only in Ukraine, but also abroad.

In the reporting quarter, Roman Waschuk made a presentation at the Australian Institute of International Relations in Brisbane,

where he talked about the development of the Ukrainian state and the ability of its economy to overcome military challenges. In addition, the Business Ombudsman of Ukraine took part in the event of the Chamber of Commerce in Sydney – Business NSW & Business Sydney, devoting his speech to rebooting of the Ukrainian economy in the conditions of a full-

scale invasion of the Russian Federation.

Roman Waschuk thanked the Australian partners of Ukraine for their support and encouraged the expansion of cooperation between the countries both in terms of attracting economic investments and strengthening Ukraine's defense capabilities.



## 6.5 Visit to Pharma Start enterprise, the Swiss Acino production facility



In the reporting quarter, the Business Ombudsman Roman Waschuk and his Deputy Tetiana Korotka visited Pharma Start – production facilities of Acino international pharmaceutical company with Swiss roots and met with its management – CEO of Acino in Ukraine and the CIS Yevhen Zayika and the plant CEO Dmytro Shevchuk.



During the meeting, not only the investment opportunities of the pharmaceutical company and the issue of supporting the real sector of the economy were discussed, but also the leadership of the Council had a unique opportunity to get

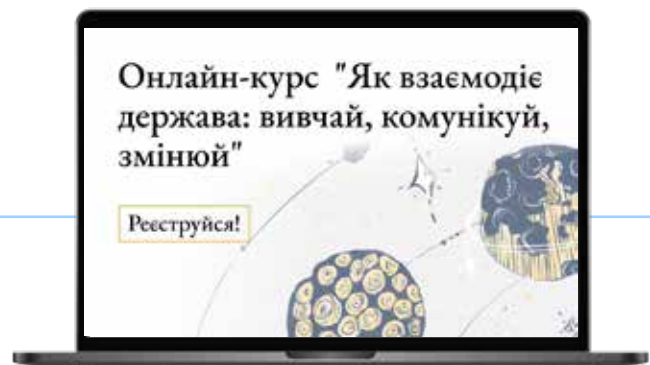
familiar with the process of medicines production at the ACINO plant.

The Business Ombudsman expressed his readiness to help the company in case of possible problematic issues with state bodies.

## 6.6 Launch of a study course “How the State Interacts: Learn, Communicate, Change”

In February 2024, the NACP Integrity Office launched the online course “How the State Interacts: Learn, Communicate, Change”, developed in partnership with the Business Ombudsman Council, the Partnership Mediation Institute, the Platform for Social Change and with the support of Universal Studio.

The course is aimed at civil servants, heads of public sector organizations and interested citizens. It offers to learn about the tools of effective interaction between public authorities, society and business.



The training, in particular, will focus on the following topics:

- Good governance as a basis for dialogue with business and the public
- Effective interaction between authorities and business
- The state and civil society – the result of joint action
- Socially responsible business and social entrepreneurship
- Communication as a tool of interaction

Registration for the course is available [here](#).

## 6.7 Events Calendar

**03.01.2024**

Discussion "Ukraine's National Revenue Strategy: Tax Reform, Budget Replenishment"

**Organized by:**  
Center for Economic Strategy

**12.01.2024**

Meeting with the Head of State Property Fund Vitalii Koval

**Organized by:**  
State Property Fund

**24.01.2024**

Conference "Strategic Vision of Ukraine's Recovery – National Revenue Strategy 2030, Facility Plan UA, Mobilisation"

**Organized by:**  
Association of Taxpayers of Ukraine

**26.01.2024**



Meeting "Business Support and Development During War"

**Organized by:**  
Ministry of Economy

**06.02.2024**

Event "United with Action: Presentation of Diia.City United"

**Organized by:**  
Diia.City

**07.02.2024**



Discussion "Priorities and Challenges for SME Activities in the context of Ukraine's Reconstruction"

**Organized by:**  
The Verkhovna Rada Committee of Economic Development

**13.02.2024**



Economic overview  
"Government vs Business. How to Ease Pressure on Ukrainian Entrepreneurs"  
**Organized by:**  
German Economic Team (GET)

**12.02.2024**

Meeting Olena Boichenko, USAID SOERA Lead

**Organized by:**  
USAID SOERA

**12.02.2024**

Business and MOH consultations on presenting an Action plan on reforming healthcare

**Organized by:**  
Ministry of Health of Ukraine

**28.02.2024**

Meeting of Ethics and Executive Committee of UNIC

**Organized by:**  
UNIC

**28.02.2024**



Discussion regarding Ukraine's reconstruction

**Organized by:**  
Network 20/20

**07.03.2024**



Anti-Corruption Law Forum

**Organized by:**  
Ukrainian Bar Association

**07.03.2024**

Meeting with AHP International

**Organized by:**  
AHP International

**13.03.2024**



Discussion "BEB: a Body of Pressure on Business, or a New Analytical Center for Economic Crimes Prevention?"

**Organized by:**  
Ukrainian Bar Association

**13.03.2024**



Discussion "Two Years of the Great War: In Which Condition Is the Economy Now?"

**Organized by:**

CASE Ukraine

**18.03.2024**

Meeting of the Ministry of Health Advisory Body

**Organized by:**  
Ministry of Health

**18.03.2024**



Conference "Strategy of Rebuilding and SME Development for 2024-2027 – Vision of Business"

**Organized by:**  
Ukrainian Business Council

**21.03.2024**

Presentation of sociological survey results "Corruption in Ukraine 2023: Understanding, Perception, Frequency"

**Organized by:**  
National Agency for Corruption Prevention (NACP)

**22.03.2024**

Meeting with Members of the President of Ukraine's Council for Entrepreneurship Support in the Conditions of Martial Law

**Organized by:**  
President's Office

**16.03.2024**

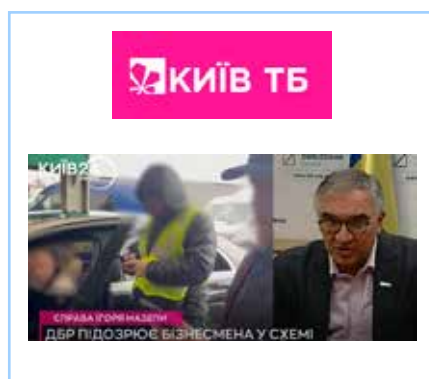
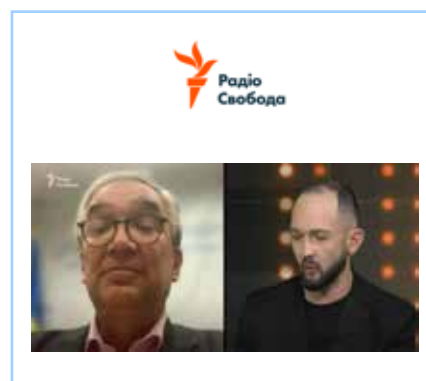
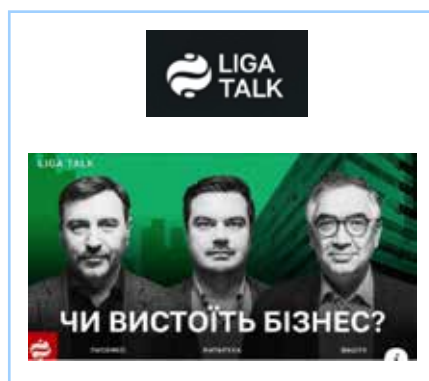
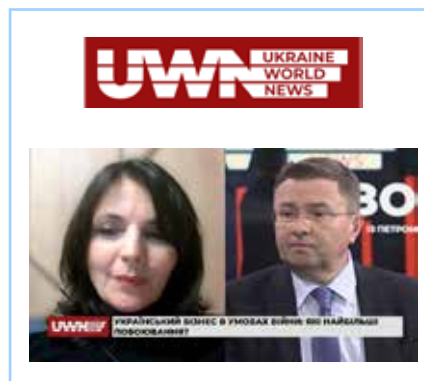
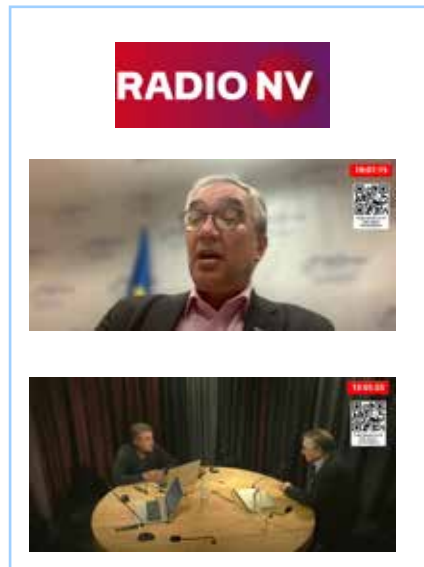


New alley creation on the occasion of 29th anniversary of Yurydychna Praktyka publishing house

**Organized by:**  
Yurydychna Praktyka  
Publishing House



## 6.8 Cooperation with media

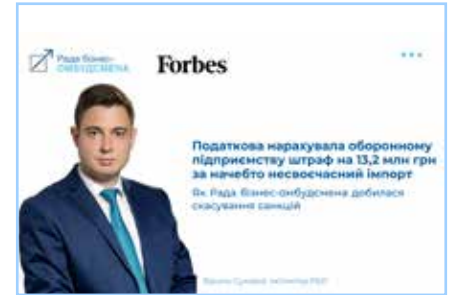
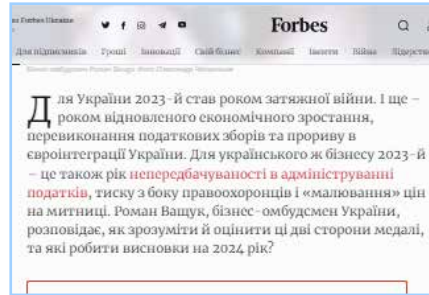




## Cooperation with Forbes Ukraine

# Forbes

In the reporting quarter, BOC continued to share its complainants' cases in Forbes and issued the Business Ombudsman's article on pressing business problems



## Press briefings

On January 19, 2024, the Business Ombudsman Roman Waschuk met with journalists at the BOC office to present the results of the BOC operations in 2023. The meeting was attended by representatives of leading media outlets – Forbes, Liga, The Page, Yurydychna Gazeta, Pro Groshi.



At this important time for business, when it is not always possible to prove one's right to the tax service and the only way out seems to be filing a lawsuit in court, the Business Ombudsman Council comes to the rescue. This is exactly the situation that our company faced, and as always, the BOC team helped to solve our problem in the shortest time possible. Your support is not only very important, but also very effective."

**LLC "Ukrainian Agro-Industrial Transport Group"**

CEO of **Smart Tech Industry LLC** Oleksandr Rudenko personally thanked the Business Ombudsman Council for its help during a personal meeting with the Business Ombudsman Roman Waschuk, his Deputy Tetiana Korotka and the investigator Maryna Pavlenchyk authorized in the case. The Council helped the company to register a new industrial park in Poltava Region in the Register of Industrial Parks.

We express our gratitude to the Business Ombudsman Council for their assistance in solving two important cases regarding numerous violations of legislation and pressure on the company from the State Production and Consumer Service State Administration in Zaporizhia region and the failure of the STS of Ukraine to comply with the court's decision regarding compulsory registration of tax invoices. We are sincerely grateful for the proactive attitude towards Ukrainian business in such a difficult time for the country."

**LLC "Albakor"**



Business  
**OMBUDSMAN**  
Council

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