



SPECIAL STUDY

The EBRD's Investment Climate Support Activities Case study : Business Ombudsman Institution in Ukraine

Regional

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EBRD EVALUATION DEPARTMENT

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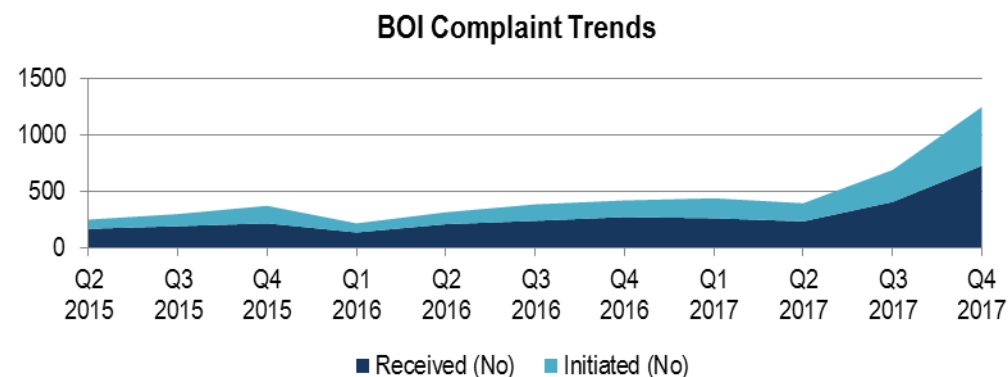
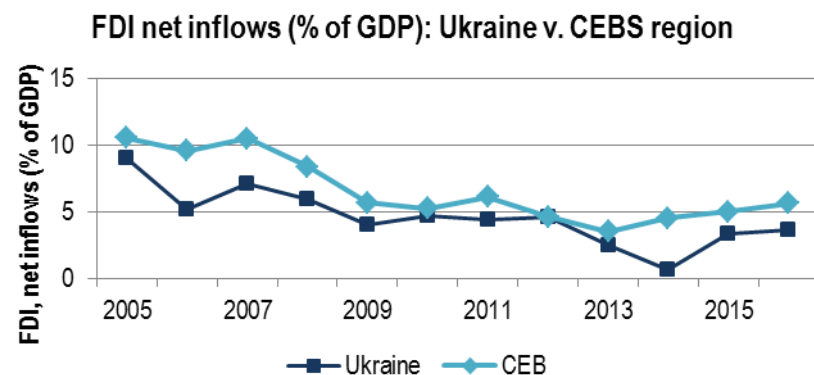
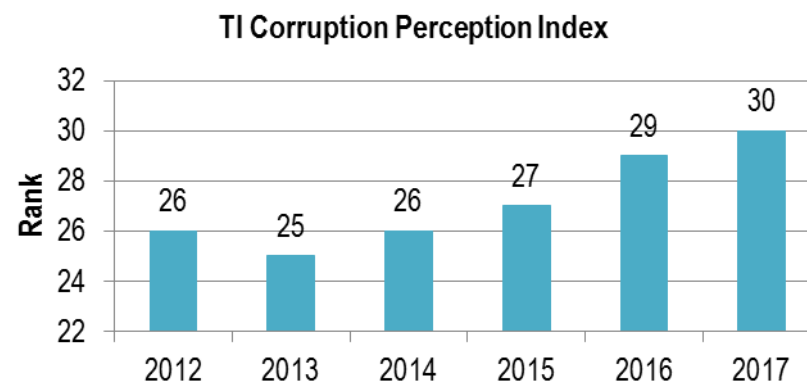
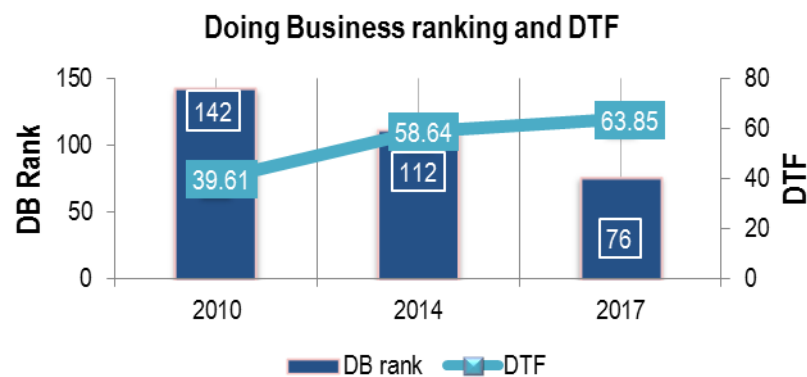
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Abbreviations

ACC	American Chamber of Commerce
BO	Business Ombudsman
BOI	Business Ombudsman Institution/ Business Ombudsman Council
COO	Country of Operation
EBA	European Business Association
EBRD	European Bank for Reconstruction and Development
GPA	Governance and Political Affairs Department, EBRD
HLRM	High Level Reporting Mechanism
ICGI	Investment Climate and Governance Initiative
LTT	Legal Transition Team
MDA	Multi Donor Account
MoU	Memorandum of Understanding
NGO	Non-Governmental Organisation
OCCO	Office of the Chief Compliance Officer
OECD	Organisation for Economic Cooperation and Development
OGC	Office of the General Counsel
PPD	Private-public dialogue
UAH	Ukrainian hryvnia
UFE	Ukrainian Federation of Employers
UNIC	Ukrainian Network of Integrity and Compliance

Ukraine Context Figures



List of BOI's Systemic Reports

Date	Systemic Report	Date	Systemic Report
01/18	"Control Over Controllers: Status Of Control Bodies Reform Implementation"	01/16	"Natural Monopolies Vs. Competitive Business: How To Improve Relations"
07/17	"Combatting Raidership: Current State And Recommendations"	10/15	"Problems With Administering Business Taxes In Ukraine"
02/17	"Challenges For Government And Business In Dealing With Local Government"	10/15	"Problems With Cross-Border Trading In Ukraine"
11/16	"Challenges And Problems In The Sphere Of Competition Protection And Oversight"	07/15	"Getting Access To Electricity"
07/16	"Reducing The Risk Of Corruption And Attracting Investment To The Construction Industry"	07.15	"Problems For Businesses As A Result Of The Military Situation In The East Of Ukraine And The Annexation Of Crimea"
01/16	"Abuse Of Powers By The Law Enforcement Authorities In Their Relations With Business"		

Sources: World Bank, Transparency International, BOI (Q4 2017 Report)

1. Introduction

Approach

This case study report contributes to a larger evaluation of the EBRD's activities in supporting improvements to the investment climate in its countries of operation. The report contains the results of the evaluation of the EBRD's activities supporting the establishment and functioning of the BOI in Ukraine, as well as those aimed at potentially establishing similar institutions in other COOs. The report is based on the analysis of internal and external documents related to the BOI's activities and semi-structured interviews with EBRD colleagues, BOI officials, donors, and other main stakeholders in the country (see Annex 1 for the full list).¹ It is not an evaluation of the BOI's activities as such and should not be considered as a performance assessment.²

For the purpose of answering the evaluation questions EvD used a theory of change developed for this special study. Therefore the logic of this report follows the logic of the theory of change (see Annex 2 for full details), presenting an analysis of the inputs, activities and results achieved by the EBRD in supporting the Ukrainian Business Ombudsman Council.

Support to the BOI contributes to achieving objectives in two transition qualities: well-governed and competitive. It also contributes to progress in four out of seven dimensions of the EBRD's Investment Climate and Governance Initiative (ICGI), particularly: (a) public-private dialogue; (b) transparency and disclosure; (c) incentives to reduce corruption; and (d) dispute resolution. While covering areas that are the responsibility of various bank teams (OCCO, OGC, LTT) this initiative is managed by the Governance team in the GPA department, under the leadership of the Country Director for Ukraine and the Managing Director for Eastern Europe and the Caucasus.

In terms of the elements of the country's investment climate, which is wider than the EBRD's mandate and which consists of 12 domains,³ the BOI's activities contribute to improving public governance; corporate governance; policies enabling responsible business conduct; competition policy; and tax policy. The first three policy areas combined together characterise the quality of institutions and the processes they support, which constitutes the EBRD's well-governed transition quality.

Country context

Corruption is a problem faced by a majority of countries, but in Ukraine its scale and extent of embeddedness in all spheres of life is particularly challenging. The EBRD's 2011-2014 Ukrainian country strategy, which was outdated at the time of evaluation (mid-2018), states that *"Improving the business environment and reducing corruption are key structural reform priorities which are likely to have a direct impact on the inward flow of foreign investment."*⁴ The dashboard above illustrates Ukraine's sluggish progress in attracting FDI, improving its position in the WB's Doing Business ranking and dynamics of the corruption perception index in the last five years.

Since the Revolution of Dignity in 2013-14, Ukraine has launched large-scale systemic reforms in many economic and social areas, simultaneously facing security threats and the need to invest heavily in its defence and security services. However, while some governance and policy changes have already had a positive effect on the economy, the challenge of corruption remains largely untamed. The years 2016-2017 have seen the launch of several new anti-corruption institutions, significantly enhanced public scrutiny of government actions and large-scale disclosure of the personal assets of civil servants, and wide

¹ Interviews in Kiev, Ukraine, took place in March 2017. In total 14 people shared their views on the BOI's activities and their results

² The OECD supported the preparation of the Assessment of the BOI's institutional capacity in 2017 and its report was made available to evaluation team

³ See the methodological annex in the main report for more details

⁴ Strategy for Ukraine, 2011-2014, BDS/UK/11-1 (Final)

deployment of e-governance instruments in order to reduce rent-seeking behaviour on the part of public officials. Despite these positive developments the business community, as well as the wider population, remain convinced that corruption poses the greatest danger – even greater than the ongoing military conflict in eastern Ukraine – to the country’s future economic growth and security.

For example, in the latest EBA/Dragon Capital/Centre for Economic Strategy survey of foreign investors in Ukraine (September 2017)⁵ corruption was identified as the biggest obstacle to foreign investment (8.5 points out of 10), followed by the lack of trust in the judicial system (7.5). Elsewhere, GFK’s Survey of Public Opinion of Ukrainian residents (July 2017)⁶ identified corruption within state bodies as the biggest problem (51% of respondents), closely followed by the military conflict in eastern Ukraine (50% of respondents). Therefore it is fair to say that the progress in this area remains marginal, which is also illustrated by the statement made recently in Kiev by the EBRD’s President, Suma Chakrabarti:

“...Ukraine needs to do much more to consolidate the rule of law and respect for property rights, indeed everything that advances the struggle against corruption. This is the single largest obstacle to the return of investment which will drive future growth.”⁷

Origination of idea

The idea of establishing a Business Ombudsman office in Ukraine was conceived through the Anti-corruption Initiative, the origins of which go back to 2013. At the time, the snowballing problems of aggressive asset raiding, high-level corruption and nepotism negatively affected many companies in Ukraine, including EBRD clients. The Bank came up with the high-level anti-corruption initiative and suggested that its future investments in the country’s economy would depend on the progress in tackling corruption. In 2013 initial steps were taken to prepare the Memorandum of Understanding on Anti-corruption Initiative with Viktor Yanukovich’s administration. However, delays in taking action and the further dramatic political turbulence that led to a regime change and the overwhelming security and economic crisis meant that the MoU was not signed until May 2014. Since then the Ukrainian authorities and the EBRD have been on track, establishing the Business Ombudsman Institution, which was formally launched in November 2014. A detailed timeline of actions is presented in Graph 1 below.

The Ukrainian Business Ombudsman Institution (BOI) was broadly structured along the line of the principles of the High Level Reporting Mechanism (HLRM) – a collective action tool that targets bribery solicitation and other unfair treatment of business through the rapid actions of the alternative dispute resolution mechanism (see section 2 for more information on HLRM). The authors of HLRM – experts from the OECD and the Basel Institute of Governance – structured this tool as a mechanism that primarily helps to prevent corruption and unfair treatment of businesses in a procurement context; at the same time, the BOI is a tool designed to address issues wider than just procurement, which result in the mistreatment of businesses by the authorities. Given their expertise in this area, the Bank retained the Basel Institute of Governance as a consultant during initial phase of the project (prior to the signing of the Memorandum of Understanding in May 2014 – see the Timeline in Graph 1 below).

At the initial stage (2013-2014) there was substantial scepticism about the Bank’s ability to address the issue of corruption through the Initiative. When the EBRD experts (including those from the Office of the Chief Compliance Officer (OCCO) and the Kiev Resident Office), together with the OECD and the Basel Institute of Governance, were brainstorming regarding practical solutions to effectively tackle corruption in the summer of 2013, they consulted a wide range of businesses and government agencies in Ukraine. At that time, EvD was evaluating the EBRD’s experience with policy dialogue in Ukraine. Its conclusions,

⁵ http://ces.org.ua/wp-content/uploads/2017/09/2017_InvestorSurveyResults_4_3.pdf

⁶ http://www.gfk.com/fileadmin/user_upload/dyna_content/JA/02-News-2017/2017-8-22_ukraine_poll_presentation.pdf

⁷ Suma Chakrabarti’s Speech at Yalta European Strategy Annual Meeting, Kiev, Ukraine, 15 September 2017, available at <http://www.ebrd.com/news/speeches/ukraine-an-mdb-perspective.html>

among other things, were based on a range of interviews, including those with stakeholders who were directly involved in preparing the launch of BOI. In its report, EvD noted⁸:

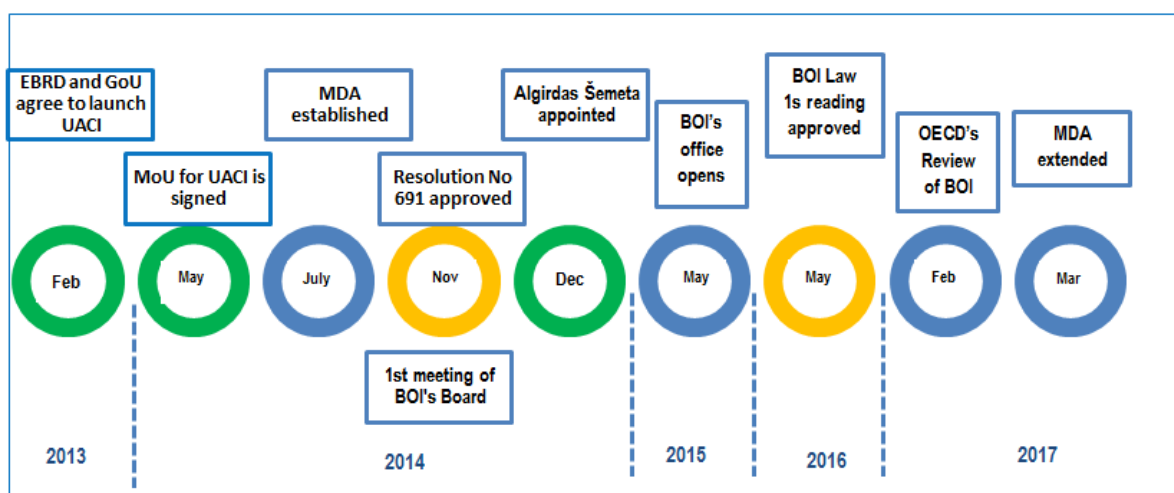
“...Non-EBRD people interviewed in Ukraine generally praised the EBRD for the [anti-corruption] initiative, viewing it as an important and necessary stand. However given the context prevailing at the time the interviews were conducted, most did not consider the chances of success great”.

In the middle of 2017 it is evident that the EBRD did succeed in mobilising significant financial and human resources, as well as the commitment of the Government and businesses across the country to launch the Business Ombudsman Council in November 2014. This case report demonstrates the substantial results achieved since May 2015, when the BOI’s Secretariat started operating in Kiev. It also outlines the indications of the BOI’s potential long-term impact on Ukraine’s investment climate, and the potential and conditions for replicating this model in other countries of operation (COOs).⁹

Timeline

Graph 1 below illustrates the sequence of actions taken by the EBRD, Ukrainian government and international actors that enabled the BOI launch and ensured its successful initial stage of operation.

Graph 1. Timeline of BOI’s launch*



Source: EvD's own elaboration

*Colour coding of the actions: blue – EBRD's action; yellow – GoU's action; green – joint action.

2. Inputs

According to the theory of change developed for this study (see Annex 2) the success of investment climate support activities depends on the scale and scope of inputs provided and their timing. By inputs we understand the availability of: (i) core funding for relevant policy teams and administration of the project/activity; (ii) donor funding for TC projects; (iii) contributions of the country team; (iv) contributions made by local partners, including government; (v) top management support; and (vi) parallel contributions from other IFIs and donors. This chapter provides some details of the inputs used to launch and sustain the BOI in Ukraine.

The Business Ombudsman Institution (BOI) is a new format for the Bank’s work in the area of investment climate improvement and anti-corruption. It is one of the mechanisms for enabling private-public dialogue

⁸ EvD's Special Study "The EBRD's Experience with Policy Dialogue in Ukraine", p. 39, April 2014, available [here](#).

⁹ It is too early to offer an evidence-based impact evaluation of the BOI's activities.

(PPD) and recourse for businesses, as described in the main evaluation report¹⁰ and was first introduced in Ukraine in 2014, and broadly based on the concept of the High Level Reporting Mechanism (HLRM). HLRM is a novel instrument first developed in 2013 by a team of experts from the OECD and the Basel Institute of Governance along with other international actors, prompted by a G20 drive to tackle global corruption. It is defined as “...an innovative collective action tool that calls for collaborative efforts from multiple stakeholders to address bribery solicitation, suspicious behaviour and other similar concerns at the national level and thereby prevent corruption practices.”¹¹ Currently (in 2018) HLRM has been introduced in Colombia and Ukraine, although with the distinctively different implementation models and institutional arrangements in place.

The OECD, as one of the originators of the HLRM concept, is taking an active part in the activities of the Ukrainian BOI – through its membership of the Supervisory Board and the provision of methodological and intellectual support. Among other things, the OECD supported the preparation of an assessment of the BOI’s institutional capacity in 2017¹², as well as the preparation and launch of the Ukrainian Network of Integrity and Compliance initiated by BOI, which also collaborates closely with the Bank’s OCCO experts.

The EBRD is a founding and leading partner of this initiative. The Bank provides ongoing organisational support, as an administrator of the Multi-Donor Account that provides funding for the BOI’s activities, and as a core partner in the dialogue with the Government, having substantial weight due to its status as the biggest investor in Ukraine’s private sector.

Organisationally the Governance and Public Affairs (GPA) department, and specifically the Governance team, is responsible for the implementation of the BOI. Since 2014 it has assigned to the Kiev RO a senior governance/legal expert, whose role was critical at the inception and the structuring phases when key BOI governance documents were prepared, negotiated and agreed with key stakeholders; the MoU on Anti-corruption Initiative; the legal documents, including the Resolution of the Cabinet of Ministers No 691 (26.11.2014) on the establishment of the BOI and the Rules of Procedure of the Business Ombudsman Council. After inception, the EBRD expert was essential for maintaining relationships between the BOI Secretariat and HQ, including coordinating with the RO leadership. Until recently, the expert was a governance/legal resource assigned from the HQ, and as of April 2017 there has been a locally-based Governance Counsellor who provides expert support for BOI activities, alongside their other responsibilities.¹³

The EBRD Director for Ukraine is a crucial leader in the process as he assumed the role of the Chair of BOI’s Supervisory Board. He dedicates a considerable amount of time and effort to sculpting the BOI’s organisational structure and work programme, making it consistent with the initial design. He is also crucial for enabling the connection between the Ombudsman and the business community, as well as enabling networks with the international donor community and government agencies. Having comprehensive knowledge of the problems faced by many EBRD clients in Ukraine he also has the real-time validation tools that allow him to track the effectiveness of the BOI’s activities. Other core members of the EBRD management team are also crucial for ensuring the consistency and persistence of the BOI’s activities, its importance and relevance in Ukrainian politico-economic context.

During interviews in Kiev in March 2017 the evaluation team repeatedly heard from international, government and business counterparts that the EBRD was the only organisation that could “pull this thing [BOI] together”. All partners praised the Bank’s determination, which resonated with the views expressed in 2013-2014. However, four years on, this determination was bearing very concrete and tangible results. The EBRD consistently enjoys great trust from the government, businesses, and international partners as

¹⁰ Link to the main report

¹¹ The OECD, the Basel Institute of Governance (2017) *The High Level Reporting Mechanism (HLRM). A tool to help prevent bribery and related practices*. Briefing note.

¹² Marin A. (2017) *Final Report on the Business Ombudsman Council of Ukraine*, 26 February 2017

¹³ The Governance team has a dedicated governance adviser for Ukraine, Belarus and Moldova as of April 2017

its actions have the right mixture of flexibility and firmness, and its status as the biggest investor in the private sector warrants political leverage.

The donor support in launching and sustaining the BOI in Ukraine was essential and it remains such. Although the first steps in establishing the BOI were mainly supported by the Bank's own financial and human resources, it is the Multi-Donor Account (MDA) established in July 2014 that provided funding for launching the BOI institution¹⁴ (see Box 1 below for core MDA facts). The BOI is one of the largest projects funded via MDA with total committed funding of €7.3 million, and its recent extension to July 2020 will allow support to be given to the Ombudsman's activities for the next three years. The BOI's initial annual budget was €1.5 million, with a slight increase from mid-2017 due to expanded capacity.

Box 1. EBRD Ukraine Stabilisation and Sustainable Growth Multi-Donor Account

Established:	July 2014 (Board approval)
Closure date:	July 2020
Amount committed:	€25.5 million
Governance and reporting mechanisms:	Annual Assembly of Contributors; regular reports
Donors:	Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Poland, Sweden, Switzerland, the United Kingdom, the United States, the EU (the largest donor with €8 million contribution).
Priorities:	(1) investment climate; (2) banking sector; (3) energy; (4) corporate sector; (5) infrastructure.
Main principles:	(a) the Bank's additionality; (b) relevance to the Ukrainian reform agenda; and (c) co-ordination with the international and donor community.

The BOI should operate on the basis of the law. Initially, the BOI was established as a consultative body of the Cabinet of Ministers, based on the Cabinet Resolution No 691/2014. This temporary legal foundation is a potential weakness because it grants very little authority to the BOI in dealing with public agencies at the central and local levels. Consequently, its organisational/financial management is not straightforward and the BOI's Secretariat had to be registered as an NGO in order to open a bank account and to employ its staff.

Consistent with the initial agreement with the Government, the EBRD's experts together with the BOI office and business counterparts, prepared the Draft Law on Business Ombudsman in Ukraine No. 4591, which stipulates its long-term legal position in the institutional structure of the Government.¹⁵ In 2016 the draft law was approved by the Cabinet of Ministers and presented in the parliament as a government-sponsored legislation. It was approved in first reading in May 2016 but since then its approval has been delayed in the parliament. It is currently proposed for the second reading. While the EBRD and OECD have sent letters to the head of the parliament in support of the draft law in its current form, there is currently no strong support for enhancing the BOI's legal status among the various factions of MPs and core parliamentary committees. Some MPs attempted to weaken the proposed legislation, being concerned about creating another agency with strong investigative powers. Conversely, others are concerned about the organisation's "light" status as per existing draft. The ongoing negotiations over the draft are mainly of a political nature. Under the current legal set-up, the BOI faces some possible limitations that may affect its effectiveness. However, its experts have designed a number of practical instruments that help minimise these until the BOI law is adopted (see section 2 for more details).

It is fair to say that the evident success of the Ukrainian Business Ombudsman Council is due to the combination of all necessary inputs, as identified in the theory of change for this study. Appropriate corporate funding and allocation of human resources, available donor funding, strong commitment and

¹⁴ BDS14-167 "Establishment of the EBRD-Ukraine Stabilisation and Sustainable Growth Multi-Donor Account", 20 June 2014, revised version BDS14-167 (Rev 3), 24 May 2017.

¹⁵ Draft Law on Business Ombudsman is available in Ukrainian at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58980

leadership from the country team, backed up by the top management, and most importantly, commitment of the country leadership and key counterparts – all these components are present. The BOI is well funded, compared to similar initiatives launched and managed by the EBRD. Its well demonstrated direct financial and systemic impact has shown that the donor support for the BOI represents money well spent. The urgency of change and fragile macroeconomic situation, combined with a politico-economic context which is conducive to change, has spurred the commitment of all parties, including financial. At the same time, should the priority to support reforms in Ukraine subside, inevitably there is a risk that the commitment of the local counterparts and the interest of foreign donors might decrease.

It is therefore important for the BOI to continue demonstrating its sustained economic value and importance in Ukraine's system of rule of law and dispute resolution. Its achievements in resolving complaints and the subsequent economic effect, as well as systemic impact stemming out of its advice and systemic reports and recommendations, should ensure that its cost of action is legitimate and could, at least partially, be derived from public income, which otherwise would be lost because of corrupt actions, unintended mismanagement and lack of transparency. Therefore, a portion of the costs of its activities might gradually be covered by the Government and business associations. However, as discussed below, the local commitment to financing the BOI in Ukraine is only tentative and requires governance instruments to be considerably designed, in a manner that does not compromise the four founding principles of the ombudsman's work (independence, impartiality, confidentiality, and credible investigative process). The current international status of the organisation – due to the origins of its funding, administrative oversight and leadership – ensures its high reputation and adherence to principles.

3. Activities

The EBRD uses a wide range of instruments and activities that contribute to improving the investment climate in COOs. Among them are: (i) fundraising and business development; (ii) policy dialogue and advocacy; (iii) project design and implementation; (iv) monitoring and evaluation; (v) mobilisation of local networks; (vi) supporting legal changes and implementation in country; (vii) training and capacity building; (viii) support in creating new institutions; and (ix) identifying relevant lessons/integrating them in new activities.

The EBRD's initiative to launch and support the sustainable functioning of BOI is a very good example of support in creating a new institution, however all other elements are also present in this innovative initiative. This chapter presents them along three main strands: (1) inception and corporate processes; (2) the BOI's core activities; and (3) the EBRD's activities.

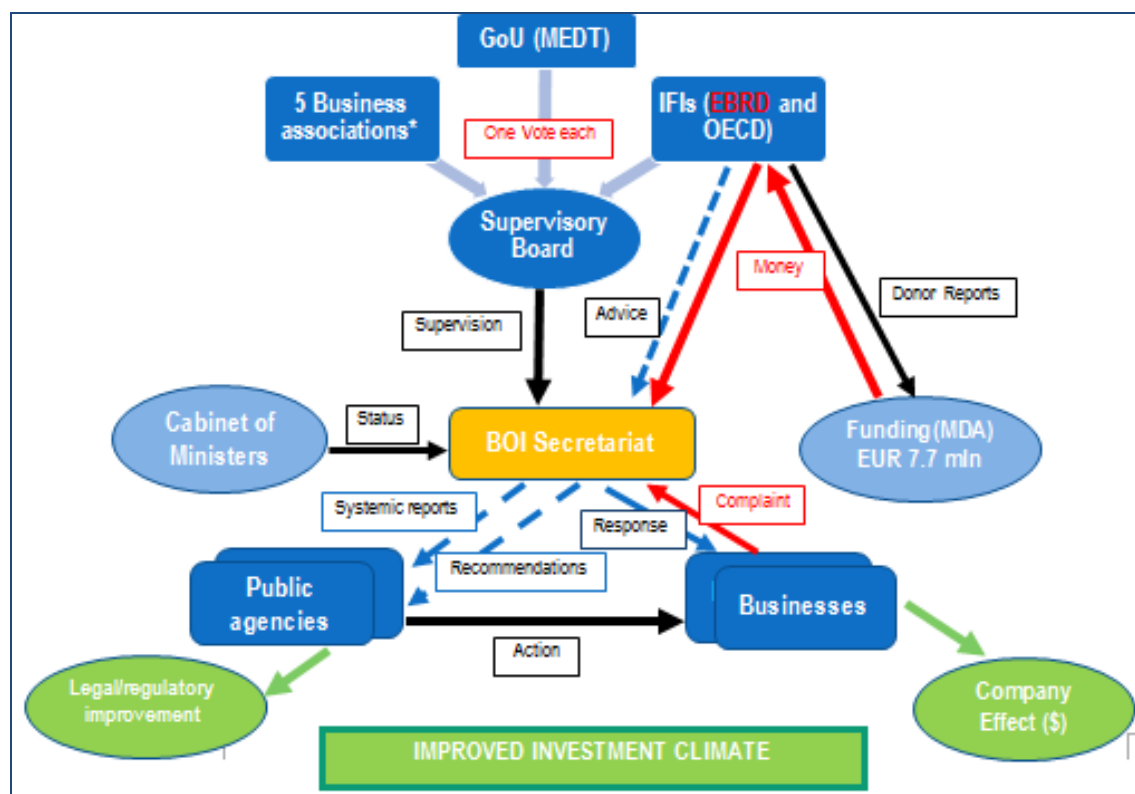
Inception phase and corporate activities

The BOI's inception phase included the preparation and signing of the Memorandum of Understanding for the Ukrainian Anti-corruption Initiative,¹⁶ and establishment of the BOI's Supervisory Board. The Memorandum was signed on 12 May 2014 and the Supervisory Board had its first meeting in November 2014. It was a lengthy and challenging process in which the EBRD staff based in country and HQ experts persevered in agreeing the sometimes conflicting interests of the government and business community. Graph 2 below illustrates the map of stakeholders involved in the BOI and the core processes/flows among them. Its Supervisory Board is comprised of representatives of organisations-signatories of the above-mentioned MoU.¹⁷

¹⁶ Full text of the MoU is available at <http://www.ebrd.com/downloads/news/mou-ukraine-aci.pdf>

¹⁷ There is a provision in the Rules of the BOI to extend the number of Board members, however until now the membership remains unchanged.

Graph 2. Stakeholder map and BOI processes



Source: EvD's own elaboration

* American Chamber of Commerce (ACC), European Business Association (EBA), Ukrainian Chamber of Commerce and Industry (UCCI), Ukrainian League of Industrialists and Entrepreneurs (ULIE), Ukrainian Federation of Employers (UFE)

The governance model finally approved for the BOI, with a triangle of partners on the supervisory board, offers a balanced structure. Each side – government, business, and international organisations – has one vote. It allows equal representation of the interests of the government and business, with international partners (the EBRD and the OECD) playing the role of the honest broker and the insurer of compliance and accountability for resources spent. Five largest business associations of Ukraine – ACC, EBA, UCCI, ULIE, and UFE – represent interests of Ukrainian businesses and need to agree their positions prior to voting/taking decision.

As noted above, the BOI is a governmental advisory body with consultative functions but not part of the government apparatus; it is therefore not subject to a Government oversight that is normal for a governmental agency. The government representative on the BOI supervisory board¹⁸ ensures a continuous political will for change so that systemic policy and regulatory recommendations are enacted by the respective public agencies.

The BOI is fully funded by donors, which means the existence of strict accountability lines. The EBRD plays a core role in ensuring this accountability, as well as in instilling compliance and integrity standards, and full transparency of functioning. All of these are essential for the BOI's long-term success. Business associations ensure a two-way flow of information and practices: the voices of discriminated businesses are heard, while new standards of integrity and compliance are being promoted among Ukrainian companies and entrepreneurs.

¹⁸ The Government representative on the BOI supervisory board is currently the First Deputy Prime Minister and Minister of Economic Development.

It should be noted that the BOI was launched in an extremely difficult business environment with little mutual trust between the private sector and the government. Building trust requires time and demands the highest standards of integrity, compliance and accountability from the BOI and its staff. Only then might the final results of its activities – direct financial gains of businesses, amended regulatory acts, corrected decisions of controlling agencies and removal of corrupt practices and individuals – have a long-term systemic effect.

The Supervisory Board's first action was to select the Business Ombudsman and two deputies. After a competitive process Algirdas Šemeta was officially appointed as Ombudsman in December 2014, followed by the (competitive) selection and appointment of his two deputies. He immediately started the process of selecting the Secretariat's staff – investigators, communications and IT specialists, administrative staff. By the middle of 2015, the BOI's Secretariat was fully functioning with fourteen full time staff members.¹⁹ By September 2017, after Ukraine's Multi-Donor Account contributors approved the extension of the Fund and the BOI's budget for the next three years, the number of staff was increased to thirty.²⁰

The specificity of the BOI's activities is that it uses state-of-the-art technological solutions. The cloud-based case management system (CMS) which is fully integrated with the BOI's website, allows all management processes/tasks related to business complaints to be fully automated.²¹ From submitting the complaint to initial review, to formal case review, to communications with the public institutions against which the complaint is filed, to final decision/ communication with the client - all these steps are done through the IT system. Clients do have a chance to submit complaints in hard copy, which is especially important for SMEs in remote areas of the country. In this case, BOI staff will digitalise all case documents submitted in hard copy and the automated workflow is generated. Overall about 50% of all complaints are submitted via the BOI website, the rest is submitted via email and post.

The system generates automatic reports, and core statistics related to the BOI's activities is available in real time on the BOI website. This is one of the most advanced and transparent reporting systems in Ukraine and worldwide. Periodic data is used for regular reports (quarterly and annual) that are also freely available on the Council's website. The BOI's transparency and openness is one of the most important elements of the Institution's role and reputation (see Results section for more information). Being a new institution, the BOI leads by example on how publicly important institutions could be set-up and managed, and how they may be held accountable by their clients and the general public. Using the most advanced technological solutions allows the BOI to substantially decrease the time and cost spent on internal administrative procedures and ensures impartiality. All professional staff members have access to all cases and internal information through CMS, including remote access. It is particularly helpful as there is no specialisation among the staff and the allocation of cases happens randomly, to ensure impartiality and lack of conflict of interest.²² Effective knowledge management and sharing processes (including an online library and internal technical seminars/information sessions) are essential for a system with such a generalist approach to case review.

The high standard of the BOI's work is ensured by a strict Code of Conduct and the staff selection process. Effective staff management and motivation is important for maintaining consistency and adherence to the Code (BOI staff have competitive salaries, comparable to similar positions in the private sector). The policy also ensures an appropriate distance from the public agencies that are being investigated in the process of case work.

It should be noted that competitive remuneration of BOI staff creates tension with some of its founding partners – business associations. During interviews some of them expressed the view that their staff is doing similar work but for a fraction of the price. It is difficult to verify these claims without knowing the details of internal organisational processes in business associations. However it is possible to state that

¹⁹ The BOI's First Quarterly report, April-June 2015

²⁰ The BOI's website information as of February 2018

²¹ The IT infrastructure was developed by the Ukrainian IT company Terrasoft after a competitive tender procedure.

²² In a situation when the investigator is allocated a complaint that is linked to their former employer, the reallocation of the case is ensured.

the independent and unbiased status of the BOI and its staff, which is distinguished as its greatest strength, is ensured through adequate staff remuneration, thus removing most of the integrity risks emanating from unscrupulous staff behaviour. Associations could not offer the same degree of openness and independence, being committed to supporting their members regardless of the situation. This was acknowledged in conversations with their representatives, as well as with government officials and representatives of international organisations/donors.

The BOI's Core activities

Only a summary is presented in this chapter, for full details please refer to Annex 3 of this case report.

The BOI's activities could be grouped into three main categories:

- (1) Case work;
- (2) Systemic policy advice; and
- (3) Outreach and communications.

Case Work

As indicated on the dashboard, the number of cases reviewed by BOI investigators has grown substantially and consistently from day one of its work. As of end- 2017, the BOI has received 3,091 complaints, with 64% of them closed (1,042 cases in 2017 alone) after a successful review and consequent actions. In the fourth quarter of 2017, 19% of all complaints were rejected for various reasons which are clearly stipulated in the Rules of Procedure and presented in simple infographics – both available at the BOI website.²³ This is a significant improvement compared to 26% of rejections at end-2016, which testifies to a greater understanding of the BOI's role and the scope of its activities among Ukrainian companies. More information on the BOI's case work is presented in the Results section.

Traditionally, tax issues top the list of complaints. These are followed by the actions of state regulators (e.g. Antimonopoly Committee); Prosecutor's Office actions; actions of the National Police; Ministry of Justice; deficiencies in legal acts; actions of local councils and municipalities; customs issues; actions of the state security service; actions of state companies etc.

Systemic Policy Advice

The systemic work of BOI is as important as the case work, as it allows "preventative" measures and procedures to be designed that would, potentially, mean more clarity for businesses, fewer opportunities for misuse by public servants, and ultimately, fewer complaints to the BOI. At the moment, the BOI operates on the basis of the Decree of the Cabinet of Ministers rather than the Law, and has the status of a consultative body with the right to issue non-binding recommendations. This situation requires additional tools to build constructive relations with key government stakeholders. The BOI's experts designed a mechanism of co-operation by signing a Memorandum of Understanding with a public institution. It is expected that after the BOI Law has been approved, the MoU tool will become redundant. As of end-2017 the BOI has signed MoUs with nine public agencies.

Another element of the BOI's systemic work is preparing and publishing systemic reports. These contain comprehensive overviews of a specific sector, sphere or problem, with in-depth insights combined with comprehensive legal analysis and real-life challenges faced by the BOI's clients. By the beginning of 2018 the BOI Secretariat have prepared 11 systemic reports and all documents are available on the BOI website (for a full list, see the dashboard).

The most recent area of the BOI's systemic work is the support in launching and maintaining the Ukrainian Network of Integrity and Compliance. It is a new instrument for Ukraine, aimed at tackling "supply" side

²³ Presented link contains the Rules of Procedure in English - [https://boi.org.ua/media/uploads/rules_of_procedure_\(eng\).pdf](https://boi.org.ua/media/uploads/rules_of_procedure_(eng).pdf) They are also available in Ukrainian

corruption – nurturing a culture of integrity and compliance among Ukrainian companies of different sizes and in different sectors, “to promote the idea of doing business ethically and responsibly”.²⁴ This network is one of the most valuable “pre-emptive” activities supported by the EBRD.

Outreach and Communications

Being a new organisation with a consultative status, with no legal tools to compel state institutions means that the Ombudsman and his staff are obliged to interact a lot with the public and mass media. Communicating the results of its work to the public is essential for building awareness that the Ukrainian Business Ombudsman Institution exists and the benefits its interventions offer. The Ombudsman regularly visits the Ukrainian regions and conducts meetings at oblast (regional) state administrations with representatives of local businesses and regional regulatory agencies. After each regional visit the BOI witnesses a substantial increase in the number of complaints submitted by the companies based in the region.

Work with the media is also successful, although the BOI has neither a specific budget for media advertising, nor for advertising in social networks, which are increasingly important channels for disseminating information and communication. The Ombudsman and his deputies are frequent speakers at various events organised by partner business associations, different fora and events organised by government, international organisations and universities.

The EBRD’s activities

The Bank performs a considerable number of activities aimed at sustaining the BOI’s work to ensure its financial stability (through managing MDA) and long-term sustainability. The work of GPA colleagues in HQ and the Kiev RO, combined with the leadership of the EBRD Director in Ukraine, is continuous and increasingly links the BOI’s outputs with other Bank initiatives aimed at improving Ukraine’s investment climate (e.g. Strategic Advisory Group for Support of Ukrainian Reforms, Reform Support Teams at the ministries, support to PROZORRO procurement platform, corporate governance reform of state owned enterprises, the newly established Ukrainian Corporate Governance Academy, support to the Secretariat of the National Investment Council). All these initiatives have their own important role in enhancing Ukraine’s progress towards offering a business-friendly regulatory environment.²⁵

The EBRD monitors the BOI’s activities through regular reports to the MDA contributors. However, with the degree of transparency offered by the BOI website the task is relatively easy and all results are available readily and in real time. The Bank is also supporting a number of exploratory activities aimed at introducing a BOI in other countries of operations, in particular Moldova, Serbia and the Kyrgyz Republic. These activities include the organisation of visits to BOI offices in Kiev, and discussions with local counterparts on their commitment to establishing an independent body as BOI. More reflections on replicability are offered in the Results section.

4. Results

EvD has developed a results framework, which allows it to identify the outputs, outcomes and impact of activities aimed at improving the investment climate (see Annex 2 for details). This chapter mainly focuses on operational results (outputs) and outcomes, as it is too early to measure the long-term impact. Outcomes are related to the higher quality of legal/regulatory framework, dynamics of reform, synergy between the Bank’s interventions and the domestic policy framework; reduced resistance to change; decrease in regulatory barriers; enhanced ratings.

Although it is too early to identify the systemic impact of the BOI, launched in 2015, and the Bank’s contribution to it, some positive trends can already be observed. Ukraine have not yet achieved a dramatic

²⁴ <https://boi.org.ua/en/publications/news/96-applications-to-join-the-ukrainian-network-of-inte>

²⁵ These initiatives are not the subject of this evaluation and no opinion is offered on their effectiveness

breakthrough in perception of corruption (see dashboard), but there is slight progress in Transparency International's CPI from 2013-2017. On the other hand, some elements of regulatory environment have improved considerably, allowing Ukraine to rise in the WB's Doing Business ranking (76th position in 2018) and to reduce its Distance to Frontier (to 65.75 in 2018 compared to 44.27 in 2012). Among the areas that improved the most compared to previous years, with DTF improving by 6.5% points, is paying taxes (dealing with construction permits improved by 10%). However the security situation remains challenging, which affects country's investment attractiveness/ratings and productivity. The economic growth is picking up (estimated 2% in 2017 and forecast of 3% in 2018), and FDI are beginning to grow, reaching 3.69% relative to GDP at end-2016.

The operational results of the BOI's activities are impressive considering the short period of time since it started operating in May 2015. According to the BOI Secretariat, the direct financial impact of the BOI's case investigation and resolution is estimated to be UAH 11,3 billion.²⁶ Among the non-financial effects of BOI activities the following are highlighted: (1) ceased malpractices by complainee; (2) obtaining permit/license/conclusion/registration; (3) closure of a criminal case against a complainant; (4) signing/execution of a contract with a state body; (5) opening of a criminal case against a state official/third party. These have had a positive effect on a number of investment policy areas, specifically public governance; corporate governance; policies enabling responsible business conduct; competition policy; and tax policy.

In the fourth quarter of 2017, 64% of cases were closed with the desired outcome for the complainants and a further 10% were closed with recommendations for public agencies (139 recommendations in total). Since the launch of operations in May 2015, the BOI has provided 1,254 case-driven recommendations of which 91% were implemented.

The BOI reports a high rate of response by public agencies and consequent changes in regulatory/legal acts to prevent similar situations happening in the future. The collaboration with public agencies is greatly assisted by a number of MoUs signed by the business ombudsman and the heads of the respective agencies. This framework arrangement is not only helpful for resolving cases, but also conducive to implementing more systemic changes (please see subsection Systemic Policy Advice for more details).

Client feedback on the BOI's work is very positive. It is fully integrated with the complaint process and at the beginning all clients fill in a form stating the degree of transparency they would allow in disclosing their case. Some companies take a conservative approach and data remains confidential, while others are happy to disclose the details, including participation in the BOI's media activities and case production (see Annex 3 for more details). In the most recent report (Q4 2017), based on 213 feedback forms, 98% of clients reported high satisfaction from their collaboration with the BOI.²⁷ It should be noted that among the BOI's clients there are members of the founding business associations (such as ACC, UFE and EBA), as well as EBRD clients. It was noted during the interviews, that the BOI provides a valuable service, which was previously undertaken by the association or the Bank. However, the BOI's activities do not provide a complete substitute for the services provided by the business associations, and there is also room for policy dialogue performed by the EBRD's office in Ukraine on various issues related to regulatory reforms and improving the investment climate.

While the BOI's operational results are impressive its ability to have a systemic impact on the legal and regulatory framework in its current form remains potentially limited. With the number of enacted BOI recommendations growing, the quality of the regulatory environment should be enhanced. However there are no indicators of this happening on a large scale and the most recent dynamics in the Doing Business rating illustrates this (see dashboard). Unless the Law on Business Ombudsman is adopted, and the BOI obtains a status beyond that of a consultative body with the right to issue non-binding recommendations, there is a limit to its abilities to have a systemic effect.

Unfortunately there is no consensus among parliamentarians that would allow the final approval of the Law and new approaches to creating/cementing a majority of votes are necessary. The EBRD and OECD

²⁶ Valid for the time period of 20 May 2015 – 31 December 2017

²⁷ EvD had no chance to validate this data as there were no client meetings scheduled for the mission in March 2017.

have written letters to the head of the parliament and IMF included the adoption of the Law as part of its conditionalities. Recently, in April 2018, the EU Commissioner Johannes Hahn reminded the authorities of the need to adopt the BOI law in its current form. He linked the passing of this legislation, together with certain other important reforms, with the release by the EU of a significant funding in support of Ukrainian reforms. During interviews all business associations confirmed their commitment to join their voices to the BOI's in a balanced but vocal information campaign, aimed at lobbying for the approval of the Law. There needs to be a considerate approach to this situation that enhances BOI's role without its neutrality and objectivity suffering.

The BOI invests a significant amount of time and effort in establishing the Ukrainian network of integrity and compliance which will deliver significant positive results that curtail corrupt supply side practices. However UNIC's effects will only be notable after the next 3-5 years, as a critical number of companies join and the established norms and practices of behaviour are changed. In the mid-term perspective, UNIC might deliver more "bankable" clients, including for the EBRD. Having high standards of corporate governance and compliance, they will deliver cost savings for future financiers in terms of performing due diligence and providing corporate governance consultancy.

Where the BOI's direct effects are already noticeable today, is the contribution to the transparency of decision making and data disclosure. Ukraine is firmly on the path towards becoming an advanced country in terms of open data and e-government. Although these achievements cannot be directly attributed to the BOI's activities, they do make a contribution to this trends. For example, Ukraine has significantly improved its position in the Global Open Data Index (31st position in 2016 vs 54th in 2015)²⁸ and UN's E-Government Development Index (62th position in 2016 which is an improvement of 25 positions compared to 2014)²⁹.

Prospects for replication

The BOI is one of ICGI's flagship products and the replicability is a core question. While facing growing interest in and demand for similar institutions in other COOs, the Bank needs to be cautious in managing expectations. For a BOI to be as successful in another context as it is in Ukraine, it would need to serve a market of similar size (for sustained demand), to have similar donor interest and commitment (including financial commitment), to have significant political commitment (for continuous government support), secure a professional high-profile individual to undertake the role of Ombudsman (foreign nationality is optional), and enjoy the solidarity of business stakeholder opinions. The combination of all these preconditions created a unique politico-economic environment that is challenging to replicate.

Anticipating further interest for replicating BOI in the EBRD's COOs, EvD notes that success is dependent upon the ability to invest significant time and human resources in designing a model that is relevant to the local politico-economic context. In Ukraine a senior advisor was posted to Kiev in order to design and support agreement/approval of the legal documents establishing the BOI – in conformity with the local legislation. Therefore, to ensure the success of any similar institutions in a different context, the EBRD needs to invest comparable human and financial resources at the inception phase and at the operational stage. As the BOI is still very much an experimental tool, the support and guidance from international partners is crucial, as well as effective feedback loop that enables necessary modalities and evolution. Government's continued commitment to the cause is another essential ingredient for long-term success.

The results delivered by the BOI so far, even with a short-term perspective, strongly indicate a contribution to the implementation of four out of seven ICGI dimensions. Specifically these are (a) public-private dialogue; (b) transparency and disclosure; (c) incentives to reduce corruption; and (d) dispute resolution. It also illustrates a positive case of horizontal collaboration between teams and the significance of localised expertise and resources provided by the country team.

²⁸ <https://index.okfn.org/place/ua/>

²⁹ <http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2016/08/04/ukraine-jumps-by-23-in-un-e-government-development-index.html>

5. Conclusions

Since 2014 Ukraine has experienced one of the most dramatic crises in its history – not only economic, but also security and political. However, it is fair to say that this current crisis has not prevented progress. The extent and depth of the reforms achieved in the period 2014-2017 has equalled, if not surpassed, the volume of reforms throughout the previous 22 years of independence (1991-2013). Some contributed to improving the investment climate, as reflected in some ratings, such as the World Bank's Doing Business, where Ukraine improved its Distance to frontier score from 44.27 in 2012 to 65.75 in 2017. Nevertheless, Ukraine has not yet demonstrated large improvements at the macro level (in economic growth, FDI flow, and perception of corruption) and, as the recent Transition Report notes, public governance challenges remain.

The EBRD's role in supporting this reform process is important and difficult to overestimate. The BOI is a unique institutional innovation championed in Ukraine by the EBRD and no other IFI is directly involved in its activities. Initiating and supporting the activities of the Ukrainian BOI is one of the most successful examples of the Bank's non-investment operations in the country, and the only example of introducing a novel institution in a COO. Ukraine is a country where the EBRD has affirmatively addressed the long-standing challenge of reform support activities: policy implementation is prioritised as much as policy adoption, if not more. The BOI is an illustrative example of the complex and continuous support the Bank and its international counterparts provide to the Ukrainian government and business community in implementing difficult but necessary policies aimed at enhancing the public service culture, creating standards of transparency and responsible actions, and nurturing mutual trust between the public authorities and businesses. All these elements deliver important results that contribute to an improved investment climate and, ultimately, to a greater volume of investments in the country, and to its dynamic economic growth.

After two and a half years of functioning the BOI has become a trustworthy institution in the eyes of the public. This is a great achievement since trust is something that Ukrainian state institutions have persistently lacked. The BOI is effectively a substitute for dysfunctional dispute resolution between private businesses and state agencies. Through its systemic work it directly contributes to improving Ukraine's legal and regulatory environment, and is highly regarded by its clients, critical mass of which is willing to take compliance and ethical behaviour a step further. In 2017 the Ukrainian Network of Integrity and Compliance was established, and compliance self-assessment and a Compliance Pledge is being introduced in a growing number of businesses. BOI staff support this process, as do EBRD experts, who also participate in other compliance activities, thanks to the generous funding from donors.

The EBRD's role in supporting the BOI is essential: it was the source of the idea and it has since been an enabler, mobilising donor resources and top quality international expertise. Since its inception the Bank has been responsible for managing the Ukraine Multi-Donor Account (MDA) which finances the BOI's activities, and the EBRD country director became a chair of the BOI supervisory council. In fact, the country director plays an indispensable role in the BOI council by facilitating the process of building a consensus, steering the BOI's strategic work in the directions that require/deserve its attention, ensuring complementarity with other initiatives supported by the donors and IFIs, and ensuring that the BOI's voice is heard at the highest levels in the Government, Parliament and other public institutions. This is a significant role that the Director performs alongside his main responsibilities.

The speed of mobilising and flexibility in deploying EBRD staff to launch and support BOI activities is impressive. Pressed by the urgency of responding to the deep structural crisis affecting the entire economy and EBRD clients in particular, the Bank created and staffed a full-time position in Kiev, with high calibre legal skills enabling the swift preparation of all founding documents and draft law, along with secondary regulations. The senior governance/legal advisor was crucial in launching the appropriate institutional structure and governance standards that are essential for an institution that battles corruption and unethical behaviour.

Despite the BOI's independent status, the EBRD has a strong influence on its functioning and ensures that its path is not diverted by the vested interests of influential state and private sector stakeholders. Until now, the EBRD's protective influence has delivered mostly positive results. The question is how to take things forward, which includes considering the scenario which would involve an increased role of the Government and the business associations in the funding of the BOI. However, it will be equally important that the increased dependence on such funding will not erode the independence of the BOI in conducting its business and thus its trustworthiness towards its users – Ukrainian businesses.

To avoid a conflict of interests, the BOI does not engage with the EBRD's specialist/policy departments in its daily work, and some interviewees noted the deficiency of this arrangement. As the institution's activities grow in breadth and depth a mutually accommodating arrangement should be developed to engage EBRD experts in some BOI systemic (rather than case-based) activities. Some collaborative activities with OCCO are already emerging. The BOI's inputs might be useful for the Bank's diagnostic work and for defining its priorities in Ukraine during the strategy preparation cycle due to begin in 2018. At the same time, given its investor's role in Ukraine, the Bank has to ensure appropriate degree of separation of its investment activities from the work of the BOI.

However attaining a systemic effect remains challenging for the BOI. While recognising its clear success, it should be noted that unless the Law on Business Ombudsman is adopted, and the BOI obtains a status beyond that of a consultative body with the right to issue non-binding recommendations, there is a limit to its abilities to have a long-term sustained impact. The EBRD's ability to have a long-term systemic effect in the country is equally challenging. With only a marginal share of its resources dedicated to core policy activities, and with operational processes geared up towards banking, rather than TC operations, the Bank can't offer large scale replication potential. Rapid mobilisation of resources – financial and human – is feasible in crisis situations but challenging in “calm periods”, as other cases illustrate. At the same time, the EBRD has confirmed its formidable reputation of being able to support reform-minded government of Ukraine as a “friend in crisis”.

When considering the creation of similar opportunities in other COOs, the Bank should be mindful of the number of elements that ensured success in the Ukrainian case. Among them is the large market size, commitment of donors, continuous and significant political commitment, securing a high-profile professional to undertake the role of Ombudsman. The combination of all these preconditions created a unique politico-economic environment that is challenging to replicate. However, the diversity of models that could be developed and used in other countries is an intrinsic element of the entire instrument. It is the principles that need to remain intact, for success to be equally meaningful: rapid-reaction; neutrality; non-enforcement nature; clear, transparent and sufficiently independent governance structures; companies free to share their concerns without fear of retribution; confidentiality and safeguarding of personal data.

6. Sources

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[Memorandum of Understanding for the Ukrainian Anti-corruption Initiative](#)

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[Report on applications to join Ukrainian Network of Integrity and Compliance](#)

[Global Open Data Index](#)

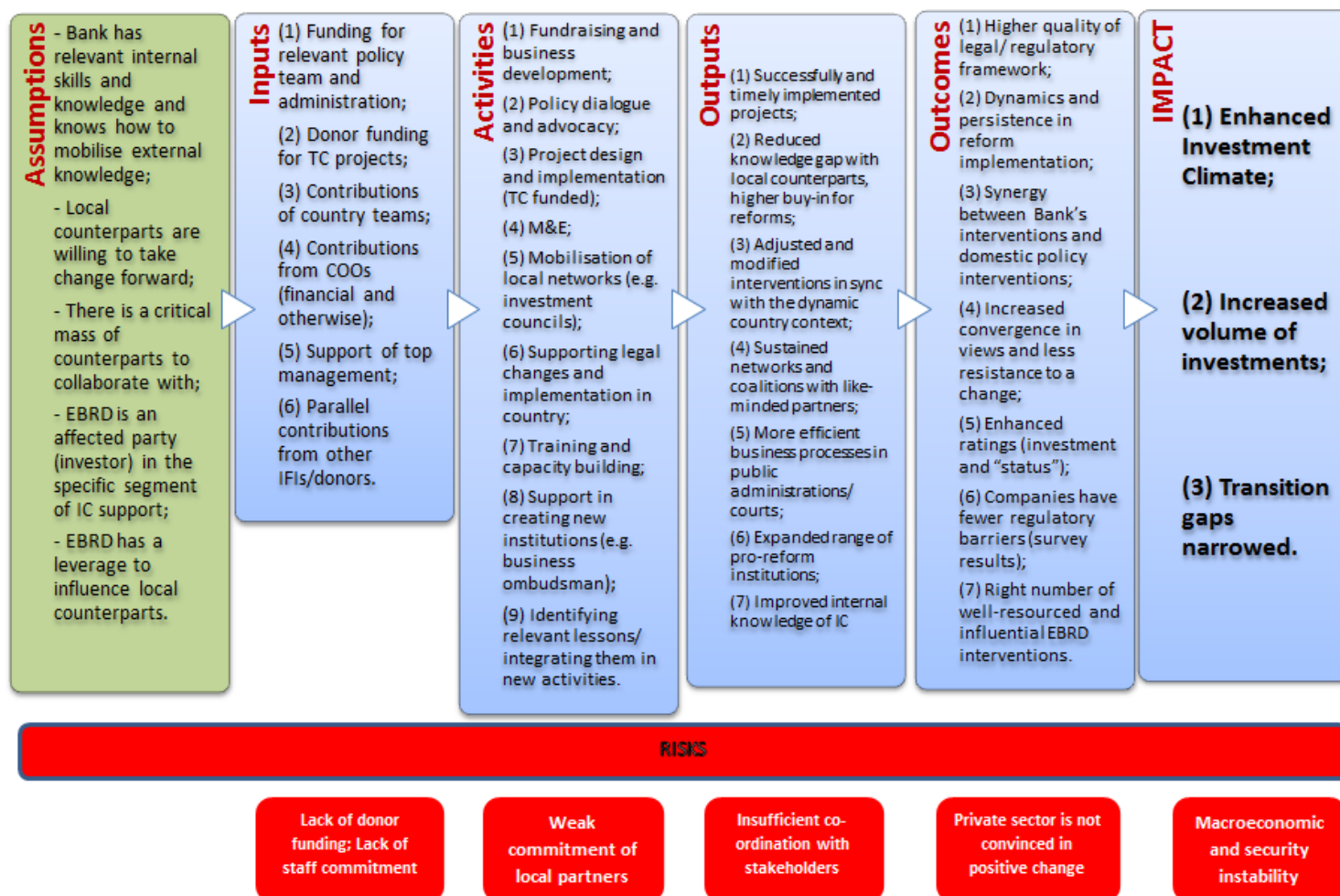
[UN's E-Government Development Index](#)

[BOI Report for Fourth Quarter of 2017](#)

Annex I: List of counterparts interviewed in the process of preparing the case report

Name	Position	Organisation/Unit
Sevki Acuner	Director for Ukraine	Kiev RO
Francis Malige	MD	Eastern Europe and Caucasus
Marina Petrov	Deputy Director for Ukraine	Kiev RO
Algirdas Semeta	Business Ombudsman	BOI, Kiev
Tetyana Korotka	Deputy Business Ombudsman	BOI, Kiev
Tetiana Kheruvimova, Volodymyr Kutsenko	Investigators	BOI, Kiev
Olga Pikulska	Chief Communications Officer	BOI, Kiev
Max Nefyodov	First Deputy Minister	Ministry of Economic Development and Trade
(1) Gennadiy Chyzhykov, (2) Lyubov Nesterenko, (3) Evgen Kurulenko	(1) President, (2) Legal Advisor, (3) Head of project office, Investment promotion	Ukrainian CCI
(1) Dmytro Oliynyk, (2) Natalya Gosteva	(1) President, (2) Director of Department of Deregulation of business	Federation of Employers of Ukraine
(1) Anatoliy Kinakh, (2) Oleksiy Mikhaliov	(1) President, (2) Director of Department of economic policy	Ukrainian League of Industrialists and Entrepreneurs
Andy Hunder	President	ACC
Boris Filipov	PSD and Public Procurement, Sector Manager	EU Delegation in Ukraine

Annex II. Results Framework of IC Study



Annex III: BOI's Activities since May 2015

Case work

As indicated on the dashboard, the number of cases reviewed by BOI investigators has grown substantially and consistently from day one of its work. As of end- 2017 the BOI has received 3,091 complaints with 64% of them closed (1,042 cases in 2017 alone) after a successful review and consequent actions. In the fourth quarter of 2017, 19% of all complaints were rejected for various reasons, which are clearly stipulated in the Rules of Procedure and presented in simple infographics – both available at the BOI website.³⁰ This is a significant improvement compared to 26% of rejections at the end-2016, which testifies to a greater understanding of the BOI's role and the scope of its activities among Ukrainian companies. More information on the BOI's case work is presented in the Results section.

The Rules of Procedure are very clear regarding the timeline for BOI actions. Each quarter the Secretariat reports on the average duration of the preliminary review (six working days in Q4 2017, compared to the stipulated 10 days) and the investigation of an accepted case (60 days in Q4 2017 based on a sample of 429 closed investigations in that quarter, compared to the stipulated three months).³¹ Both these periods have shortened dramatically in 2017, after the expansion of the investigators' cadre.

Traditionally, tax issues top the list of complaints. These are followed by the actions of state regulators (e.g. Antimonopoly Committee); Prosecutor's Office actions; actions of the National Police; Ministry of Justice; deficiencies in legal acts; actions of local councils and municipalities; customs issues; actions of the state security service; actions of state companies etc. The institutions against which the number of complaints is the biggest are (with the share of implemented BOI recommendations given in brackets): the State Fiscal Service (89%), the Prosecutor's Office (76%), the National Police (82%), the Ministry of Justice (93%), and the State Security Service of Ukraine (95%).

Systemic Policy Advice

The systemic work of BOI is as important as the case work, as it allows "preventative" measures and procedures to be designed that would, potentially, mean more clarity for businesses, fewer opportunities for misuse by public servants, and ultimately, fewer complaints to the BOI. At the moment, the BOI operates on the basis of the Decree of the Cabinet of Ministers rather than the Law, and has the status of a consultative body with the right to issue non-binding recommendations. This situation requires additional tools to build constructive relations with key government stakeholders. The BOI's experts designed a mechanism of co-operation by signing a Memorandum of Understanding with a public institution. The document establishes the principles of collaboration, the commitment of both parties and instruments of joint action, including the establishment of expert groups in the partner institutions. These usually bring together a close group of specialists from the BOI's Secretariat and the respective agency, to quickly and efficiently resolve case-specific problems or design an action plan to implement the BOI's systemic recommendations as per the Systemic Report (see below). It is expected that after the approval of the BOI Law, the MoU tool will become redundant.

As of September 2017 the BOI signed an MoU with nine public agencies: the State Fiscal Service, Kiev State Administration, the National Police, the National Agency for Corruption Prevention, the State Regulatory Service, the Ministry of Justice, the National Anti-Corruption Bureau, the Ministry of Ecology and Natural Resources, and the State Security Service. The BOI's experts expressed their satisfaction with the level of collaboration and the ratio of actioned recommendations (as specified above), and noted that the expert groups greatly helped to enhance mutual understanding. Often starting on an "icy patch", relationships develop with BOI experts gaining respect and trust, as they behave professionally while

³⁰ Presented link contains Rules of Procedure in English - [https://boi.org.ua/media/uploads/rules_of_procedure_\(eng\).pdf](https://boi.org.ua/media/uploads/rules_of_procedure_(eng).pdf) They are also available in Ukrainian

³¹ Based on BOI's report for Fourth Quarter of 2017, available at https://boi.org.ua/media/uploads/q42017/q4_2017_en.pdf

dealing with quite complicated issues. The high level of collaboration in the expert group at the State Fiscal Service was particularly noted.

It should be stressed that, in many situations the BOI experts noted a high level of understanding and compliance at the national level, but not at local and municipal levels. Often, local branches of regulatory agencies are either unaware of the most recent changes, or do not behave in a way that is in line with the legal requirements. It is then necessary to escalate local cases to the national level, although in the majority of cases it is possible to settle them locally.

Another element of the BOI's systemic work is preparing and publishing systemic reports – comprehensive overviews of a specific sector, sphere or problem, with in-depth insights combined with comprehensive legal analysis and real-life challenges faced by the BOI's clients. Usually these reports are prepared as the result of a critical mass of complaints in a specific area – be that combatting raidership, dealing with the local government or getting access to electricity. The reports always contain specific and practical recommendations on how to address the problems faced by companies in the specific sphere. These recommendations often become a subject of work for the above mentioned expert groups. By the beginning of 2018, the BOI Secretariat have prepared 11 systemic reports and all documents are available on the BOI website (for a full list, see the dashboard).

The most recent area of the BOI's systemic work is the support in launching and maintaining the Ukrainian Network of Integrity and Compliance. It is a new instrument for Ukraine, aimed at tackling “supply” side corruption – nurturing a culture of integrity and compliance among Ukrainian companies of different sizes and in different sectors, “*to promote the idea of doing business ethically and responsibly*”.³² With methodological support from the OECD and expert advice from EBRD's OCCO and Governance Team, the members joined this initiative through the signing of a Memorandum on Partnership, which included a pledge of integrity. Initially 46 companies joined the network and the membership list has been growing since. After applying for membership and successfully passing through the initial integrity verification process, companies are invited to join the network, adhere to its principles, agree to regular reviews of their integrity and compliance processes and practices, and payment of annual membership fees. Members are also expected to undergo a comprehensive certification procedure, which involves the implementation of compliance improvements in areas identified by an independent expert as being deficient. Following the implementation of the relevant compliance improvements, their quality is assessed by an independent certifier (different from the expert who identified gaps and helped implement improvements). Once the implemented improvements have been certified, the UNIC member in question becomes entitled to use the UNIC logo on its products to show that it has achieved a high degree of integrity compliance. In a way this model represents the first integrity accreditation system in Ukraine.

Given that this is the first year of UNIC's activities, it is too early to observe any concrete results. However, the principles of its creation, its corporate governance standards with self-regulating elements, sustainability through self-financing, implementation of compliance improvements by the members and the use of the logo as a public mark of compliance – all these are very positive features that promise to develop qualitative step-changes in Ukrainian standards of business behaviour. UNIC is a good example of a bottom-up collective action initiative in the anti-corruption and governance area.

This network is one of the most valuable “pre-emptive” activities supported by the EBRD. In the mid-term perspective it will deliver more “bankable” clients with high standards of corporate governance and compliance, delivering cost savings in the future for due diligence tasks and corporate governance consultancy.

³² <https://boi.org.ua/en/publications/news/96-applications-to-join-the-ukrainian-network-of-integrity>

Outreach and Communications

Being a new organisation with a consultative status with no “hard” authority in the system of state institution means that the Ombudsman and his staff are obliged to interact a lot with the public and mass media. Communicating the results of its work to the public is essential for building awareness that the Ukrainian Business Ombudsman Institution exists. The Ombudsman regularly visits the Ukrainian regions (he had visited all regional capitals at the time of evaluation) and conducts meetings at oblast (regional) state administrations with representatives of local businesses and regional regulatory agencies. In 2015, at the start of its work, the BOI benefited from the assistance of the Ministry of Economic Development and Trade in organising these visits (and some of the regional visits were performed jointly by the Ombudsman and the Minister). After several visits, the BOI Secretariat manages this organisation process independently. The visit agendas always include press briefings and after each regional visit the BOI witnesses a substantial increase in the number of complaints submitted by the companies based in the region.

Work with the media is also successful, although the BOI has no budget for media advertising, nor for advertising in social networks, which are increasingly important channels for disseminating information and communication. The core of the BOI’s communications is the stories of their clients. Depending on their disclosure agreement, clients’ stories are published on the BOI website as cases in reports, as media stories, or as scenarios for short video stories produced with support from the EBRD’s communication team.³³ The BOI has long-term arrangements with a number of media outlets, and the Ombudsman takes part in a series of regular programmes on Radio Aristocrats. A number of business stories are published by the weekly magazine “Focus” in their rubric “Business Against the System”.

The Ombudsman and his deputies are frequent speakers at various events organised by partner business associations, different fora and events organised by government, international organisations and universities. The release of systemic reports is always accompanied by a targeted media campaign that promotes the key messages and recommendations. At the moment the BOI, unlike some other newly established organisations, does not deliver its own training sessions and events, nor does it offer online courses that are increasingly popular as an alternative to conventional courses for civil servants and experts interested in a specialist policy area.

³³ At the application stage each client indicates their permission to disclose information about their complaint. About 60% of clients do not mind disclosing their name and the details of the complaint. At the final stage, after the complaint is resolved, the BOI’s communications manager obtains further permission from the client and prepares a media communication plan accordingly.