

# BUSINESS OMBUDSMAN INSTITUTIONS IN EASTERN EUROPE AND CENTRAL ASIA

New trends  
and good practices

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This report examines the work of the business ombudsman institutions of Georgia, Kazakhstan, Kyrgyzstan, Ukraine and Uzbekistan in order to identify their successful practices, as well as gaps that can be addressed through mutual learning and knowledge sharing. It reviews key aspects of the work of these institutions, including the legal framework for their operations, independence and accountability safeguards, funding mechanisms and operational procedures. Based on the analysis, the report offers a number of recommendations that can help improve existing institutions and also be useful to countries that are considering establishing them.

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# Foreword

This thematic study takes stock of the existing practices in Eastern Europe and Central Asia in terms of the establishment and operation of business ombudsman institutions. Comparing the experience of such institutions in five countries (Georgia, Kazakhstan, Kyrgyzstan, Ukraine and Uzbekistan), the study examines key aspects of their functioning, including the legal framework, independence safeguards, transparency and accountability mechanisms, resources, operational procedures and the tools employed for measuring their impact. Based on the review of the five country cases, the study identifies a range of promising practices that can help ensure effective operation of a business ombudsman institution. The recommendations developed through these findings can be useful for countries considering establishment of this type of institution.

The study was prepared at the Secretariat of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) by Erekle Urushadze, with contributions from Oleksandra Onysko and Dinara Afaunova, and under the general supervision of Olga Savran, manager of ACN, and Tanya Khavanska, manager of the ACN business integrity programme. Amelia Godber and Paloma Cupello contributed to the finalisation of the study for publication. Mr Nicolas Pinaud, Acting Head of the Anti-Corruption Division, provided invaluable comments.

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# Acronyms

<b>ACN</b>	Anti-Corruption Network for Eastern Europe and Central Asia
<b>BPM</b>	business process management
<b>BO</b>	business ombudsman
<b>BOC</b>	Business Ombudsman Council of Ukraine
<b>CMS</b>	case management system
<b>CPI</b>	Corruption Perceptions Index
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>HLRM</b>	high-level reporting mechanism

# Executive summary

This report examines the work of the business ombudsman (BO) institutions of Georgia, Kazakhstan, Kyrgyzstan, Ukraine and Uzbekistan in order to identify their successful practices, as well as gaps that can be addressed – inter alia, through mutual learning and knowledge sharing. Such institutions are a relatively recent development in Eastern Europe and Central Asia, with all five bodies discussed in this report established in the 2010s. They represent a response to the need to protect businesses from arbitrary treatment and to improve the overall investment climate in a region that has faced considerable challenges in terms of the rule of law and the fight against corruption.

## Two models

The region has witnessed the emergence of two distinct approaches to the creation of BO institutions. In Georgia, Kazakhstan and Uzbekistan, these bodies were established by the governments and the BOs are appointed by and accountable to the president or the prime minister. In Ukraine, and subsequently in Kyrgyzstan, on the other hand, the BO institutions were created through co-operation between the governments, their international partners, and local non-government stakeholders, and are governed by tripartite supervisory boards that appoint the BOs through an open and competitive selection process.

## Laws and resources

In the countries where the BO institutions are part of the state, their activities are regulated by primary law (or even a dedicated BO law), while the independent BO offices of Ukraine and Kyrgyzstan have operated based on charters adopted through government decrees. The latter two BOs also have rules of procedure that provide useful detailed guidance on various aspects of the institution's activities.

Government-established BO institutions are financed directly from state budgets (with the exception of the one in Kazakhstan, which operates within the country's national business chamber), while those that were created jointly with international organisations have operated through foreign donor funding.<sup>1</sup> The size of BO staff varies considerably across the region (depending, among other things, on a country's size).

## Goals and powers

All five BO institutions have the same twofold mission: To protect the rights and the legitimate interests of businesses and to contribute to the improvement of the general business environment in the country through continued systemic analysis of laws and practices and development of recommendations. This

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<sup>1</sup> EBRD ended its financial support for the BO in Kyrgyzstan in April 2023. The Business Ombudsman's Secretariat of Kyrgyzstan subsequently suspended receiving and processing of complaints until an alternative source of funding is found: <https://www.facebook.com/BOIKyrgyzstan/>

may involve dealing with corruption (either on “micro” or “macro” level), but only the BOs of Ukraine and Kyrgyzstan have an express mandate to work towards reducing corruption in their countries.

Since the review of complaints makes up the largest part of a BO institution’s work, the powers that the relevant laws grant them also focus primarily on this process. Public administration bodies have a duty to provide (usually within a specific timeframe) the information and the materials requested by the BOs as part of their inquiries. BOs can address administrative bodies with recommendations based on the findings of their reviews of complaints and, while these are not mandatory, in some countries such bodies are required to report back to the BOs about the state of their implementation (or provide justification for their rejection). Unusually for this type of institution, the BO in Uzbekistan can issue “warnings” to administrative bodies and even impose fines for violations. Some countries (Georgia, Kyrgyzstan) also allow BOs to participate in judicial proceedings – either on behalf of complainants or as *amicus curiae*.

In order to facilitate the work of BO institutions towards systemic improvements, the relevant legislation usually provides them with appropriate channels of communication with the highest authorities of their countries. For example, the BO in Kyrgyzstan can present proposals at government meetings as well as send them directly to the President and the Parliament, while Kazakhstan’s BO can directly address the President about “systemic violations”.

## Operational procedures

All five institutions have developed a certain system for the processing of complaints. The process is largely similar across the countries, although the BO in Ukraine has established particularly detailed procedures for this purpose, which are implemented through an electronic case management system (CMS), allowing it to track and record all key decisions and materials throughout the process.

## Measuring the impact

The five BO institutions collect and publish a range of statistics that help to both inform the public about the work of these bodies and measure the impact of this work. The complaint success rate (i.e. the outcome where the dispute was resolved in the complainant’s favour and/or where the relevant administrative body accepted the BO’s recommendation) is most commonly used for self-assessment by the BOs, and the institutions have generally shown impressive numbers in this respect. Acceptance rate for the BO’s systemic recommendations is another useful and informative figure, although the data are more patchy in this case, with only the BOs in Ukraine and Kazakhstan maintaining detailed trackers of their systemic recommendations. Ukraine’s and Kyrgyzstan’s BOs have also measured satisfaction among the complainants and the results have been overwhelmingly favourable so far. The BO in Kyrgyzstan has also adopted a long-term work plan with measurable annual targets.

## Filling the gaps

It is not the purpose of this study to identify a single best model of a BO institution that would work for all countries and contexts. Rather, it pursued the dual objectives of taking stock of the existing practices and identifying those that have been useful in some national contexts and could potentially be emulated in others. From that perspective, the analysis in the preceding sections of the report does make it possible to propose ways for the region’s BOs to improve their operations by building on existing experience.

All five countries recognise the importance of the **independence** of their BO institutions, as demonstrated by relevant provisions in their legislation. Yet, those where the BOs are currently appointed directly by the country’s top executive official could follow the example of Ukraine and Kyrgyzstan and introduce open and competitive selection for the position. Moreover, the fact that the BO offices operate within the



government sector in these countries does not exclude the possibility of establishment of boards/commissions comprising nongovernmental stakeholders that could have a role in the BO selection process and further serve as public accountability mechanisms for these institutions.

As far as the **legal framework** is concerned, Ukraine and Kyrgyzstan should proceed with their plans to adopt dedicated BO laws to reinforce the status of BO institutions as permanent bodies. Meanwhile, other countries could emulate them in adopting detailed rules of procedure that will provide detailed guidance on all aspects of the BO institutions' operation.

In terms of the **powers** of BO institutions, requiring all relevant bodies to provide the information requested by a BO within a specific timeframe and to report back to the BO on the implementation of their recommendations (or provide a justification for a refusal to accept a recommendation) certainly enhanced the effectiveness of BO work, so the countries that currently do not have such provisions in their laws should consider adopting them.

For the handling of complaints, the electronic **CMS** implemented by the BOC in Ukraine appears to be a very interesting and promising practice, which merits attention from the region's other BO institutions.

While all five institutions have made efforts to inform citizens about their work through their websites, significant gaps remain, both in terms of the types of data published and the frequency at which the information is updated. Improving the collection and publication of **statistics** would not only improve the level of transparency of the BO institutions but also make it possible to assess their impact more accurately.

The task of assessing the **impact** would also be made easier by improved planning that would include measurable targets for specific time periods. Trackers of systemic recommendations, like those implemented by the BOs in Ukraine and Kazakhstan, are another useful tool in this context.

## Recommendations

- Introduce open and competitive selection for business ombudsmen.
- Establish boards/commissions comprising nongovernmental stakeholders that could have a role in the BO selection process and further serve as public accountability mechanisms for these institutions.
- Adopt dedicated BO laws to reinforce the status of BO institutions as permanent bodies, as well as rules of procedure that will provide detailed guidance on all aspects of their operation.
- Require all relevant public administration bodies to provide the information requested by a BO within a specific timeframe and to report back to the BO on the implementation of their recommendations (or provide a justification for a refusal to accept a recommendation).
- Set up electronic **CMS** for the handling of complaints.
- Ensure regular publication of comprehensive and up-to-date statistical information about the BO institutions' work.
- Improve **impact** assessment frameworks, inter alia through measurable targets for specific time periods, trackers of systemic recommendations and satisfaction surveys.

# 1 Introduction

## 1.1 Background

A BO aims to protect the rights and interests of businesses and entrepreneurs. BOs provide protection through investigation of claims of abuse of a businessperson's or a company's rights, out-of-court dispute resolution, advocacy and/or advisory services. BOs for various businesses exist in many countries around the world: the Australian Small Business and Family Enterprise Ombudsman, the Foreign Investment Ombudsman and the Small and Medium Enterprises Ombudsman in South Korea, the Ombudsman for Small and Medium-Sized Enterprises in Poland, the Canadian Ombudsperson for Responsible Enterprise, and the Financial Ombudsman Service in the UK, to name just a few.

Over the past decade, BO institutions have been established in several countries in Eastern Europe and Central Asia. They emerged as a response to the demand by businesses for effective non-judicial mechanisms to address company complaints against public administration bodies in countries where effective and timely resolution cannot be achieved through courts and other relevant institutions. In some of these countries, the BOs not only provide support to individual companies, but also contribute to systemic changes in governance and creating a strong business culture.<sup>2</sup>

While BO institutions became popular in Eastern Europe and Central Asia, there are other forms of non-judicial mechanisms for resolving conflicts between companies and public administration that emerged in other parts of the world. For examples, several countries in Latin America have adopted the so-called high level reporting mechanisms (HLRMs). While these mechanisms vary across the countries, they share the following main features: it is a non-judiciary mechanism for companies to send an alert about possible corruption in one of the state bodies, usually in relation to public procurement; the alert is sent to a high-level authority above the state body that is alleged in bribe solicitation.<sup>3</sup>

The difference with the BO is that the HLRM does not exclude judiciary investigations, while the BO normally investigates only cases that are not subject to legal proceedings. Besides, a HLRM works well when it is narrowly focused on a specific sector, such as public procurement in a specific state body, which does not provide a comprehensive solution to all the complexity of corruption violations in the ACN region. While some of the BOs in Eastern Europe and Central Asia may resemble HLRMs, this mechanism did not take up in the region.<sup>4</sup>

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<sup>2</sup> OECD(ACN), 2019, Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges, 2016-2019, <https://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf#page=163&zoom=100,82,408>

<sup>3</sup> OECD, Basel Institute on Governance, High-Level Reporting Mechanism Enhancing accountability to strengthen trust and integrity, <https://www.oecd.org/corruption/High-Level-Reporting-Mechanism-Overview.pdf>

<sup>4</sup> OECD(ACN), 2019, Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges, 2016-2019, <https://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf#page=163&zoom=100,82,408>

### Box 1.1. The HLRM in Argentina

The Argentine HLRM is located under the Secretary for Public Ethics, Transparency, and Fight Against Corruption within the Anti-Corruption Office overseen by the President. The HLRM is composed of the Secretary for Public Ethics, Transparency and the Fight Against Corruption, the Undersecretary of Integrity and Transparency, and the Undersecretary of Anti-corruption Investigations.

Alerts submitted to Argentina's HLRM are assessed within 48 hours by the Unit for Admission and Referral of Complaints. If the issues are within scope – i.e. relating to collusion, bribery, conflicts of interest or any other form of unfair treatment of bidders – the HLRM is activated.

The HLRM's Group of Experts then addresses the issue with the goal of finding a quick, practical and fair solution. Members include two technical representatives proposed by the College of Engineers, a technical representative proposed by the Anti-Corruption Office and a representative of the Anti-Corruption Studies Centre of the University of San Andrés, Buenos Aires.

In the *Safety in Roads and Highways* and *Electricity Transmission* projects, the HLRM permitted the reporting of four types of misconduct: bribery, influence peddling, bid rigging and conflict of interest. Reports could be made from the beginning of the tender process until 48 hours before the award of the tender. This prevented companies that were not awarded the contract from reporting in bad faith. Reports could be made by participants in the tender and officials involved in the PPP, but not NGOs or other stakeholders.

The HLRM received five and nine reports for the *Safety in Roads and Highways* and *Electricity Transmission* projects, respectively. None of the reports reached the Group of Experts because they did not concern eligible types of misconduct.

Source: Basel Institute on Governance, *High Level Reporting Mechanism in Argentina: Using HLRM mechanisms in public-private partnership projects in the infrastructure sector*, <https://baselgovernance.org/b20-collective-action-hub/hrlm/hlrn-argentina>

## 1.2 Regional context and emergence of BO institutions

Although the aspiration to provide a faster and simpler alternative to formal judicial procedure is a major driver for the creation of a BO institution in any context, it is particularly relevant in a region that faces significant challenges in terms of rule of law and good governance. In Transparency International's 2021 Corruption Perceptions Index (CPI), Eastern Europe and Central Asia was the second lowest-performing region, with the average score of just 36 (on a scale where 100 points means the lowest level of perceived corruption).<sup>5</sup> In the World Justice Project's Rule of Law Index (which measures adherence to rule of law on a scale from 0 to 1), all of the region's countries were near or below the midpoint score of 0.5 in 2022.<sup>6</sup>

Strong demand from the private sector for the protection of their legitimate rights from various abuses by administrative bodies was therefore a common factor behind the establishment of BO institutions in the

<sup>5</sup>Transparency International (2022), *CPI 2021 for Eastern Europe & Central Asia: Democratic hopes in the shadow of growing authoritarianism*, <https://www.transparency.org/en/news/cpi-2021-eastern-europe-central-asia-democratic-hopes-growing-authoritarianism>

<sup>6</sup> World Justice Project (2022), *Rule of Law Index*, <https://worldjusticeproject.org/rule-of-law-index/global/2022/ranking>

region.<sup>7</sup> At the same time, in each case, there were some country-specific factors that prompted and/or facilitated the establishment of the BO institution.

There are different institutional set-ups of BOs in Eastern Europe and Central Asia: the institutions established by the executive branch as a part of public administration (**Georgia, Uzbekistan**) or the national business chamber (**Kazakhstan**), as well as independent bodies formed through collaboration between the governments, international organisations and local non-governmental stakeholders (**Kyrgyzstan, Ukraine**).

The BO of **Georgia** originally dealt exclusively with tax issues (as “Tax Ombudsman”),<sup>8</sup> but the institution’s mandate was expanded through the adoption in 2015 of the new law, “On the Business Ombudsman of Georgia”, whereby the institution is also to address the complaints of companies and promote business integrity in the country.<sup>9</sup> In **Uzbekistan**, the office of the BO was established through a presidential decree in May 2017,<sup>10</sup> while a dedicated law governing the institution’s activities was passed in August the same year.<sup>11</sup> In **Kazakhstan**, a presidential decree passed in February 2014 tasked the government with drafting legislative amendments involving the establishment of the office of Business Ombudsman. The legal basis for the institution’s operation was subsequently established through the December 2014 amendments to the law, “On the National Chamber of Entrepreneurs of Kazakhstan”,<sup>12</sup> and the new Entrepreneurial Code, which came into force in January 2016.<sup>13</sup>

The EBRD played an important role in establishing a business ombudsman institution in **Ukraine** soon after the 2014 Revolution of Dignity and the formation of a reform-minded government seeking to improve the investment climate. In partnership with the Ukrainian government, the OECD and five Ukrainian business associations, the EBRD signed a memorandum of understanding, launching the Anti-Corruption Initiative,<sup>14</sup> which led to the establishment (through a government decree) of the Ukrainian Business Ombudsman Council (BOC).<sup>15</sup> The Business Ombudsman Council is an independent permanent advisory body of the Cabinet of Ministers of Ukraine, with a mandate to help establish a transparent business environment and prevent corruption at the central and local government levels, and in state-owned and state-controlled enterprises. The creation of the BO institution in **Kyrgyzstan** was inspired by and based on the experience of Ukraine. The Kyrgyz BO was established in 2019 through a government decree as an independent non-state body funded through a grant from the EBRD to protect the rights, freedoms, and legitimate interests of business entities, both local and foreign.

<sup>7</sup>OECD ACN (2019), Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges, 2016-2019, <https://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf#page=163&zoom=100,82,408>

<sup>8</sup> The Tax Ombudsman office was created in 2011 based on Article 42 of the Georgia Tax Code and the Government Decree adopted on 23 February 2011. The new law On Georgian Business Ombudsman came into force on 5 June 2015 and the institution continued to operate under a new name.

<sup>9</sup> Law of Georgian on the Business Ombudsman of Georgia, 28 May 2015.

<sup>10</sup> Decree of the President of Uzbekistan on the Commissioner for Protection of Rights and Legitimate Interests of Entrepreneurs under the President of the Republic of Uzbekistan, 5 May 2017.

<sup>11</sup> Law of the Republic of Uzbekistan on Commissioner for Protection of Rights and Legitimate Interests of Entrepreneurs under the President of the Republic of Uzbekistan, 29 August 2017.

<sup>12</sup> The Law of the Republic of Kazakhstan on the National Chamber of Entrepreneurs of Kazakhstan, 4 July 2013.

<sup>13</sup> Entrepreneur Code of the Republic of Kazakhstan, 29 October 2015.

<sup>14</sup> EBRD, Business Ombudsman Initiatives, <https://www.ebrd.com/what-we-do/sectors-and-topics/business-ombudsman-initiatives.html>

<sup>15</sup> Memorandum of Understanding for the Ukrainian Anti-Corruption Initiative, 12 May 2014.

**Table 1.1. BOs in selected countries: establishment, legal basis and placement**

Country	Year created	Current legal basis of BO's operation	Institutional placement
Georgia	2017	Dedicated BO law	Part of government
Kazakhstan	2014	Law	Part of national business chamber
Kyrgyzstan	2019	Government decree	Independent
Ukraine	2015	Government decree	Independent
Uzbekistan	2017	Dedicated BO law	Part of government

Thus, in all five countries, the establishment of the BO institution started with a presidential or a governmental decree. In some countries (**Georgia, Kazakhstan, Uzbekistan**), the legal framework was subsequently reinforced through laws. In **Kyrgyzstan** and **Ukraine**, the BOs have operated based on executive regulations.

### 1.3 About this study

In November 2019, the Georgian Business Ombudsman hosted the first ever meeting of the BOs from across the region at the international business conference “Creating Enabling Environment for Sustainable Business in Eastern Europe and Central Asia”. The meeting demonstrated that there are various models of the BOs in the region and there was a strong interest among them to learn from each other. As a follow-up, the Secretariat of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD/ACN) through the EU for Integrity Programme, and in co-operation with the EBRD, the Council of Europe (COE) and the Business Ombudsman Council of Ukraine (BOC), initiated further discussions of the experiences of the BOs in the region to draw lessons and good practices for their further development, including during a webinar in November 2021. During this webinar, the BOs in the region agreed to provide information through a standard questionnaire. Based on the collected data, the Secretariat conducted a preliminary analysis that was presented at the ACN Business Integrity Group meeting in March 2021. The ACN Secretariat subsequently expanded the analysis through further desk research to produce this report. By offering an overview of the models of BO institutions across the region and their practices over the past few years, this report aims to contribute to informed policies both in terms of the strengthening of the existing bodies and the possible establishment of new ones.

The ACN Secretariat has also developed business integrity indicators (including an indicator on BO institutions) for its monitoring under the Istanbul Action Plan, to which all five countries covered in this report are parties. Meanwhile, the OECD Anti-Corruption Division, which hosts the ACN, has organised the OECD Global Roundtable on Business Integrity, including sessions on non-judicial mechanisms for dispute resolution. Information collected through these activities was also used in the preparation of this study.

Unless indicated otherwise, information in the subsequent sections of the report was collected through questionnaires that were prepared by the ACN Secretariat and completed by the five BO institutions, as well as through the ACN Secretariat's interviews with the representatives of these institutions. The report reflects the state of affairs (including relevant country legislation) as of March 2023 when information collection and desk research for this study were completed. The report also includes the most recent statistical data that were available at that time.

Given the timeframe of the study, the analysis of the Ukrainian Business Ombudsman Council does not reflect the impact of the Russian war of aggression against Ukraine on the institution's operation. The 2002 Annual Report of the Ukrainian BOC, which is available on the BOC website,<sup>16</sup> provides information on how the institution continued to perform its role under the difficult and challenging wartime conditions.

<sup>16</sup> <https://boi.org.ua/wp-content/uploads/2023/04/8-years-en-fin.pdf>

# 2 Mission and powers

## 2.1 Mission

The responsibilities and the powers of BOs are set out in the decrees and/or laws based on which they were established and operate. In some countries, internal regulations (usually in the form of rules of procedure) provide further guidance on their work. Broadly speaking, all BOs reviewed in this study have a dual mandate which includes:

- protecting the legitimate rights and interests of companies from violations by administrative bodies
- promoting the improvement of the overall business environment in the country.

The mandate of a BO institution may also include contributing to the fight against corruption (both through the exposure of individual cases and through the reduction of systemic risks), although this is only stated explicitly in the relevant legislative acts of **Ukraine** and **Kyrgyzstan**.

In order to exercise this mandate, the institutions have powers that vary significantly among the Bos, ranging from a largely consultative role to full access to all state information, mandatory recommendations and the power to trigger law-enforcement actions.

## 2.2 Powers/rights

*Administrative bodies have a duty... to assist, the Business Ombudsman in carrying out their activities and provide the information and documents necessary for the exercise of their mandate.*

Georgian Law on Business Ombudsman

Review of complaints – all BO institutions covered in this study have the authority to *receive and review complaints* by private sector entities concerning the violations of their rights, although there are notable differences in terms of the nature of this review, the powers of the BO institutions in terms of collection of information and investigation, and possible outcomes of the review process.

Access to information – in some cases (**Georgia, Uzbekistan, Kyrgyzstan**), the relevant legislation contains specific articles establishing the duty of public bodies to assist the BO in the exercise of their mandate. All institutions have the right to request and receive information concerning the cases under their review from the relevant public bodies, usually with the exception of information classified under national legislation. In some countries (**Georgia, Kyrgyzstan, Uzbekistan**) the legislation also requires the public bodies in question to provide requested information to the BO immediately or within a specific timeframe.

Access to public institutions and officials – further powers of the region's BO institutions during the phase of investigation/review of complaints received from companies include attending the meetings of other public institutions (**Uzbekistan**) and interviewing their officials and employees or summoning them to attend the consideration of complaints by the BO (**Kyrgyzstan, Ukraine**). The BOs can also establish working groups comprising representatives of both public and non-public bodies (**Uzbekistan, Georgia**)

or request opinion of experts from relevant fields (**Georgia, Kyrgyzstan, Ukraine**). Exceptionally, the BO in **Uzbekistan** is also authorised to enter detention and penitentiary facilities to meet individuals charged with or convicted for crimes related to entrepreneurial activities. The BO in **Kyrgyzstan** can attend government meetings and access the buildings of public institutions when the exercise of its mandate requires this.

### Box 2.1. Country highlight: BO's right to access prisons in Uzbekistan

The law grants the BO of Uzbekistan “unimpeded access” to detention facilities and penitentiary institutions to meet with individuals charged with or convicted for business-related crimes.

Furthermore, the administrations of prisons are prohibited from reading the complaints sent by such individuals to the BO and are required to deliver them to the BO within 24 hours of receiving them. They are also forbidden to read the BO's replies to such complaints and must deliver them immediately to the complainants.

Source: The Law of the Republic of Uzbekistan on Commissioner for Protection of Rights and Legitimate Interests of Entrepreneurs under the President of the Republic of Uzbekistan, Article 8.

Participation in the judicial process – the BOs also have certain powers in terms of involvement in judicial proceedings, concerning the cases under their review. The BOs of **Uzbekistan** and **Kazakhstan** can file lawsuits with courts, while the BO in **Kyrgyzstan** can attend court hearings concerning cases under its review. The **Georgian** BO has the right to act as *amicus curiae* both in general courts and in the Constitutional Court.

Power to issue case-specific recommendations – Based on the outcomes of their investigations/review of complaints, all BOs can send to the relevant authorities recommendations concerning the cases in question. There are clear differences in terms of the “weight” that a BOs recommendations are likely to carry based on the relevant legislation. In **Kazakhstan**, the relevant legislation does not establish a duty of administrative bodies to take any action in response to the BO's recommendation, although the BO can appeal to the Prosecutor's Office in the cases where it believes a violation has occurred and cannot achieve a resolution through communication with the administrative bodies in question. Meanwhile, administrative bodies in **Georgia, Kyrgyzstan** and **Ukraine** are required to report back to the BO about the actions they have taken in response to the BO's recommendation. The BO in **Uzbekistan** has the power of issuing written warnings regarding the inadmissibility of violation of relevant laws, as well as notices concerning the actions to be taken in order to eliminate the violations which have been discovered, and law requires the relevant bodies to consider these within appropriate time frames. Also, unusually for this type of institution, **Uzbekistan's** BO has the power of imposing sanctions (fines) for violations that fall under its mandate.

*The Business Ombudsman Council shall have the right to... receive prompt written notifications from the relevant state or municipal authorities, with a detailed explanation of the status of investigation and the steps taken in order to resolve the issues raised in the request from the Council.*

Regulation on the Business Ombudsman Council of Ukraine

Power to issue systemic recommendations – All BO institutions in the region have powers designed to enable them to contribute to the improvement of laws, policies and administrative practices in the field of business regulation. In **Georgia**, the BO is authorised to conduct analysis of legislation (both existing and

proposed legal acts), as well as the practices of administrative bodies, and to present to the relevant institutions proposals concerning the provisions or the practices which could violate legitimate rights and interests of businesses. The BO of **Uzbekistan** can review the adherence of public bodies to the legislative provisions designed to protect the rights and the interest of businesses, to monitor lawfulness of inspections of businesses, and to propose “complex measures” for the prevention of unlawful interference with business activities. In **Ukraine**, the law authorises the BO to give recommendations to public authorities regarding the formation and implementation of policy and administrative practices in the field of entrepreneurial activities. The Ukrainian BO can also offer the government recommendations regarding the ways of addressing systemic causes of violations, propose legislative amendments designed to improve business environment and propose candidates for participation in working groups established with the purpose of drafting such amendments. The BO in **Kyrgyzstan** has similar powers in terms of proposing legislative amendments and nominating candidates for the working groups tasked with preparing them, while also being authorised to participate in government meetings and present proposals there. In **Kazakhstan**, the BO can notify the President of the Republic about “systemic violations” of the rights of entrepreneurs.



# 3 Independence, integrity, transparency and accountability

Effective operation of a BO institution requires its protection from any undue external influence, both from government/public administration and the private sector. At the same time, the institution's independence needs to be balanced by appropriate levels of transparency and accountability. Finally, it is important to ensure integrity of the BO and the employees of the office, if the institution is to enjoy strong trust among the stakeholders. All countries covered in this study recognize the importance of these objectives (as reflected in their respective legal provisions on BO institutions), but they have adopted different approaches in their efforts to attain them.

## 3.1 Independence

Various safeguards designed to ensure the BO's independence are in place across the region:

Explicit provisions on independence in relevant legislation – in **Kyrgyzstan** and **Uzbekistan**, the legislation directly prohibits interference with the BOs work. In **Uzbekistan**, the law emphasises that the BO exercises its mandate independently from other state bodies. The **Georgian** law highlights “neutrality” as a key principle of the BO's work.

Fixed appointment term – in **Kazakhstan** and **Kyrgyzstan**, the BO is appointed for a fixed period of time (four and five years, respectively). In both countries, the same person can serve a maximum of two consecutive terms as a BO.

*The Business Ombudsman and the Secretariat's employees are not state or municipal officials and shall carry out their activities independently from state authorities.... Intervention in their activities, as well as impact on their activities, or obstruction of it in any form is prohibited.*

Rules of Procedure of the Business Ombudsman of Kyrgyzstan

Protection from arbitrary dismissal – in all five countries, the legislation establishes conditions for the BO's removal from office. These usually include legitimate reasons, such as the BO's death or a health condition preventing them from performing their duties, violation by the BO of their mandate and relevant legal provisions, conviction of the BO for a crime, the BOs decision to leave the country for residence abroad, and so on.

Restrictions on parallel activities – in all five countries, there are legislative provisions prohibiting the BOs from engaging in activities which could undermine their independence or create conflicts of interest, such as membership of political parties, performance of any kind of parallel paid work (usually with the exception of academic work) and involvement in commercial enterprises.

**Immunity** – In **Uzbekistan**, the BO cannot be detained, arrested, charged or subjected to administrative penalties without the President’s consent.

### Box 3.1. Country highlight: Supervisory Board and BO selection process in Ukraine

According to the government resolution on the establishment of the Business Ombudsman’s Council in Ukraine, the Business Ombudsman “may be a citizen of Ukraine, a foreign national or a stateless person that has an impeccable business reputation, high moral qualities, who has completed higher economic or legal education, and has profound knowledge of economic, social and government issues in Ukraine, in accordance with the criteria determined by the supervisory board”.

The initial selection process is conducted through a selection committee appointed by the Supervisory Board, with each of the board’s three blocks (the government, international financial institutions, business associations) appointing one member of the committee. The committee then publishes information about the competition for the BO’s position on the Council’s website. After the deadline for applications, the selection committee has 45 calendar days to:

- assess the accuracy of the information in the applications and select the candidates who meet the established requirements
- collect recommendations for each of the selected candidates from at least four people who are well acquainted with their work and achievements
- if necessary, conduct additional assessment of the selected candidates’ competencies and management skills of selected candidates
- form a shortlist of the best candidates (three to six people)
- conduct interviews with shortlisted candidates and submit to the Supervisory Board a recommendation on the best candidate for the position of BO
- nominate a reserve candidate, who will be presented to the supervisory board in case the board does not select the first candidate recommended by the committee.

The above steps can also be delegated by the selection committee to a company for the selection of personnel, which then needs to present a justification for its shortlist of candidates. The recruitment company is obliged to provide, at the request of the selection committee, all information about the candidates who have submitted their candidacy for the position of BO.

The decision to select the BO must be made unanimously by all three blocks in the Supervisory Board. Once this decision is made, the BO is formally appointed through a government decree.

Source: Resolution of the Cabinet of Ministers of Ukraine, 26 November 2014.

The rules governing the selection and appointment of the BO are important factors that can potentially influence the institution’s independence. The BO is appointed directly by the President in Kazakhstan and Uzbekistan, and by the Prime Minister – in Georgia (with the Parliament Chairperson’s consent). The arrangements are different in Ukraine and Kyrgyzstan, where the respective BO institutions were established through collaboration between the government, the business community and international partners. Consequently, in both countries, the governing bodies (supervisory boards) of the BO institutions comprise three “blocks” (made up of representatives of the three founding parties: the government, international organisations, business associations). Decisions regarding the appointment of the BO require a unanimous vote all three “blocks” and are then submitted to the government for approval. Furthermore, in Ukraine, the Rules of Procedure guarantee the appointment of the Business Ombudsman and Deputy

Business Ombudsman through competitive selection. The same has been the case in practice in Kyrgyzstan, where the BO and deputies were selected competitively.

### 3.2 Accountability and transparency

The accountability mechanisms of the region's BO institutions vary depending on how the institution was originally established and who plays the key role in the BO's appointment process. Where the head of state or the executive branch appoint the BO, the BO reports to either the President (**Kazakhstan, Uzbekistan**) or the Prime Minister and the Parliament (**Georgia**). There are some differences in terms of the frequency of reporting and the requirements concerning the content of the reports. Both **Georgia** and **Kazakhstan** require their BOs to submit annual reports to the relevant bodies and also to publish them. In **Uzbekistan**, the law says that the BO is to report "regularly" to the President and there is no explicit requirement for the BO to make such reports public. The laws in Kazakhstan and Uzbekistan offer very limited guidance on the content of the BO's reports (referring to the information on the institution's work and the general situation in terms of the protection of the rights and legitimate interests of businesses, respectively). The Georgian law is more detailed on this subject, requiring the BO to include information on the reviewed applications, shortcomings discovered in legislation and in practice, its findings and recommendations, the responses of administrative bodies to those findings and recommendations, and general trends in the country in terms of the protection of the rights and legitimate interests of businesses.

In **Ukraine** and **Kyrgyzstan**, where the institutions were established through collaboration between state and non-state parties, the BOs report to their respective Supervisory Boards. This reporting duty includes the BO's presentation of annual and quarterly activity reports to the Board. In both countries, the rules of procedure of the BO institutions provide a detailed guidance regarding the information to be included in these reports (which are to be posted on the BO websites after their approval by the Board). Additionally, the BOs of Ukraine and Kyrgyzstan are required to present detailed annual financial reports to their respective boards.

There are no provisions concerning mandatory annual external audits of BO institutions in any of the reviewed countries. Where the BO operates as part of the public administration (as in **Georgia**, for example), it can, in principle, be audited by the country's supreme audit institution, although it's not clear how often this has been done in practice (if at all).

**Table 3.1. Accountability requirements of BO institutions**

Country	Reports to	Reporting frequency	Financial reporting	Mandatory audits
Georgia	PM and parliament	Annual	X	X
Kazakhstan	President	Annual	X	X
Kyrgyzstan	Supervisory board	Quarterly/annual	✓	X
Ukraine	Supervisory board	Quarterly/annual	✓	X
Uzbekistan	President	Not defined	X	X

Publication of reports and other types of information via the internet is currently the main way of ensuring transparency of BO institutions in the region. All five institutions have active websites, although there are some differences in terms of their content and how up-to-date the published information is.

The BO institutions of **Georgia, Kazakhstan, Kyrgyzstan** and **Ukraine** publish annual activity reports. The BO of **Uzbekistan**, on the other hand, does not produce unified reports but posts the relevant types of information separately on its website.

Table 3.2. Inclusion of key statistics in annual BO reports

Country	Number of complaints received	Statistics on outcomes of complaints	Number of policy/legislative recommendations	Statistics on response to policy/legislative recommendations
Georgia	✓	✓	✗	✗
Kazakhstan	✓	✓	✗	✓
Kyrgyzstan	✓	✓	✗	✓
Ukraine	✓	✓	✓	✓
Uzbekistan	✓	✓	✗	✗

Note: Other useful types of information that can be found on BO websites across the five countries include information on the institutions' staff and structure, the procedures for receiving and handling complaints, the mandates of the institutions and the laws (and by-laws) based on which they operate, annual budgets and expenditure reports, information on the outcomes of individual cases which the BO has taken up, and systemic recommendations and other analytical materials prepared by the BO institutions.

Table 3.3. Key types of information available on BO websites

Country	Staff and structure	Procedures	Budget/spending	Information on individual cases	Systemic recommendations
Georgia	✓	✓	✓	✗	✗
Kazakhstan	✓	✓	✗	✓ <sup>1</sup>	✗
Kyrgyzstan	✓	✓	✗	✓	✓
Ukraine	✓	✓	✗	✓	✓
Uzbekistan	✓	✓	✓	✓ <sup>2</sup>	✗

Notes:

1. Via the Registry of Problems.

2. Only a small number of cases.

It is noteworthy that the BO institutions of **Kyrgyzstan** and **Ukraine**, which have similar mandates and structures, publish information on individual cases along with the analytical materials (such as legislative or policy recommendations). Meanwhile, the BO offices that operate as parts of their respective governments (**Georgia**, **Uzbekistan**) make the information on their budgets and expenditures available to the general public via their websites. The BO of **Kazakhstan** has established an extensive “Registry of Problems” together with the National Chamber of Entrepreneurs – the body under whose umbrella the BO operates.

It should also be noted that, while the BO offices have the sections devoted to different types of information highlighted in the table above, the information available in those sections often appears incomplete, notably with regard to the description of individual cases, while also often not presented in the most user-friendly form (as is the case with financial reports of Uzbekistan’s BO).

### 3.3 Integrity

As far as the integrity of the BO institutions is concerned, few safeguards are currently in place across the region beyond the general conflict of interest restrictions for the BOs discussed above. The **Ukrainian** BO is an exception, as it adopted a Code of Conduct for its staff in 2020. The code’s scope includes, among other things, conflict of interest, outside activities, gifts and hospitality, and procedures for dealing with misconduct. In **Kazakhstan**, since the BO operates as part of the country’s Chamber of Entrepreneurs, the latter’s conflict of interest policy and code of ethics apply to its officials and employees. Other BO institutions in the region do not have specific regulations on integrity, although they may be subject to the broader integrity rules that are in place for public officials and civil servants in their countries (as in **Georgia**, for example).

# 4 Resources

Four of the five BO institutions discussed in this report have dedicated staff established by relevant legislation. The only exception is Kazakhstan where the BO relies on the employees of the national business chamber instead.

The size and the composition of the BO office staff varies across the region, depending on a country's size and the mandate of the institution. For example, in **Ukraine**, the BOC is authorised to conduct investigations, so its employees include dedicated investigators. The apparatus is made up of 35 people, 16 of whom are investigators. For comparison, the **Georgian** BO office, consists of the BO, two deputies, and a staff of 10 people, including lawyers, tax and procurement specialists, and other analysts.

There are different approaches to the financing of the BOs across the region. The **Georgian** and **Uzbek** BO offices are public institutions and consequently financed directly from state budgets (although the Georgian law also allows the BO to receive grants). The **Kazakh** BOs is part of the country's business chamber and funded through the latter's budget. The **Ukrainian** and **Kyrgyz** BOs were established in collaboration with international partners and this was reflected in their financing arrangements. In Ukraine, the BOC is funded through the Multi-Donor Account, set up by the EBRD, to which a number of countries, as well as the EU, have contributed. In Kyrgyzstan, the EBRD provided financing of the BOI for the initial three-year period of its operation.

Notably, in the countries where the BOs are financed directly from the state budget the legislation does not currently guarantee their involvement in the drafting of their own budgets. In **Ukraine** and **Kyrgyzstan**, on the other hand, the BOs prepare their budget plans which they then present to their respective supervisory boards for approval.

**Table 4.1. Human and financial resources of BO Institutions**

Country	Annual caseload (year)	Number of staff	Funding source	Annual budget
Georgia	219 (2021)	14	Government, grants	EUR 257 000 (2022)
Kyrgyzstan	126 (2021)	13	EBRD	EUR 500 000 (2021)
Kazakhstan	5 175 (2020)	Over 100 (shared)	The National Chamber of Entrepreneurs	No separate budget
Ukraine	2 182 (2021)	32	Multi-Donor Account	EUR 1.5 million (2021)
Uzbekistan	3 202 (2019)	94	Government	EUR 2.1 million (Jan-Sep 2022)

Establishing whether or not the existing resources are sufficient for the BO institutions' effective performance of their respective roles is beyond the scope and the objectives of this study. Nevertheless, some of the available data provide useful pointers on the subject. For example, in both **Ukraine** and **Kyrgyzstan**, the legislation allocates 10 days for the preliminary review of a complaint by the BO and three months for the full review. In Ukraine, the actual average time spent on complaints in 2021 was 7.7 days for preliminary review and 77 days – for full review, both in line with the legal time frames. In Kyrgyzstan, on the other hand, while the average duration of preliminary review was only five days, full reviews took 112 days on average, i.e. longer than required by legislation (although the Rules of Procedure allow for the extension of review by another three months in exceptional cases and the Kyrgyz BO completed the review of 98% of complaints within the established timeframe).

# 5 Complaints procedures

## 5.1 Eligibility criteria and submission of complaints

All five BO institutions discussed in this study accept complaints based on certain admissibility criteria. The most basic such criterion, which is common to all five institutions, is that the complainant must be an entrepreneur or a company whose rights or legitimate interests were violated by public authorities (no disputes between private entities are accepted for consideration).

## 5.2 Further criteria are applied frequently

- The complaint must not relate to an ongoing court dispute or challenge the validity of a judicial ruling (**Kyrgyzstan, Ukraine, Uzbekistan**).
- The complainant must have exhausted the existing administrative appeal procedures (usually at least one such procedure) for resolving the issue in question (**Georgia, Kazakhstan, Kyrgyzstan, Ukraine**).
- The complaint must be submitted to the BO within one year of the alleged violation, although this time limit can be exceptionally extended in some cases (**Kyrgyzstan, Ukraine, Uzbekistan**).

The BO institutions have multiple channels for the filing of complaints, including post, email, hotlines, websites and in-person delivery. In **Georgia, Kyrgyzstan and Ukraine**, the legislation also explicitly allows submission of a complaint by an authorised representative of the complainant. Anonymous complaints are not accepted by any of the five BOs, although the BO in **Kyrgyzstan** can make an exception to this rule, while a complainant also has the right to ask the BO not to disclose their identity to the authorities against which the complaint has been filed.<sup>17</sup> In **Uzbekistan**, the law requires provision of the complainant's personal information as part of the complaint, but the BO's website nevertheless has a functionality of anonymous reporting.

*Anonymous complaints shall not be considered unless the Business Ombudsman decides otherwise.... The Business Ombudsman has a right to refuse to disclose the confidential information related to the anonymous complaint to the state authorities.*

Rules of Procedure of the Business Ombudsman of Kyrgyzstan

BOs normally review cases based on complaints they receive, although in **Kyrgyzstan, Ukraine and Kazakhstan** they can also start inquiries on their own – for example, based on information received through the media. The BO in **Georgia** has a similar power of launching an “analysis of practice” without a prior complaint.

<sup>17</sup> In fact, 21% of complaints to Kyrgyzstan's BO were submitted anonymously in 2021.

Table 5.1. Criteria for admissibility of complaints

Requirement	Geo	Kaz	Kgz	Ukr	Uzb
Complaint related to violation of entrepreneurial rights by public administration	✓	✓	✓	✓	✓
Complaint not related to ongoing court dispute or existing judicial ruling	✗	✗	✓	✓	✓
Complainant has sought remedy through available administrative channels	✓	✓	✓	✓	✗
Complaint submitted no later than one year after violation took place	✗	✗	✓	✓	✓
BO can start inquiry without a complaint	✓	✗	✓	✓	✓

### 5.3 Review of complaints

While the procedures for handling complaints differ in the five institutions discussed in this study, some elements are common:

**Preliminary review** – to determine whether a complaint meets the admissibility criteria. In **Kyrgyzstan and Ukraine**, 10 days are allocated for this process (with the possibility of extension by another 10 days, if the complainant is asked to provide clarification). In other countries, there is no established time limit for preliminary review. In the event of a refusal to accept a complaint for consideration, the BOs in **Kyrgyzstan, Ukraine and Uzbekistan** are required to provide the complainants with reasons for such decision. The BOs in **Kyrgyzstan** and **Ukraine** can decide to consolidate two or more complaints and consider them together, if they concern similar issues.

**Review of the complaint** – during which the BO collects information and materials to establish whether a violation did take place. This can take up to 30 days in **Georgia** and **Kazakhstan** and up to three months in **Kyrgyzstan** and **Ukraine** (although the period can be extended, if necessary, in all four countries). There is no established time limit specifically for the consideration of a case by the BO in **Uzbekistan**, although there is a general legislative provision establishing a 15-day period for the consideration of appeals by the country's public institutions (which can be extended further up to a month through a decision by an institution's head). During this process, BO representatives can request information and documents from administrative bodies and hold in-person meetings. The laws in **Georgia** and **Uzbekistan** require administrative bodies to provide the BOs with the necessary documents within 10 days of receiving a request (in **Kyrgyzstan**, the law allows for a period of 15 days for this, although the BO can also ask for the information to be provided in five days). In **Kyrgyzstan** and **Ukraine**, the BOs can hire experts and commission studies during the review of a case.

**Mediation** – In **Kyrgyzstan** and **Ukraine**, the legal framework explicitly allows the BOs to engage in mediation between the parties with the view of achieving an “amicable settlement.” If a settlement takes place, the BO can decide to terminate the case but can still issue recommendations.

**Conclusion of review** – the BO establishes whether or not a violation took place and takes corresponding steps (which differ, depending on an institution's powers). In **Georgia, Kazakhstan, Kyrgyzstan** and **Ukraine**, if the inquiry concludes that a violation took place, the BO issues a recommendation regarding the ways of addressing it and restoring the rights of the complainant. The BO in **Uzbekistan** can issue, along with recommendations, more formal “warnings” and “notices” (the latter is issued to the heads of the bodies which have the necessary powers to eliminate violations). The BOs in **Kyrgyzstan** and **Ukraine** can request further review/investigation of cases by relevant authorities, as well as sanctioning of the persons responsible for violation, following the conclusion of their own review. **Kazakhstan's** law specifically authorises the BO to send requests to the Prosecutor's Office, if it cannot achieve restoration of the violated rights of entrepreneurs through communication with the relevant administrative bodies.

**Follow-up** – In **Georgia**, the administrative bodies which reject the BO's recommendation (either partially or fully) are required to inform the BO about this within 30 days of receiving the recommendation and provide reasons for their decision. If a recommendation is accepted, the law authorises the BO to monitor

its implementation and request relevant information (the **Ukrainian** and **Kyrgyz** BOs have similar powers). The law in **Uzbekistan** requires administrative bodies to report back to the BO about the outcomes of the consideration of recommendations and measures taken toward their implementation.

**Table 5.2. Elements of complaint review process**

Requirement	Geo	Kaz	Kgz	Ukr	Uzb
Time limit for preliminary review	X	X	✓	✓	X
BO required to provide explanation for refusal to accept complaint	X	X	✓	✓	✓
Consolidation of similar complaints possible	X	X	✓	✓	X
Time limit for consideration of complaint	✓	✓	✓	✓	✓
Time limit for provision of information to BO by administrative bodies	✓	X	X	X	✓
Possibility of amicable settlement	X	X	✓	✓	X
BO issues formal recommendations upon concluding review	✓	✓	✓	✓	✓
Post-review monitoring by BO	✓	X	✓	✓	✓

### Box 5.1. Country highlight: Electronic case management system in Ukraine

Ukraine's Business Ombudsman Council (BOC) uses the electronic case management system (CMS), which is based on business process management (BPM) online electronic platform, to receive, process and track complaints.

Every complaint is given a unique number in the system which automatically assigns it to one of the available investigators. Manual assignment of complaints is only allowed in exceptional cases and requires written authorisation by the Business Ombudsman which is saved along with other case files in the system.

The system's other functionalities include classification and categorisation of cases, approval process, recording of full history of user actions, task delegation and reassignment, automatic versioning upon file change, comprehensive search, metadata exporting, and high-grade security features including specific permissions and security levels.

All documents received or generated in the process of handling a case are to be stored in the system (including those received as hard copies which have to be converted into a digital format).

Source: Ukrainian Business Ombudsman Council



# 6 Impact

An in-depth assessment of the impact of BO institutions is beyond the scope and objectives of this study. Yet, an overview of some key indicators offers useful insights into the performance of the five institutions discussed in the report.

It should be noted that (as demonstrated by the table below) there are considerable differences in terms of how the five institutions categorize data, so direct comparisons are not always possible or meaningful. The figures do, however, provide useful “snapshots” of their activities.

**Table 6.1. Work of BO institutions: Key annual indicators**

	Georgia	Kazakhstan <sup>1</sup>	Kyrgyzstan	Ukraine	Uzbekistan <sup>2</sup>
Complaints received	219 <sup>3</sup>	5 175	126	2 182	4 318
Reviews conducted <sup>4</sup>	51		97	1 440	3 597
Cases resolved successfully	70% <sup>5</sup>	2 245	24 <sup>6</sup>	818 <sup>7</sup>	1 801 <sup>8</sup>
Financial impact (Million Euros)		73	20	70	0.336
Systemic recommendations developed	80 <sup>9</sup>		58 <sup>10</sup>	53	

Notes: The data are for 2021, unless indicated otherwise.

1. The data are for 2020.
2. First half of 2021.
3. Written applications only. The office also held 630 in-person and online meetings, according to its annual report.
4. Some of the cases reviewed by a BO institution in a given year are from the complaints received during the preceding year, so the difference between the number of complaints received in a year and the number of reviews conducted the same year does not represent the number of rejected complaints.
5. No total number is provided in the annual report which says that the relevant bodies “fully or partially accepted the Business Ombudsman’s position” in 70% of the cases reviewed in 2021.
6. Recommendations (“response acts”) recognizing complaints as justified were issued in further 24 cases.
7. A further 122 cases were “closed with recommendation” (whose implementation continued to be monitored), 274 cases were still under review at the end of the year and 551 cases were closed without success.
8. The number of applications that were “satisfied,” according to the BO website.
9. The number of legislative acts reviewed by the office in 2021.
10. The annual report does not provide a single figure for the systemic recommendations issued in 2021. It says, however, that the authorities accepted two of the three “large-scale recommendations” and 17 of the 55 “recommendations related to eliminating systemic issues in legislation” prepared by the BO.

## 6.1 Total caseload

It is important to consider several factors while looking at the total number of cases processed by each BO institution:

- **Country size:** The five countries differ greatly in size, as Ukraine, Uzbekistan and Kazakhstan have populations many times larger than those of Kyrgyzstan and Georgia.
- **Mandate:** The differences between the mandates of the five institutions (discussed in the relevant section of this report) are likely to affect the way in which complaints are handled. For example, the BOs in Kyrgyzstan and Ukraine can devote up to three times as much time to the review of each case as those in Georgia and Kazakhstan.

- **Resources:** For example, in Kazakhstan, the BO office is part of the National Chamber of Entrepreneurs and can process complaints through the latter's network of regional offices along with its own central office.

The total number of cases handled by each of the five BO institutions has either remained stable or increased significantly in recent years. The annual number of complaints submitted to the **Ukrainian** BOC, for example, increased by more than a quarter between 2017 and 2021: from 1 638 to 2 182. The number of complaints to the **Kyrgyz** BO almost doubled in the first two years of its operation. The data for **Uzbekistan**, although patchy, still point to a major rise in the number of complaints: While 3 202 complaints were filed in 2019, there were 4 318 complaints in the first six months of 2021 alone. **Georgia** saw a surge of complaints during the COVID-19 pandemic in 2020 (1 253 compared with just 305 in 2019) but the number dropped again (to 219) in 2021. Meanwhile, the annual caseload of **Kazakhstan's** BO has not changed significantly since 2017.

### Box 6.1. Country highlight: BO's "delivery plan" in Kyrgyzstan

The BO office in Kyrgyzstan has adopted a set of measurable annual targets based on its broader "Strategy 2025" which aims to ensure the institution's establishment as a "credible, independent and professional organization with long-term sustainability" and highlights a number of key objectives related to effective response to complaints, facilitation of systemic improvements and the internal development of the office.

The institution's "Delivery Plan for 2021" contained 13 quantitative targets, including:

- acceptance by state bodies of 10% of the BO's "response acts"
- acceptance by authorities of 30% of the BO's "large-scale recommendations"
- acceptance by the authorities of at least 30% of the BO's "recommendations related to the elimination of the systemic issues in the legislation"
- satisfaction of at least 70% of complainants with their communication with the BO
- completion of the review of at least 90% of complaints within the timeframe established by the law
- publication of at least 100 news reports and articles and at least 50 interviews on the institution's work
- at least eight meetings with business representatives outside the country's capital.

The institution reached 12 of the 13 targets of the Delivery Plan in 2021.

Source: Office of the Business Ombudsman of Kyrgyzstan

## 6.2 Successful resolution rate

The ratio of the total number of complaints received to those resolved successfully is one criterion that can be applied to measure the impact of a BO institution's work. The BO institutions do not typically set for themselves specific targets in this regard, although the **Kyrgyz** institution has annual "delivery plans" which include quantitative targets: For 2021, the target was to have at least 10% of the BO's "response acts" (issued in response to reviewed complaints) accepted by the relevant state bodies. In 2021, state bodies accepted three of the institution's 24 "response acts" in 2021 (a rate of 17%), but another 23 cases were resolved successfully, which could mean that some of the complaints could have been settled without the need for a "response act." This is a useful reminder that what is considered successful resolution of a case

may differ across countries and institutions, while the same institution could also count different types of outcomes as successful.

With the above caveat, it is still remarkable that most of the institutions have operated near or above 50% success rate. According to the **Georgian** BO, 70% of cases were resolved successfully in 2021. In **Ukraine**, 818 of the 1 440 cases reviewed in 2021 were closed successfully, while another 122 were “closed with recommendations.” **Kazakhstan’s** BO successfully resolved 44% of the cases in 2020. As for **Uzbekistan**, the most recent year for which full data are available is 2019 when 2 706 of the 3 202 applications were settled in the complainant’s favour.

Interestingly, the BOs in **Kyrgyzstan** and **Ukraine** have also tracked the **level of satisfaction** with their own services among the complainants, which was 95% in Ukraine and 100% in Kyrgyzstan (among the complainants who provided feedback) in 2021.

### 6.3 Financial and non-financial impact

Some BO institutions publish information on the annual “financial impact” of their work, which usually means the amount of money that the complainants were able to recover and/or the losses they avoided through the BO’s assistance. The numbers range widely, from approximately EUR 330 000 in **Uzbekistan** in the first six months of 2021 to EUR 70 million in **Ukraine** and EUR 73 million in **Kazakhstan** over the 12 months of the same year. This difference could stem from variations in the size of typical companies appealing to BOs in these countries, while it is also possible that different institutions calculate their financial impact differently.

The BOC in **Ukraine** also keeps an account of its “non-financial” impact, i.e. the statistics of different types of problems that were resolved through its efforts. The BO of **Uzbekistan** has employed similar indicators, noting that, in the first six months of 2021, “1 264 legal measures” were taken in the interest of entrepreneurs, resulting in administrative sanctions against 621 officials and disciplinary sanctions against 225 officials, as well as annulment of 467 “unlawful decisions” by public bodies.

### 6.4 Profiles of complaints and complainants

The data collected and published by BO institutions offer some interesting insights into the predominant nature and subject of complaints, as well as the enterprises which tend to appeal to the BO institutions:

Subject of complaint and administrative body involved – complaints involving tax and/or customs issues and the relevant authorities make up a significant portion of the caseload in all five BO institutions. They were the most common type of complaint in **Georgia**, **Ukraine** and **Kyrgyzstan**, and the third most common type of complaint in Uzbekistan in 2021 (the most recent data for **Kazakhstan** is from 2020, when complaints concerning pandemic-related restrictions accounted for a largest share of the BO’s work, although tax-related complaints still made it into the top three). Beyond tax and customs issues, however, there is considerable divergence in the prevalent types of complaints across the countries. For example, in Georgia, the Government and the Finance Ministry are the most frequent targets of complaints after the Revenue Service, while, in Ukraine, it is the police and local government bodies (which are also among the top three types of complaint targets in Kyrgyzstan, along with state-owned enterprises). Land-related complaints are common in Kazakhstan and Uzbekistan, while disputes concerning public procurement (and non-fulfilment of relevant obligations) are frequently brought to the BO’s attention in Kazakhstan and Kyrgyzstan.

*In Ukraine, small and medium-sized enterprises accounted for 74% of the complaints to the BOC in 2021, while 87% of complaints were filed by local companies.*

Geography of complaints – this could depend, for example, on the access to the BO’s services and awareness of its existence across a country, as well as relative concentration of businesses within and outside the capital city. In **Georgia** and **Kyrgyzstan**, the capital cities accounted for a majority of the complaints (78% and 61%, respectively) in 2021. On the other hand, in **Ukraine**, only 34% of the complaints came from the city of Kyiv the same year.

Size of complainants – according to the 2021 annual report by the **Ukrainian** BOC, 74% of complaints that year came from small and medium enterprises and the remaining 26% – from large companies. Other BO institutions have not published this type of data, although some of the available statistics (such as the ratio of “financial impact” to the total number of cases reviewed) suggest that small and medium enterprises probably make up a majority of the complainants in other countries too.

Local vs foreign companies – Again, only the **Ukrainian** BOC has published this statistic: According to its 2021 annual report, 87% of complainants were local businesses and 13% were foreign.

## 6.5 Systemic recommendations

Apart from aiding companies in individual cases, BO institutions can also make an impact by identifying most common issues which appear in complaints from companies and develop recommendations to address these **systemic problems**. They also conduct **regulatory impact assessments** of proposed legislation. All BOs in the region conduct this type of work to varying extents, although lack of publicly available systematised data makes it difficult to assess the impact in some countries.

The **Ukrainian** BOC collects and publishes comprehensive information on the systemic recommendations it develops. These recommendations are parts of “systemic reports” – the BOC had published 18 such reports by 2021. The institution’s website has a special section where all its systemic recommendations are listed along with the current status of their implementation. As of 2021, the BOC had produced a total of 435 systemic recommendations since its establishment and 159 (37%) of those had been implemented (with many more in the process of implementation).

In **Kyrgyzstan**, the BO provides recommendations concerning systemic problems in legislation. These recommendations have been developed based on the results of reviews of business complaints about decisions, actions (inaction) of state bodies, municipal bodies and public sector enterprises and analysis of the legislative framework regulating business operations. Of the 55 recommendations proposed by the BO, 17 were accepted in full or in part (33%).

In **Kazakhstan**, there is a “registry of problems” which includes common issues identified during the review of complaints.

### Box 6.2. Country highlight: Registry of problems in Kazakhstan

The National Chamber of Entrepreneurs of Kazakhstan (of which the country's BO is part) runs a "[registry of problems](#)" designed to identify issues that affect a wide range of entities, so that a large number of future complaints can be avoided through their resolution.

The registry contained 737 issues by the end of 2020, of which 534 (72.4%) had been resolved. The sectors with the largest number of issues included agriculture, logistics and cargo, public procurement, construction, medical and pharmaceutical activities, taxation, technical and professional education, customs, permits, and land relations.

For each issue, the registry contains the information about the entity which raised it, the date it was submitted to the registry and current state of its resolution. Every entry includes a brief summary of the problem, the level of the issue (national or regional) and proposals for its resolution. The system is equipped with a search engine and filters.

Other BO institutions covered in this study have not published such detailed statistics on their systemic recommendations, although their annual reports contain overviews of selected systemic recommendations along with the information on outcomes.

# 7 Conclusions: A promising start

Business Ombudsman institutions are a novelty in Eastern Europe and Central Asia: None of the five bodies discussed in this report existed a decade ago and some have only been around for a few years. The region is currently serving as a laboratory where different approaches to the development of these types of structures are tested.

All five BO institutions reviewed in this study serve the same two broad goals: assisting businesses in addressing violations of their rights and legitimate interests and improving the general business climate in the country. The violations of business rights and interests are likely to involve possible acts of corruption in some cases in practice, although only the legal provisions establishing the mandates of the BO offices in Ukraine and Kyrgyzstan mention the fight against corruption as part of their mission.

Beyond the common mission, the five countries discussed in this study can be divided into two groups representing distinct paths to the shared goals. Georgia, Uzbekistan and Kazakhstan have implemented a broadly similar approaches, whereby the institution is established as part of the public administration (except for Kazakhstan, where it is placed within the national business chamber), while the BO is appointed by and reports to the head of the executive branch (in Georgia's case, Parliament also has a role in both procedures). As a way of ensuring the BO's independence (which is an essential prerequisite to the office's trust among the business community and thus to its ultimate success), the laws in these countries protect the BO from arbitrary removal by establishing an exhaustive list of legitimate reasons for their dismissal, although there is a notable lack of provisions that would also enhance the BO's independence through elements of the appointment process.

Meanwhile, in Ukraine and Kyrgyzstan, the BOs operate as independent institutions established through co-operation between the governments, international partners and local nongovernmental stakeholders. In Both countries, the BOs are selected by the supervisory boards of the BO offices and report to them. Notably, along with protecting the BOs from arbitrary dismissal, this model provides a further safeguard for the BO's independence through an open and competitive selection process. Accountability provisions are also extensive under this approach, as the BOs are required to report to their supervisory boards both more frequently (on a quarterly basis as well as annually) and more extensively (by presenting financial accounts along with highly detailed activity reports).

Each of these two approaches could have its strengths and long-term benefits. Establishment of the BO office as a formal public body (along with the fact that such bodies operate based on dedicated primary legislation) is more likely to ensure its long-term survival and sustainability, while the BO institutions which operate outside the public sector are better protected from undue political influence which is an important consideration in the regional context.

Although only the countries from the first group currently regulate their BOs through primary laws (in Georgia's and Uzbekistan's cases, dedicated BOs laws), there is a general consensus that such an arrangement is preferable, as demonstrated by both Ukraine's and Kyrgyzstan's plans to adopt BO laws. In the latter two countries, the BOs also have rules of procedure which provide useful and detailed guidance on various aspects of their operation.

The distinction between the two approaches extends to the financing of BO institutions, with government-appointed BOs receiving their funding from the state budget (except for Kazakhstan where its is financed

through the business chamber) and the independent bodies funded by foreign donors. Notably, the second model currently appears to give the BOs a greater say in financial matters, as the relevant legal acts in Ukraine and Kyrgyzstan state that the BOs are to draft their own budgets and present them for approval to their respective boards. There is no such express legal guarantee of the BO's involvement in the budget process in the other three countries.

There are fewer variations in terms of the powers of the region's BO institutions which (like the powers of most ombudsman institutions worldwide) are generally limited to issuing recommendations (the Uzbek BOs power to impose fines being a highly unusual practice which merits further monitoring to assess its possible impact). Nevertheless, governments have made efforts to add institutional "weight" to the BOs by granting them certain rights vis-à-vis their administrative counterparts: All the countries discussed in this report require their public bodies to assist the BO in their work and some of them also require the recipients of the BOs recommendations to report back to the BO on their implementation or to provide justification for their refusal to implement them. Further powers that are in place in some countries, such as the BO's right to participate in judicial procedures (either in an advisory role or by filing complaints on companies' behalf) and to launch inquiries without receiving a complaint (e.g., based on media reports) are likely to enhance the standing and the influence of these institutions.

All five BO institutions also have broadly similar procedures for handling complaints from businesses, although the Ukrainian BOC has developed a particularly detailed set of rules for processing complaints along with an electronic case management system.

Despite their short history, these institutions have undoubtedly made an impact in their respective countries, helping businesses defend their rights and addressing their legitimate concerns on hundreds and (in some countries) even thousands of occasions. The rate of successful resolution of complaints is the most common criterion which the BO institutions have applied to measure their impact, but most BOs also try to calculate their financial impact and those in Ukraine and Kyrgyzstan have measured satisfaction among complainants too. The Kyrgyz BO office has come up with another useful way of assessing its own compliance through annual "delivery plans" which include measurable targets.

All five institutions have made commendable efforts to keep the general public informed about their activities via their websites, but, in most cases, there are notable gaps in the information published, with certain important types of information not updated regularly or missing entirely.

## 7.1 Recommendations

This study does not aim to propose a one-size-fits-all model of a BO institution for all country contexts. However, based on the preceding review of five institutions, it is possible to propose measures which are likely to improve the effectiveness of any BO office:

- Introduce open and competitive selection for business ombudsmen.
- Establish boards/commissions comprising nongovernmental stakeholders that could have a role in the BO selection process and further serve as public accountability mechanisms for these institutions.
- Adopt dedicated BO laws to reinforce the status of BO institutions as permanent bodies, as well as rules of procedure that will provide detailed guidance on all aspects of their operation.
- Require all relevant public administration bodies to provide the information requested by a BO within a specific timeframe and to report back to the BO on the implementation of their recommendations (or provide a justification for a refusal to accept a recommendation).
- Set up electronic **CMS** for the handling of complaints.

- Ensure regular publication of comprehensive and up-to-date statistical information about the BO institutions' work.
- Improve **impact** assessment frameworks, inter alia through measurable targets for specific time periods, trackers of systemic recommendations and satisfaction surveys.





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