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# Access to justice in small and medium-sized enterprises in Poland. An empirical report

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# Introduction



## — Introduction

The report presents selected results of an empirical study carried out as part of the research project **"Access to law among small and medium-sized enterprises in Poland"** funded by the National Science Center (NCN 2016/21/B/HS5/00397<sup>[1]</sup>). This project involved extensive empirical research on the use of law, legal institutions and legal services by Polish small and medium-sized enterprises (SMEs).

### **The project aimed to determine:**

1. what are the legal problems of Polish SMEs;
2. in what situations SMEs use law, legal institutions and legal services to solve their business problems;
3. in what situations SMEs use non-legal methods to deal with business difficulties;
4. which elements of legal regulation of business are particularly burdensome for entrepreneurs;
5. what barriers make it difficult for entrepreneurs to solve problems using legal tools and institutions.

These questions are motivated by epistemic and academic goals, but also by the belief that wider access to justice among SMEs would contribute to better functioning of the economy and would allow the policymakers to implement more effective public policies.

This conviction, in turn, results from the observation that the law plays two roles in business. On the one hand, it is a limitation and a threat for entrepreneurs, because it eliminates the possibility of undertaking specific actions or hinders them. It also imposes on entrepreneurs arduous and costly obligations related to adapting to new regulations and public administration activities. On the other hand, it gives them the opportunity to better organize their businesses and achieve greater regularity and predictability. It also allows one to eliminate at least some of the threats arising in the company's environment, including arbitrariness of public administration and dishonest activities of contractors and third parties.

However, for this to be possible, entrepreneurs must have at their disposal the widest possible range of legal tools to solve their business problems. Only then will the constitutional guarantees of the rule of law really be observed and economic relations will be stable and fair.

**Based on these assumptions, we define access to justice among SMEs broadly. It is an ability of entrepreneurs to use legal institutions and instruments, refer to public mechanisms of dispute resolution, access knowledge about laws and legal standards, and use legal services.**

## — Introduction

We carried out the research in two stages using both quantitative (survey) and qualitative (in-depth interviews) methods. The report presents findings broken down into categories of problems identified in the quantitative study. It shows the main types of legal difficulties experienced by SMEs and how they are dealt with, as well as statistical relationships between the categories of these difficulties, the actions taken in response to them, and the characteristics of enterprises. Quantitative data is illustrated by fragments of interviews from the qualitative study.

The report does not present research material in its entirety. It is very extensive and will be discussed in both academic and popular publications, including the second report on issues related to compliance with changing business regulation. Instead, we focus on the most important descriptive research findings and their relevance to public policies regarding access to the law.



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# Summary of findings



## — Summary of findings

The report is based on quantitative (7292 survey interviews) and qualitative (101 in-depth interviews) empirical study on access to justice among small and medium-sized enterprises (SMEs) in Poland. It was one of the largest studies ever carried out on Polish entrepreneurs.

The subject of the study was access to justice. It is understood as the use of legal standards, legal institutions and services to solve problems emerging in business.

Among small and medium-sized enterprises legal problems occur at a large scale. Almost half (46.9%) of respondents had a serious difficulty of a legal nature during the 3 years preceding the study. Legal problems occur in all sectors of the economy, affecting businesses operating in any industry and implementing various business models.

Legal problems are relatively rarely solved by entrepreneurs using legal tools - references to formal institutions and legal services. Polish SMEs only benefited from the help of lawyers in relation to approx. 1/3 of serious legal problems. This is however varied depending on the industry, size, and characteristics of the enterprise. Instead of using legal services, informal, extralegal and private actions are often taken. An important role in solving legal problems is also played by accountants.

### **The weakest entities on the market - mainly self-employed persons and micro enterprises - encounter the biggest barriers in the use of the law.**

The study showed that circumstances commonly identified as the biggest barriers to access to justice - economic situation, legal consciousness and attitudes towards the law - in fact do not play a key role. Barriers in access to justice are rather due to imperfect functioning of public institutions and a mismatch between legal services provided on the market and the needs of entrepreneurs. Research demonstrates that in many types of common legal problems entrepreneurs desire a lawyers-based solution but are unable to find relevant services on the market.

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# Summary of recommendations





## — Summary of recommendations

Based on research, the report recommends taking the following actions to improve access to justice for small and medium-sized enterprises.

### **In the field of business regulation and public policies:**

1. extending access to free legal assistance to self-employed persons and low-income micro-entrepreneurs;
2. creating a public system of legal information for entrepreneurs;
3. supporting the diversification of legal services and products;
4. promoting out-of-court mediation and in-court mediation in the opt-out scheme;
5. creating conditions for the development of the legal protection insurance market;
6. reviewing the code of civil procedure and considering new solutions to accelerate and simplify court proceedings involving SMEs;
7. reviewing templates of official documents and forms to verify the necessity of collecting some types of information and improving linguistic clarity;
8. intensifying activities aimed at systematic resolution of sectorial, industry or repetitive legal problems.

### **In the field of regulation regarding self-governments and legal professions:**

1. lifting or limiting the advertising ban for lawyers;
2. lifting the ban on charging a success fee from business entities;
3. introducing a non-binding tariff system for legal services;
4. supporting the diversification of legal services and products;
5. providing legal professionals with opportunities of training in the field of SME legal problems;
6. modifying programs for trainee lawyers;
7. developing cooperation with accounting associations.

### **In the scope of activities of other entities:**

1. extending the curricula of law studies with elements of economics and management;
2. improving the cooperation between employers' and entrepreneurs' organizations' with lawyers' professional self-government and public administration.

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# Research methodology





## — Research methodology

We conducted the study between March and June 2018. It consisted of two parts. The quantitative part aimed to determine the frequency of legal problems in SME operations and the predominant ways of solving them. To achieve this, we have completed 7292 questionnaire interviews in the WWW environment (CAWI) with business owners and managers. They were chosen so as to be quota-random sample of active Polish SMEs. In the study, we also included persons who had ceased their business activity within three years before the study was conducted.

We used the paths to justice methodology well-tested in foreign studies<sup>[2]</sup>. In line with its assumptions, respondents were asked about significant difficulties in their business activities and the remedial actions taken. Among the more than 230 types and varieties of difficulty listed in the response cafeteria, there were justiciable problems (such that could be resolved by legal means, including in court), and problems that were of a different nature.

Respondents who stated that they had a significant problem were asked if and how they tried to solve it. We were primarily interested in legal actions - the use of legal services and attempts to appear before courts and offices *pro se*. However, we have also inquired about organizational, financial, and technical reactions. We also asked about the use of non-legal services. Questionnaire also included more direct questions about the use of legal services in situations where the respondent (in his/her opinion) did not experience any business problems. In addition, the survey contained questions aimed at determining the attitudes and opinions of respondents on a variety of issues related to the use of law and legal institutions.

This construction of the questionnaire made it possible to determine the types of legal problems in which legal services are most frequently used as well as those in which some other actions are undertaken. It was also possible to observe how often legal services are used in routine situations - such that entrepreneurs do not find problematic.

In the qualitative part, we conducted 101 in-depth interviews with owners and managers of small and medium enterprises (a number of large business owners also took part). We asked about the business model, repetitive and unexpected problems as well as legal and extra-legal methods of dealing with them. We analysed the collected material inductively, trying to determine how problems and their solutions are perceived and described by decision makers in enterprises.

Neither quantitative nor qualitative research superimposed on participants what a problem in business is. Respondents could define that themselves. In in-depth interviews they could freely develop their statements, and in the questionnaire survey they could use the proposed typology of problems or describe the nature of the difficulty in their own words.



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# Overall picture







## Overall picture

Legal problems frequently affect Polish entrepreneurs. **Almost half (46.9%) respondents who ran a business at the time of the survey had at least one legal issue in the three years preceding the study.**

**If one assumes - following the Central Statistical Office<sup>[3]</sup> - that in Poland there are 2070 thousand business entities, the number determined in the study means that in said period not less than 974,000 enterprises experienced a legal problem, i.e. at least 324,667 annually.**

Still, these numbers do not stand for all legal problems occurring in business. The study only asked about problems evaluated as relevant. For methodological reasons, a study as described in this report underestimates rather than overestimates, the prevalence of justiciable problems<sup>[4]</sup>.

**In different enterprises the chances of encountering legal problems are not the same. They depend on the industry and the nature of the enterprise.**

**Main risk factors include the form of business activity, the number of employees, and revenues.** More problems are experienced by enterprises whose activity is more complicated for organizational reasons and because of the nature of their business operations. However, the findings suggest that justiciable problems cannot be avoided by running certain types of business or doing that in a particular way. Legal problems occur in business operations for heterogeneous and complex reasons, and their appearance is difficult to predict.

The experience of legal problems encourages entrepreneurs to take up all kinds of activities. The study included eight broad categories of such activities in several dozen variants. They differed in the degree of formality and direct respondent engagement to include a variety of behaviors - from passivity, through taking private action and seeking the help of specialists, to appearing before courts *pro se*.

## Overall picture

If one looks at justiciable problems in a general perspective without distinguishing their specific types, one finds that **the most popular way of solving them is to take independent actions without using legal services**. Such actions are both of private character, such as contacting and negotiating with the other party, as well as of formal nature, such as appearing *pro se* in court or before public administrative bodies. **Legal assistance of a professional is only sought by 33.5% of respondents who experienced a justiciable problem**. Only in a smaller fraction of these cases finding a solution is commissioned to a professional. These findings may be surprising in the light of the fact, that the problems revealed in the study were perceived by the respondents as significant. In addition to the number indicated, 19% of entrepreneurs (401,000) benefited from legal services in situations that they did not identify as a significant problem.

What actions will be taken depends on the characteristics of the enterprise and circumstances. **The experience of some problems provides strong incentives to appeal to law and legal institutions or to use legal services**. In other cases, private solutions are more common. This is also influenced by the industry in which the entrepreneur operates and the size of his/her business. **Legal services are much more often used by medium (and larger) enterprises than by self-employed persons and micro enterprises (employing up to 10 people)**.

Contrary to the stereotype, **propensity of respondents to use legal services does not depend on the financial situation of their enterprises**. **The most important factor encouraging the decision to use lawyers is the characteristics of the legal problem**. It seems reasonable to suppose that in some situations seeking formal legal solutions to justiciable problems is pointless, and often has no economic justification, because the use of legal services is too expensive, requires too much effort or is too time consuming. This can be seen in the detailed data presented further on the frequency of justiciable problems belonging to ten broad categories and ways to solve them.

Engineer specializing in environmental audits  
(I036)

*KM: When it comes to obtaining [investment] permits, don't you feel that legal assistance would help you?  
R: No legal assistance whatsoever! Whatsoever! Lawyers treat their work exactly the same as public officials, right? So they generally think you are just berk. A client comes ... Now lawyer has that random template ready... Of course, I'm not saying this is what all lawyers do, but many such [...] I have seen. Motions all crap, template work, because they have done same thing once, it must be the same now. I have no illusions about this, that there is any ethics in the legal profession, because nothing such exists...*



## Overall picture

Study also indicates that the use of legal assistance is strongly related to the formal or contentious nature of the issue. If the case has been pending before court or the other party has used legal services, the likelihood that the respondent also takes advantage of this possibility increases significantly. This may indicate that **legal services are only used when the case involves a vigorous dispute, a confrontation between the parties is unavoidable, and no possibility exists that formal methods are evaded**

This corresponds to the aforementioned general tendency of the respondents to independent problem solving. This happens sometimes after consultation with a lawyer, and specific strategies vary depending on the type of justiciable problem. In most cases, however, entrepreneurs try to deal with their problems using the simplest and most accessible means.

**A special place on the map of services used by entrepreneurs experiencing justiciable problems is occupied by accounting services.** In the group of respondents employing workers, 55% declared that they employ an accountant, and at least 87% of SMEs use accounting services on regular basis - external or provided by a specialized employee. In contrast to this, 14% of respondents use legal services on regular basis. As a result, for entrepreneurs seeking help the first point of support are often accountants. They help not only in settling taxes and other public levies and keeping employee records, but also in other matters.

Therefore, the study shows that **although Polish entrepreneurs are rarely passive when they experience legal problems, they use legal services only infrequently. This finding is supported also by cross-national comparisons<sup>[5]</sup>**. They are currently only possible in limited scope, but the results of similar studies conducted in Great Britain, the Netherlands, Australia and Hong Kong lead to the conclusion that in Poland small and medium entrepreneurs utilise legal services and judicial institutions to a similar degree as in those countries. Also foreign studies found significant barriers to access to legal services for SMEs.

### Manufacturer of food products (I065)

*My accountant [...] She has already advised me on many things, like, what should I do to ... I'm not talking about bending the law a little, but about reasonable accounting of different things: what can I do to save money properly and legally, things that I previously hadn't been aware of. [...] Thanks to this, I saved a lot, she gave me some ideas about what is better to do. As I said: if I was alone with it, I would stand no chance.*

### Consultant in public tenders (I023):

*I have never enforced anything. To go to court, for example to get 5,000 [does not make sense], because if these were large amounts, then certainly, but I'm talking about these smaller tenders [I take part in] - a matter of one thousand, five, three [thousand]. Well and now I have to pay five [thousand] to a lawyer so I can go fight for five. These amounts are small enough that this does not pay. [...]*

### Owner of a start up developing accounting software (I055):

*I believe that there is no such safeguards, or a helping hand from the government in the form of such support... I am not saying that someone should give us money, we can make it by ourselves. But to get it started, we need such legal assistance, and we don't have it. We have to pay heavy money, hundreds of zlotys for every hour of lawyer's [work]. Before he gets through such a contract, draws it up, it costs several thousand zlotys [...]*

## Overall picture

Finally, a comparison of the results with other Polish studies indicates that **in small and medium businesses legal services are used for resolving legal problems as often as in private life<sup>[6]</sup>**. This is a surprising finding. It could be expected that entrepreneurs - who undertake their business activities at their own risk, will look for the most effective solutions of their justiciable problems. Such a standard of professional actions is also superimposed on them by various legal regulations. The reality is yet different.

Findings support the view that, for some SMEs, serious justiciable problems emerge as a result of the limited possibilities of solving them due to limited ability to recognize and address their own legal situation at an early stage. This is the ailment of the economically weakest and least experienced entrepreneurs, especially those running one-man businesses in the form of self-employment. In the qualitative study many entrepreneurs who have managed to develop their business have mentioned the difficulties they had in getting legal assistance at the start.

**Study also shows that the actions taken by respondents are not linked to their more general beliefs about the proper ways of resolving disputes, views on the role of law and attitudes towards lawyers, unrelated to the specific situation.** Such attitudes and views, often referred to under general label "legal consciousness" were measured in the study using several questions. We have determined that there are no significant statistical relationships between variables describing attitudes and views and those pertaining to actions taken and problems experienced. It is not so that entrepreneurs convinced of the need for conciliatory settlement of conflicts, having a negative opinion about lawyers, and treating the law instrumentally, have used institutions, services and other legal tools significantly less frequently than everyone else.

### Owner of a psychotherapy center (I004)

*[Now] I have a very competent accounting firm. This is a big firm, they have a team of legal advisers and a team of accountants, so they run everything from A to Z: employee matters, payroll, tax settlements, social security. And since I use this firm, in many aspects I have had peace of mind. But as a beginning entrepreneur, [...] I absolutely could not afford it, to use the services of such a firm. I had to fill out such big red sheets every month and it turned out that it is not so simple. At the beginning I did that myself, there were always some mistakes, issues, and then I was looking for people who knew about it better, and even then there were always some mistakes and issues, too. And there have always been perturbations associated with it, because something was done wrong. Well, the firm saves me from this. But I had to reach the stage that I can afford it. And the start for a beginner entrepreneur is a nightmare.*



## — Overall picture

Overall, the picture of access to justice among small and medium-sized enterprises emerging from the study shows that neither **legal regulation nor legal institutions and legal services are a useful tool for entrepreneurs.**

**They are not widely used for shaping business organization and determining its relationships with the environment.** In some areas too variable and excessively complex business regulation appears to be dysfunctional and in the qualitative study it was the subject of respondents' numerous negative utterances. They also expressed various critical opinions about the functioning of the institutions of justice and public administration.

They are seen as inefficient, and the services they provide as having limited use in business. This applies for example to the recovery of outstanding receivables (especially small ones), implementation of investment processes and participation in tenders, but also to excessively oppressive auditing activities of public administration, low standard of customer service therein, and the imposing on SMEs obligations perceived as irrational and incomprehensible.

The apparent difficulties in using law justify the belief that **improving access to justice among SMEs should be an important element of public policies.** Of course, the study does not allow for comprehensive assessment of existing public policies in this area. Still, concrete steps should be considered to improve accessibility of legal services for at least the least wealthy entrepreneurs, in particular micro-entrepreneurs and self-employed persons of low revenues.

## Overall picture

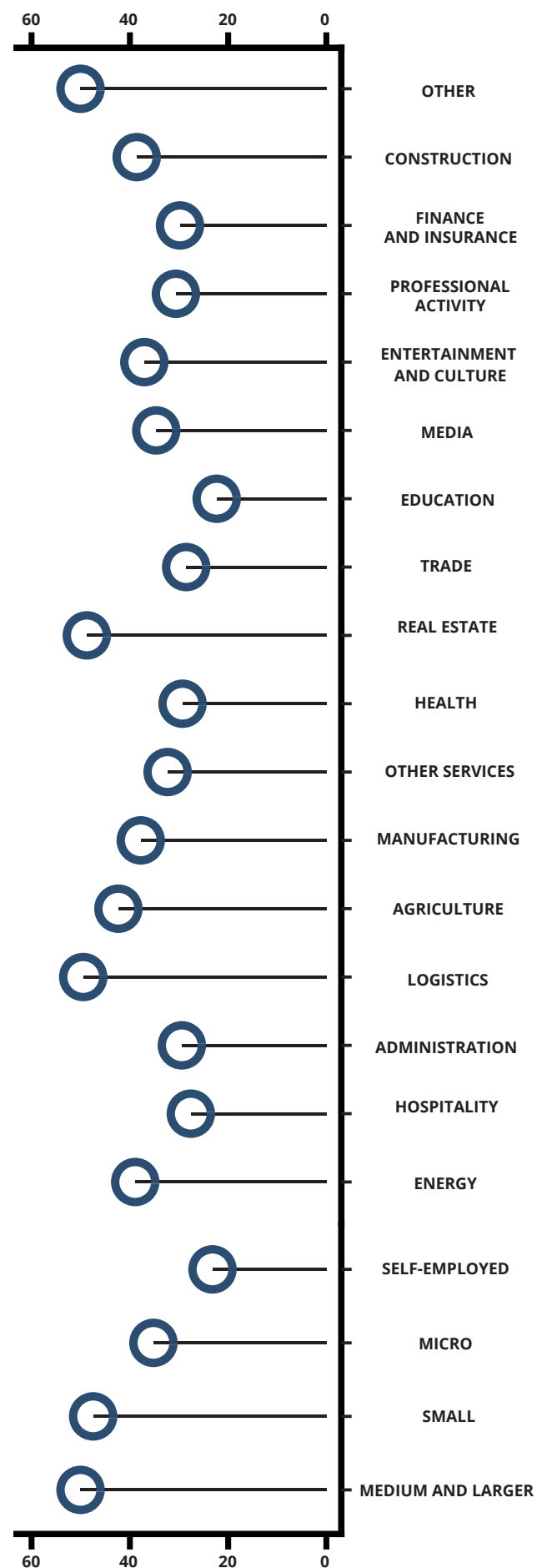
Within 3 years before study a significant problem of legal nature was experienced by 46,9% respondents.

This is approx. **974,000** companies.

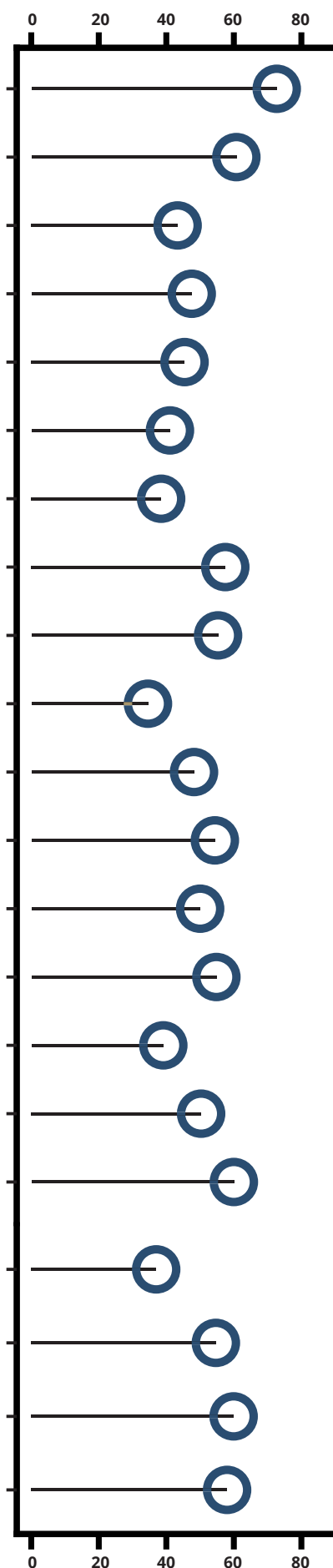
Most often it was related to **finance and payments** (29.2% of all the problems) and to **contracts and contractors** (17.6% of them).



FREQUENCY OF USING LEGAL ASSISTANCE



FREQUENCY OF JUSTICIABLE PROBLEMS



The most common reaction of entrepreneurs, who have experienced a significant legal problem was to seek unassisted contacts with the other party (42,8% of situations). **33.5% entrepreneurs used the help of a lawyer.** Most often such actions were undertaken in industries not included in the classification where the help of a lawyer was used in 50% of problems, and in logistics where such services were used in 49.5% of problems.

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# Finance and payments







## Finance and payments

According to the respondents' declarations, the most common type of justiciable problems were problems related to finance and payments. **The most common category - (73% of problems) were issues related to non-payment of liabilities due to the enterprise or with the timeliness of such payments.** Such problems were experienced by 10% of respondents. **Financial problems also involved difficulties in relations with banks and other financial institutions** (9% of problems). Interestingly, respondents were much less eager to mention difficulties with paying their own debts to their contractors and public institutions (such situations constituted respectively 9% and 2% of cases in this category) than situations in which their company was a creditor. This suggests that **enforcement of debt is for Polish entrepreneurs more problematic than being in debt.** Indirectly, this indicates weakness of debt enforcement mechanisms, especially when it comes to small amounts.

Upon closer analysis, wide variation in the occurrence of problems of this type depending on the industry becomes apparent. **Among enterprises active in construction and transport, problems with payments constituted over 40% of all significant justiciable problems.** In healthcare and agriculture<sup>[7]</sup>, education and the hospitality industry such difficulties did not exceed 20% of all legally problematic situations. This is undoubtedly connected with the nature of goods and services provided in these industries and with the types of transactions dominant in them. However, there is no significant differentiation in terms of the size of the enterprise measured by the number of employees.

The emergence of legal issues related to finance and payments yet depends on revenue. In the group of enterprises with income in the range from 1 million to 5 million PLN per year, justiciable problems are several dozen percent more frequent than in businesses with the lowest (up to 1 million) and the highest revenues.

Owner of an electrical company (I025)

*If there is a contractor who does not pay within 30 days, then after one or two calls I always hear that he is waiting for the money. I understand that, because I'm waiting, too.*

Manager of several companies (I001)

*In real estate business I estimate that every tenth transaction ends in somebody not paying you.*

## Finance and payments

This suggests that **difficulties with finance and payments are most common during the company's development.**

The most common response to legally relevant financial problems is **establishing direct contact with the other party.** Such action was undertaken in 56% of justiciable problems registered in the study. A lawyer was asked for help in 38% of the situations, including 17% of the cases when this took the form of advice or representation. At the same time, among all types of problems financial problems are those for which consultations with an external advisor (professional or not) are least sought - respondents did that in 17% of cases. In turn, **unassisted actions involving the administration of justice, for example going to court, prosecutor's office or in bailiffs office were taken in 24% of the situations.** Among all types of problems, this kind of activity is undertaken more frequently only in response to issues stemming from prohibited acts.

### Manufacturer of food products (I065)

*There are customers who have a monthly payment deadline, and they pay sometimes after a week, sometimes at the end [of the period] but they fit in. There are customers about whom I know we have agreed a month and a half, but the money can be expected after two months and [sometimes] up to three months may they extend [the payment deadline]. [If that happened] I called them. I gave them 2 weeks. After 2 weeks, I called them to inform that there is an invoice, and that maybe it got overlooked and so on. After one such phone call to one of the companies, probably the third, every invoice delayed, I heard: "If you intend to call me like that, I will change my supplier, I don't feel like talking to you, so that you keep on telling me that an invoice has not been paid. When I have [the money], I will pay". And what am I supposed to do?*

### Manufacturer of electronic devices (I057)

*The basic problem, one of the biggest problems harassing small enterprises in Poland are the problems with payments. These concern clients and institutions, large companies, as well as individual clients. There are no reliable mechanisms that allow for enforcing the payments for your production or services. In case of large companies and large money one hires lawyers, the whole machine call it formal, that allows to enforce money to a better or worse effect. However, in the case of small companies, if someone does not pay me invoices for several hundred or several thousand zlotys, I do not have any effective options of enforcing this money.*

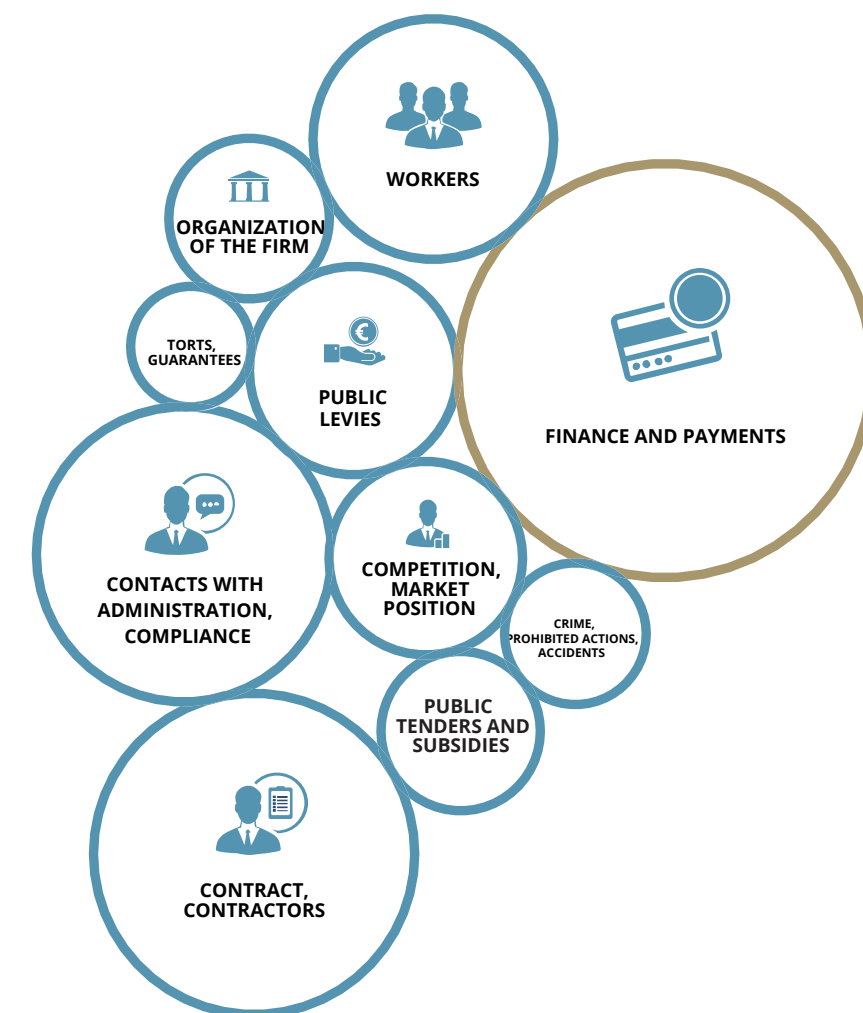
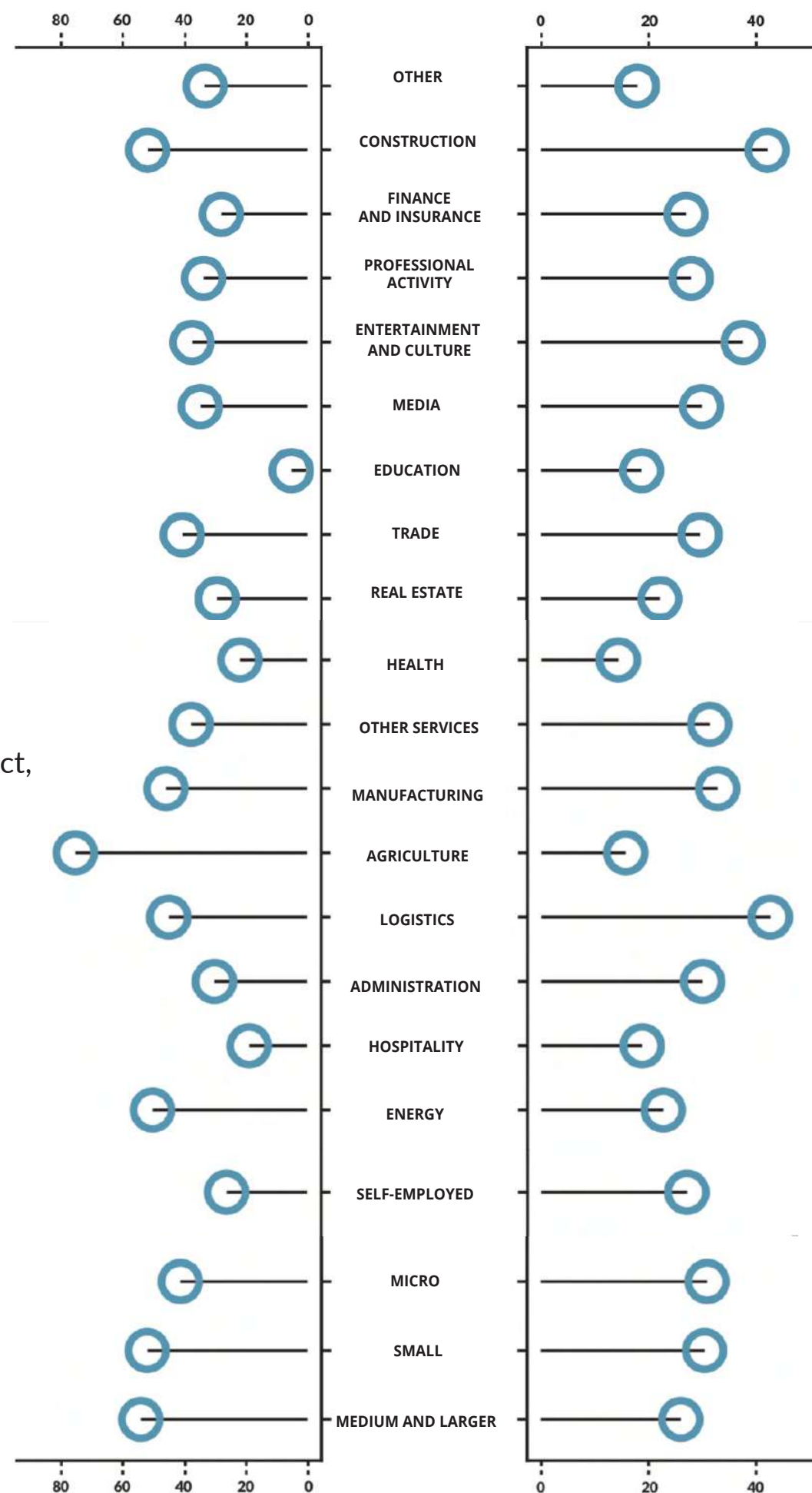
## FREQUENCY OF USING LEGAL ASSISTANCE

### Finance and payments

Among justiciable problems indicated by respondents as significant, **29.2% were related to finance, payments, cash flow, settling financial liabilities.** Within 3 years before the study such a problem had no less than 14.3% of respondents.

This is approx. **297,000** companies.

Most often it was related to the fact that someone ordered a service or product from the company but did not pay for it at all (37.9% of all such problems) or that someone has ordered in the company a service or product, but paid for it with delay (35.4% of them).



The most common reaction of entrepreneurs, who have experienced a significant legal issue related to finance, payments, cash flow settling financial obligations was **unassisted contacting the other party** (56.2% of situations). 38.7% of entrepreneurs used the help of a lawyer. Most often such actions were taken in agriculture where with the help of a lawyer was used in 75% of justiciable issues and in construction where such services were used in relation to 51.9% of problems.



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# Contracts and contractors





## Contracts and contractors

The second most frequent category of problems were difficulties in the field of broadly understood contract law. They concerned implementation of contracts, their drafting, negotiation and dissolution, as well as more general relationships with contractors. **These types of problems accounted for 17% of all justiciable problems.** The most common difficulties were related to **untimely or unreliable performance of obligations by contractors or adverse effects this brought (54% of all problems in this category)**. Less frequent were difficulties related to negotiation or determination of contract conditions (13%) and external circumstances disrupting relationships between respondents and their contractors. Finally, 11% of problems in this category were related to contractual relations involving real estate used by respondents (including construction contracts).

These problems are the most common among the enterprises dealing with real estate market and administration services. However, differences are small enough not to be statistically significant. Similar situation exists as far as most other explanatory variables are concerned, such as enterprise size and scale of revenues.

Against this background, a regularity seems to be interesting that **the respondents who expressed less favorable views about lawyers, experienced more problems** with contracts and contractors (difference between categories of entrepreneurs who expressed extreme views came to almost 100%).

**The experience of justiciable problems related to contracts and contractors mostly inclined the respondents to make informal attempts of communicating with the other party (58% of cases).**

Consultant in public tenders (I023)

*And the contract is signed and then the hassle begins again that you have to run [get things done] for this company [...] This mentality is a bit too, well I don't know if this happens elsewhere in the world or just in Poland, a bit childish. Because if there is such a problem, one should discuss it as soon as possible, now they wait and hope that somehow it will all be okay. And then when it all becomes clear that there is not enough time - it may be because capitalism in this country has not been for too long [...] It's still a little bit of approach as if a car mechanic said "yes, yes, I'll fix it" and only then worried about what the fault really is.*

Owner of the enterprise offering bearing capacity testing services (I052)

*There is no party equality. I sign contracts as they are on the market, not as I would like them to be. [...] I once tried to negotiate contracts and I wrote three pages [of reservations] to the contract and they said "thank you very much". One must hit a balance, if at all you may raise any objections, you must focus on 1-2 aspects, because if you point out all the issues in the contract affecting balance and equality of the parties, then you do not stand a chance to sign such a contract. It is always that the bigger strangles the smaller one, [...] the market is so full and he can either choose this one or that one. And these legal aspects are harder to push through.*



## Contracts and contractors

While a third party was asked for advice in 25% of cases a specialist was commissioned to resolve the problem in 14% of situations. The last two categories include asking a lawyer for advice or representation, which occurred in 21% of cases. **In total, legal services were used in the context of problems with contracts and contractors in 40% of justiciable events. In turn, personal activities in the judicial system, for example in court, prosecutor's office or bailiff's office, were taken in 18% of situations.**

Diversity of implemented strategies among entrepreneurs belonging to various categories is remarkable. **Legal services are most often used by entrepreneurs active in the mass media, agriculture and real estate, as well as unclassified industries.** Businessess active in retail, education and energy were least eager to do so.

Producer of plastic elements with 3D printers (I053)

*"Someone had paper [= merchandise for sale], supposedly great quality, bells and whistles. Samples came in a letter so we said "we take it". I have one customer with whom we have known each other for long time, he only deals with paper, cardboard, cooperates with Germans. [So I ask him:] "You take this?" [Customer:] "I take it because it is good. " Now the batch arrived, he opened it and calls me, obviously pissed off, because he already got some contract, saying this is useless. [...] Yet I continue cooperating with him, despite the mishaps that happened."*

Freelancer organizing events and concerts (I007)

*R: [I use lawyers when signing contracts, but] there is not much to negotiate, it's only about not getting into trouble [...] They check whether the contract is safe. Not all contracts need to be signed."*

Owner of a business providing care services (I097)

*"Nothing works to enforce contractual penalties like a letter from a law firm. "*

## FREQUENCY OF USING LEGAL ASSISTANCE

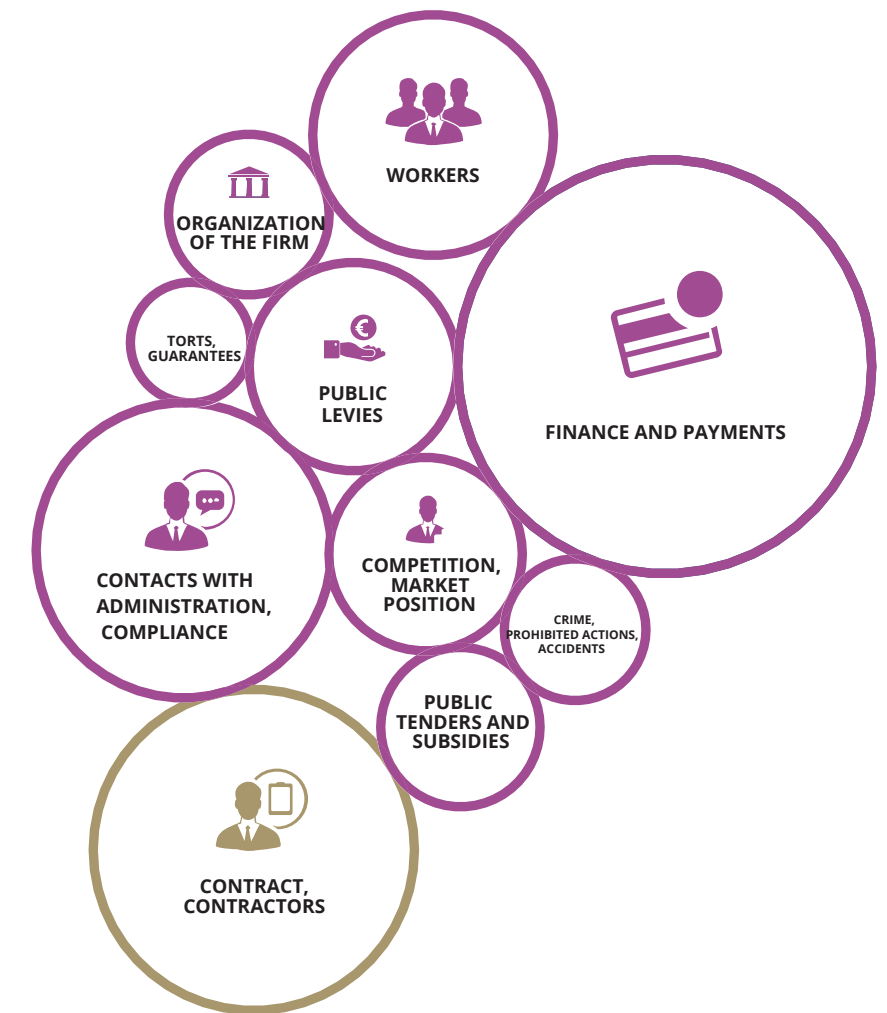
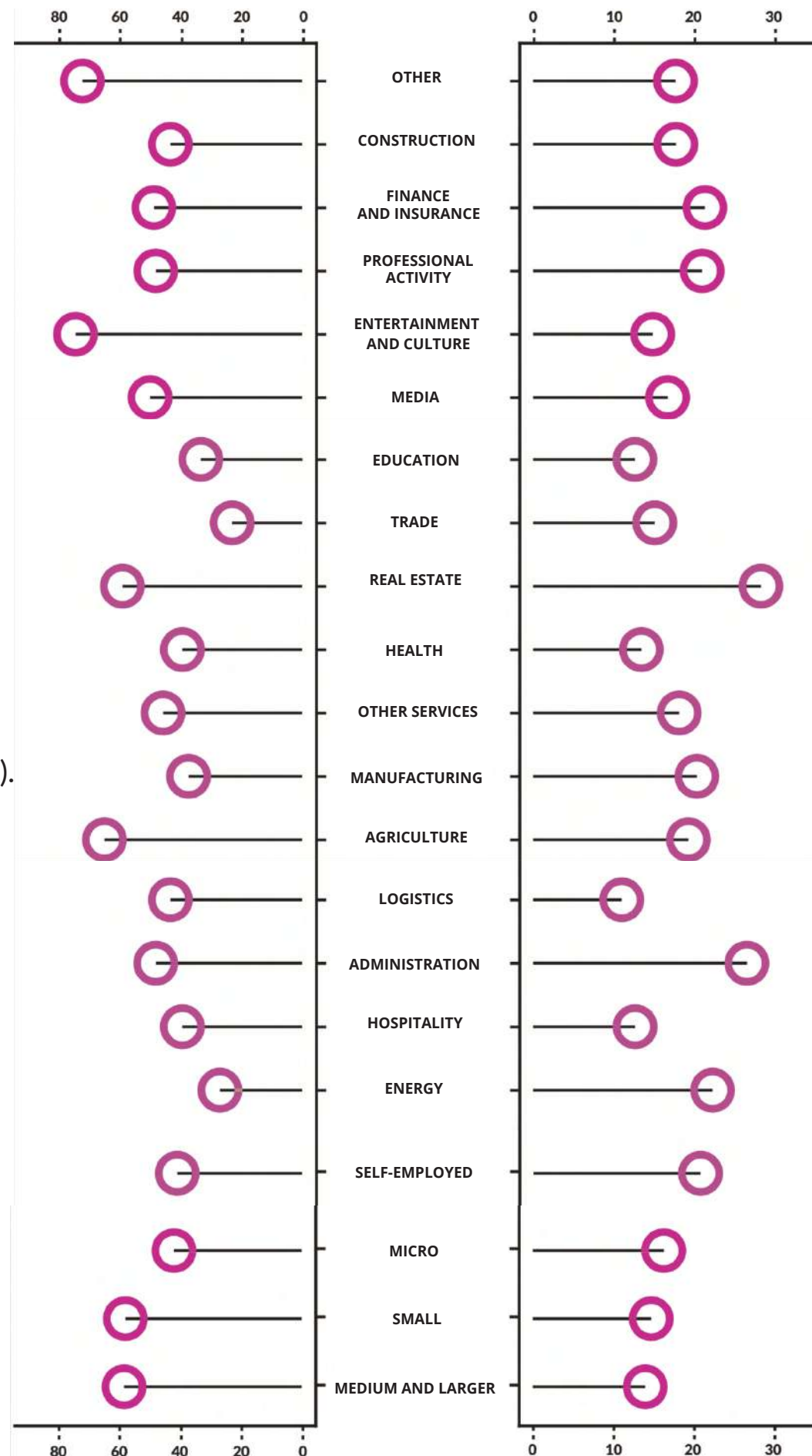
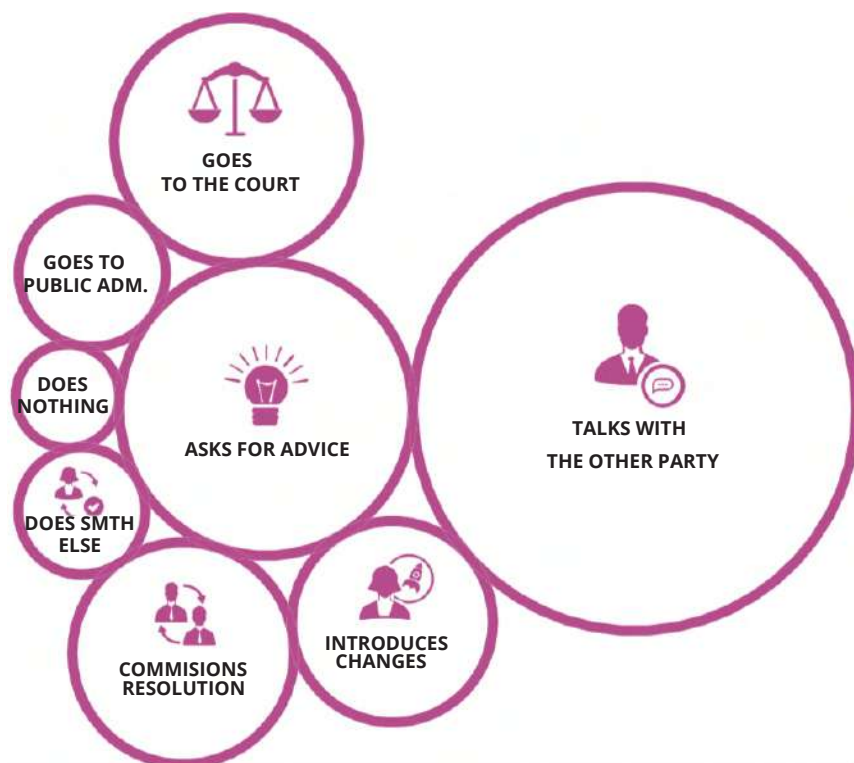
## FREQUENCY OF JUSTICIABLE PROBLEMS

### Contracts and contractors

Among justiciable problems indicated by respondents as significant, **17.6% were related to contracts and contractors**. Within 3 years before study such a problem had no less than 9.7% of respondents.

This is approx. **201,000** companies.

Most often this concerned failure to complete the contract by contractor or that s/he performed it incorrectly (45% of all such problems) or difficulty in agreeing on the terms of the contract with a contractor, negotiations (13.3% of them).



The most common reaction of entrepreneurs who have experienced a significant legal problem related to contracts and contractors was contacting the other party personally (57,9% of of situations). **40% of entrepreneurs used the help of a lawyer**. Such an action was most often taken in the media where legal assistance was used in 68.8% problems and industries not included in the classification, where such services were used in 66,7% of problems.



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# **Contacts with administration and compliance**





## Contacts with administration and compliance

The third largest category of problems reported by respondents are difficulties related to contacts with broadly understood public administration. These issues concerned primarily quality and pace of work of public officials, and to a lesser extent, the substance of their decisions. Such difficulties account for 15% of all justiciable problems registered in the study.

This category of difficulty belongs to a wider group of official problems. In it, we distinguished three detailed types. Apart from non-specific matters related to administration discussed here, it includes substantive tax issues (related to the obligation to pay specific taxes in specific situation sand the interpretaton of tax law), and issues related to tenders and public subsidies for businesses. Against stereotypical beliefs, problems related to direct or indirect intervention of the administration into economic processes constituted a significant minority (around 25%) of all problems experienced by SMEs. This proves that most business disruptions in this sector come not from public administration, but from other private entities and individuals, even if the latter are indirectly affected by inefficiencies in administration and the judiciary.

The problems related to contacts with authorities and compliance were quite varied. **The largest group of problems concerned contacts with officials in tax offices.** 31% of difficult situations resulted from **insufficient quality of work of these offices**, and situations where the respondents failed to obtain any decision or obtaining it took too long. 21% were related to **fiscal audits**. **Problems were also caused by audits perfomed by authorities other than the tax office (20% of problems in the discussed category)**, as well as difficulties related to official decisions, which the respondents have found unfavourable (altogether 13%).

### Jeweler (I046)

*When I talk to contractors I work with, one for example says that if he had a [tax] audit and he could just pay 1000 zlotys so that they don't come to him at all, he would do so right away. Because the last such visit ended with 22 thousand fine for little something, for some minute detail. And there is no ... When the audit people come, there is always a fine. They just come to fine.*

### Motorcycle accessory store owner (I020)

*Certificate of no arrears with social insurance contributions. I do not know, have you ever applied for such a thing or had to apply for it? [...] In a civilized world it would look like that: I have my registration number, I have my tax number, I have social insurance number, I go to the social insurance office, and I tell them: "Good morning, my name is this, I need my certificate of non-arrears with social insurance contributions". [...] But here it works so that you have to complete the right form, luckily it was done over one working day. Amazingly. But not immediately, they make you come in an hour, in two or three hours and get that certificate of non-arrears.*



## — Contacts with administration and compliance

An important category of legal problems (12%) in the discussed area were issues not included in the answer categories. The analysis of open responses indicates that the majority of these problems concerned **compliance**, that is, the need **to adjust the operations or organization of the enterprise to changing legal regulations**. The study period immediately preceded the moment of entry into force of the General Data Protection Regulation (GDPR) and the obligatory uniform audit file (JPK). Obligations resulting from these changes were subject to respondents' many negative comments.

**Official problems are more common in enterprises active in the health sector, agriculture, gastronomy and hotel industry, as well as energy.** Less frequently they occurred in the financial and insurance sectors and in activities related to administration services (less than 10% of all problems reported by entrepreneurs in these industries). No differences existed in enterprises of different size. However, based on a more detailed statistical analysis it can be assumed that **this type of problems a little more often affect enterprises with the highest revenues and conducting their businesses through many legal entities**, especially when the risks associated with business operations are transferred to one of them.

**In the category of problems under discussion, the actions taken by the respondents consisted primarily of unassisted handling of their affairs in the public authority (45% cases in this category).** Legal assistance was used relatively rarely, which leads to the supposition that official decisions are not treated by respondents as susceptible to effective challenge by procedural means. It seems more likely that in such situations entrepreneurs try to influence officials in a persuasive or consensual manner (nothing in the results yet suggests significant scale of corruption attempts).

**Seeking legal assistance in the event of official problems was reported primarily by respondents managing enterprises with higher employment and higher revenues.** This may be indicative of the existence of economic barriers when using legal services in this area. More eager to use legal help were also respondents who reported that the issue was particularly grave, and that it involved proceedings before a public authority.

### Yoga studio owner (I081)

*Now, as from July, again some absurd provisions are entering into force about the unified control files, so that you will need to send them [to tax office]. Again the accountant suggested that we had to buy new software. A year ago we bought accounting software - we hired an accountant in the company, because a limited company must have full accounting. We calculated that it is cheaper to do that than to hire an accounting firm, which asked 700 PLN for full accounting. We have a mandate contract with our client, who recommended her own service, but she said that she needs software. We have calculated that buying software for 1500 is cheaper than paying big money ... and now we have to change this software or purchase an update that will generate a uniform control file or something like that. There's a lot to do with it, though as I said - for me sometimes these things are absurd that they pick on that so much.*

### Owner of a renovation and construction enterprise (I005)

*It hurts me that officials in Poland are not accountable for what they do, for how they act. [...] The entrepreneur's only defense is a court. You could make matters easier if there was an institution, which would control competencies of [administration] employees [...] E.g. ZUS [social insurance authority] forces you to pay money that is not due to them, or an official tells you that you have to do something, but in fact this is not true. Incompetence, lack of accountability of officials for their actions.*



## Contacts with administration and compliance

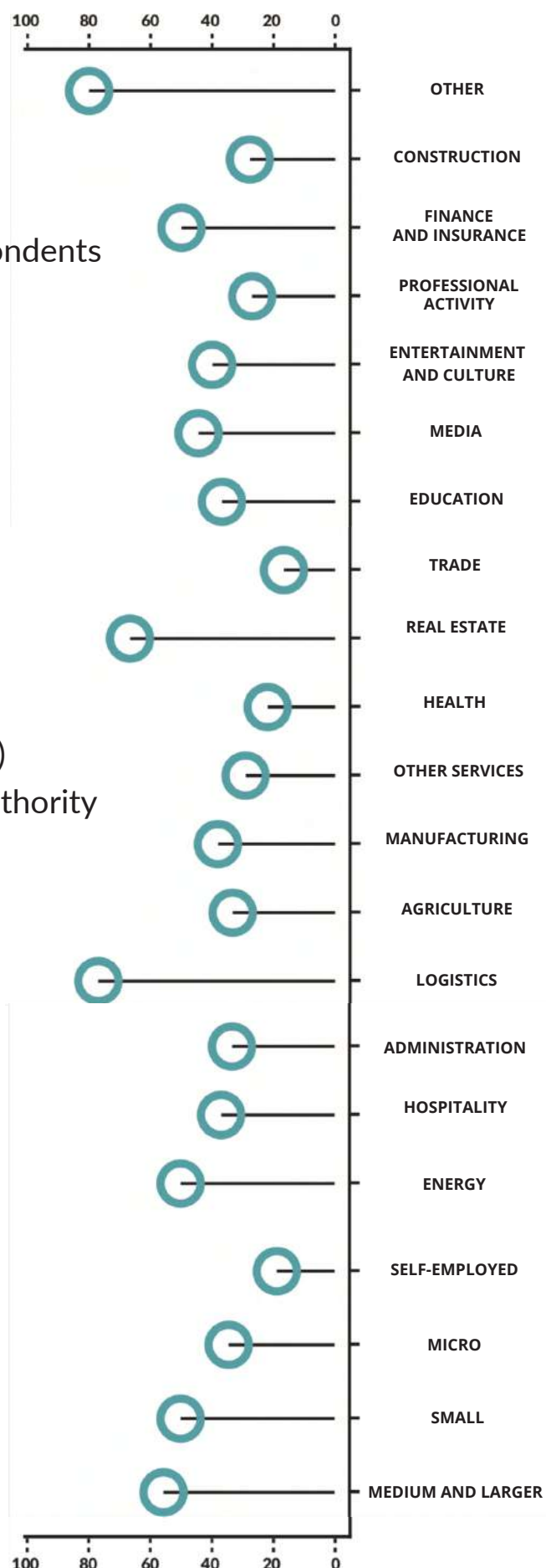
Among justiciable problems indicated by respondents as significant, **14,9% were related to contacts with public administration and compliance.** Within 3 years before the study, such a problem had not less than 8.8% of respondents.

This is approx. **183,000** companies.

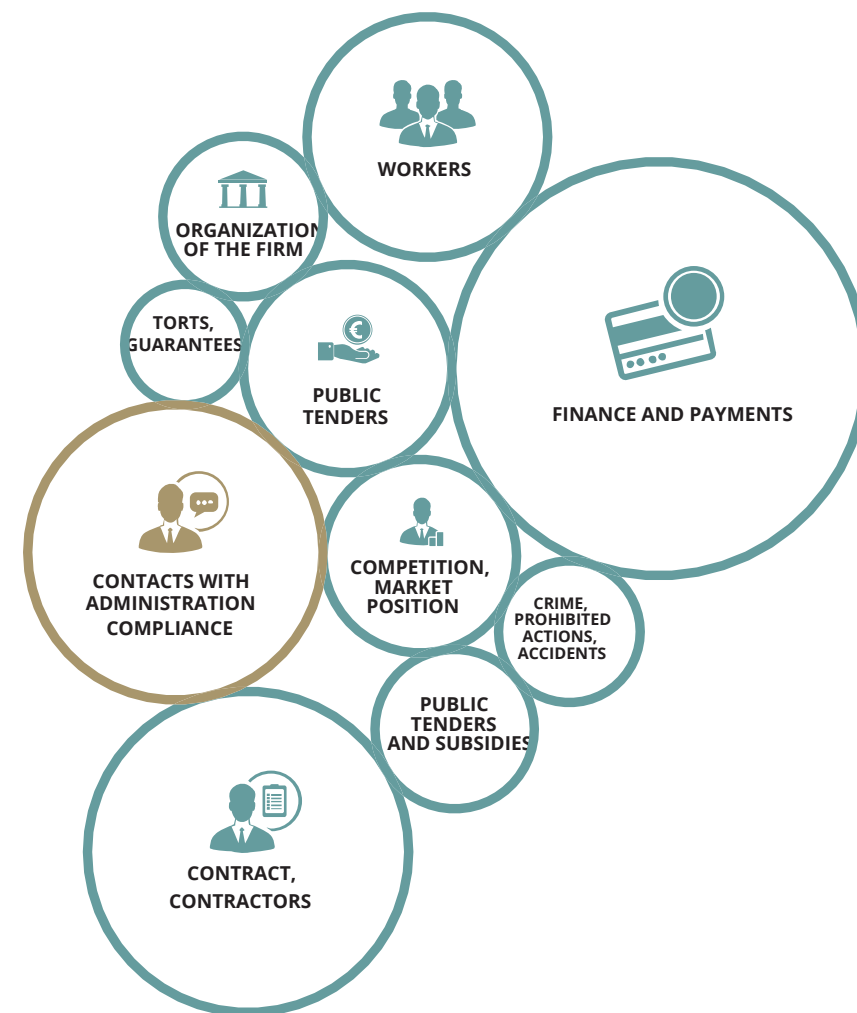
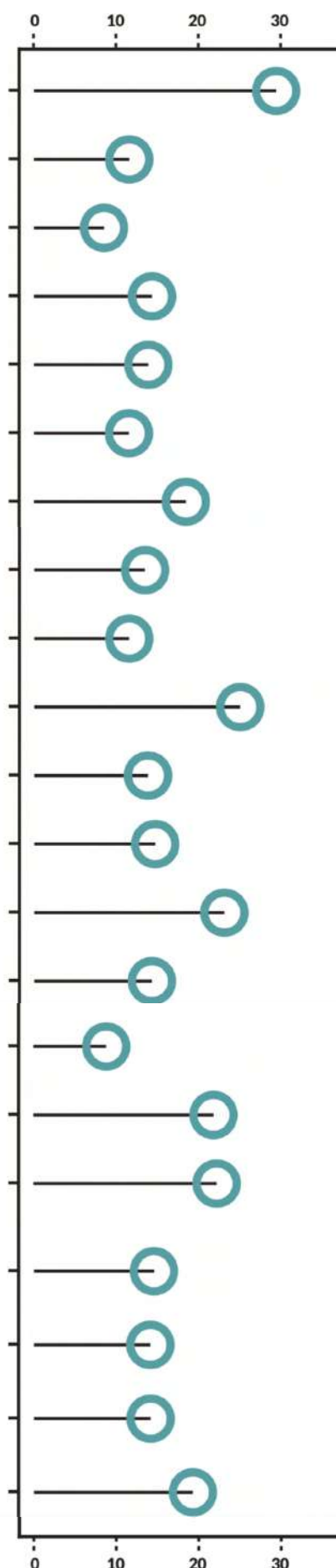
Most frequently **the source of problems was the tax office** (20.6% of all such problems) or the fact, that mode of activity of a public authority or its pace were not suitable (18% of them).



FREQUENCY OF USING LEGAL ASSISTANCE



FREQUENCY OF JUSTICIABLE PROBLEMS



The most common reaction of entrepreneurs who have experienced a significant legal problem associated with contacts with public authorities and compliance was to seek unassisted contacts with the authority (45.1% of the situations). **32.9% of entrepreneurs used the help of a lawyer.** Most often such an action was taken in industries not included in the classification where the help of a lawyer was used in 80% of problem situations and in logistics, where such services were taken advantage of in 76.9% of problems.

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# Public levies







## Public levies

The second group of official problems, difficulties related to public levies - taxes, social security and health insurance contributions, customs duties, excise duties, local taxes - accounted for 7.4% of all justiciable problems of small and medium entrepreneurs in Poland. The most numerous are problems related to **interpretation of tax law in a specific situation - 53% of difficulties with public tributes were related to that**. Secondly, problems in the group under discussion concerned benefits paid by social insurance institutions (10% of problems), and then - VAT refunds (9% of problems).

By type of public tribute, the most problematic issue was VAT. **Difficulties associated with it accounted for 52% of problems with public levies.**

In the qualitative study respondents stressed severity of interpretation problems pertaining to tax obligations and VAT refunds. **The second problematic tax (33% of problems in the discussed category) was PIT.** Other public tributes - CIT, duties, excise duty and tax on civil law transactions were relatively troublefree for respondents.

Problems with taxes and public levies varied significantly between different groups of entrepreneurs. **Their prevalence was on the average in the entertainment and culture sector, real estate companies, energy, media and agriculture.**

Industrial manufacturing, construction, and logistics sectors, on the other hand, were relatively free from difficulties of this kind (even three times less problems with public tributes than in the entertainment industry).

It also seems noteworthy that **legal problems related to public tributes are particularly troublesome to self-employed persons. They experience such problems two and a half times more frequently than in the case of micro-enterprises and five times more frequently than in the case of small businesses.** Supposedly, this is due to the fact that self-employment often coincides with the beginnings of business activity and a lack of full knowledge and experience necessary to navigate the legal system.

Specialized warehouse owner,  
technical consultant (I058)

*The biggest difficulty [...] is very poor fiscalization, which, so to speak, is the very difficult process of settling taxes, deducting costs, and so on. Unclear legislation, very few deductions. Some time ago we made a comparison of accounting conducted according to Polish and German regulations, and it came to such paradoxes that in Poland we had more tax to pay than according to German law we had income.*

Owner of a trade and service enterprise  
in the construction industry (I028)

*Our state allows for the construction of two types of houses: on recreational and residential plots. The difference is that recreational use is taxed at 23%, and residential at 8% [VAT]. Now the interpretation of tax law has changed. The provision is the same, only the interpretation itself has changed. And now they tell the companies which have built these houses that they are obliged to pay the balance. And on what grounds? On such [grounds] that the tax office could not find anything in these companies, because they acted in accordance with the law, so they started calling customers. Just checking if indeed you live there. Because if you do, then we check it out and so on. So customers for the sake of not being bothered said they do not. So by doing this they snatched on contractors of these projects. Now are these companies to give back the VAT? [...] [The effect is that now] everything [I do] I tax at the highest [VAT] rate. [...] Well, madness.*



## Public levies

This is also evidenced by the fact that tax problems are more likely to affect self-employed workers whose income does not exceed 100,000 zloty per year, who have recently started business activity or who obtain most of their orders from single entity.

This finding is in line with observations on dominant **strategies taken by entrepreneurs experiencing tax problems. In 41% of such situations they look for someone else's advice.** Yet such support is provided to them by lawyers rarely (only in 7% of cases). In 18% of cases, respondents use any legal service (including advice). **In 28% of cases entrepreneurs are trying to solve the problem on their own by contacting public administration.** On top of that, entrepreneurs rarely (only in 8% of situations) attempt to defend their position before a court.

The tendency to use legal assistance is greater in situations where the matter must be resolved in a formal way: proceedings are pending before a public authority or with bailiff's office, and when the other party is assisted by lawyers. Furthermore, **the use of lawyers is strongly associated with employment.** Whilst medium and larger enterprises use legal services in 75% of legal cases related to public levies, self-employed persons do so in less than 8% of such events. This information should be compared with the fact that the smallest companies in our study had to deal with tax problems more frequently than the biggest ones. This may indicate that in large business organizations tax issues are well mapped, which allows for avoiding unexpected difficulties.

### Importer and exporter of raw materials (I010)

*Last year, first in March and then In October and November, our VAT refund was blocked under new law. We have always used this shortened period, the 25-day period, because our documents have been exemplary. Tax office just for these months stopped the VAT refund, arguing that they want to check the transaction more closely. [...] The suspension in March limited our funds. In October, it has already seriously damaged our position. But withholding the return in November led to a serious crisis in our activity. We had to completely, immediately stop our exports, which leads to problems with contractors, suppliers, customers. [...] This is the biggest difficulty in our business [...] [something] that puts into question the very existence of the company (...)*

### Manufacturer in the installation industry (I087)

*We attach great importance to acting in accordance with the law. But recently there have appeared problems, difficulties in obtaining interpretations. Indeed we try to recognize these legal issues as they emerge, understand, introduce. But sometimes it turns out not even difficult but it is [...] impossible to obtain information or interpretation so that we are hundred percent sure that we're doing everything right.*

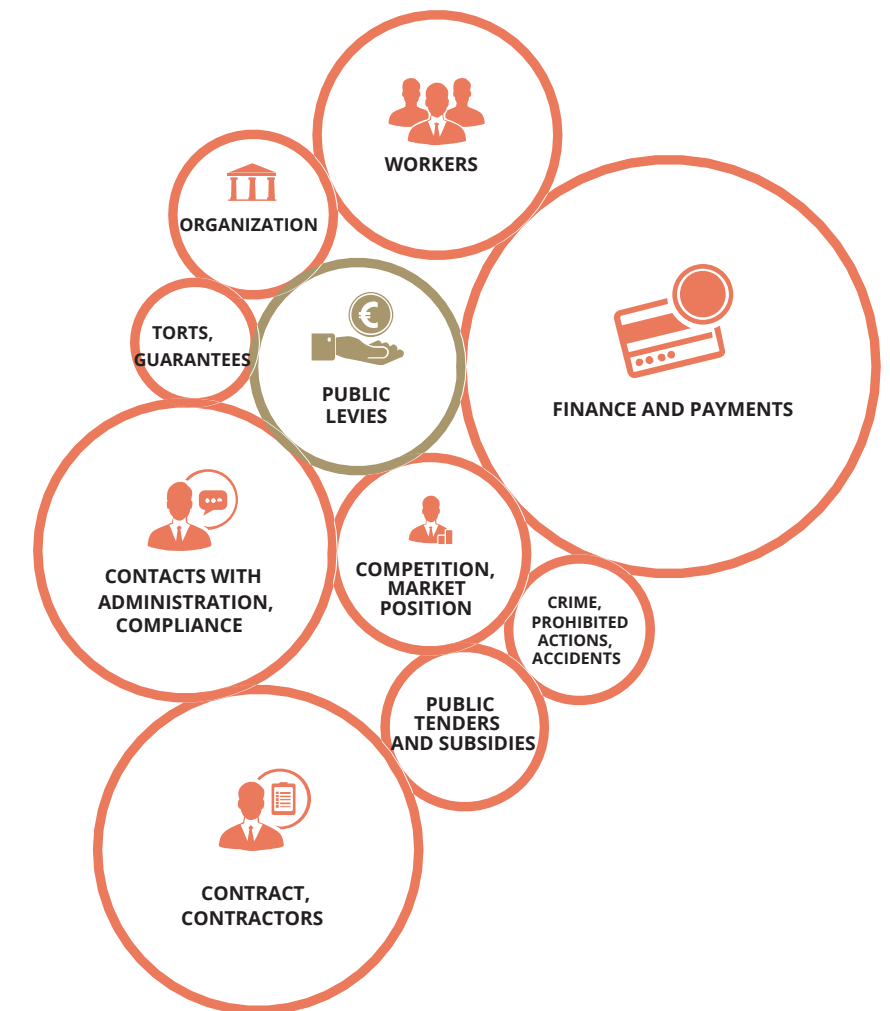
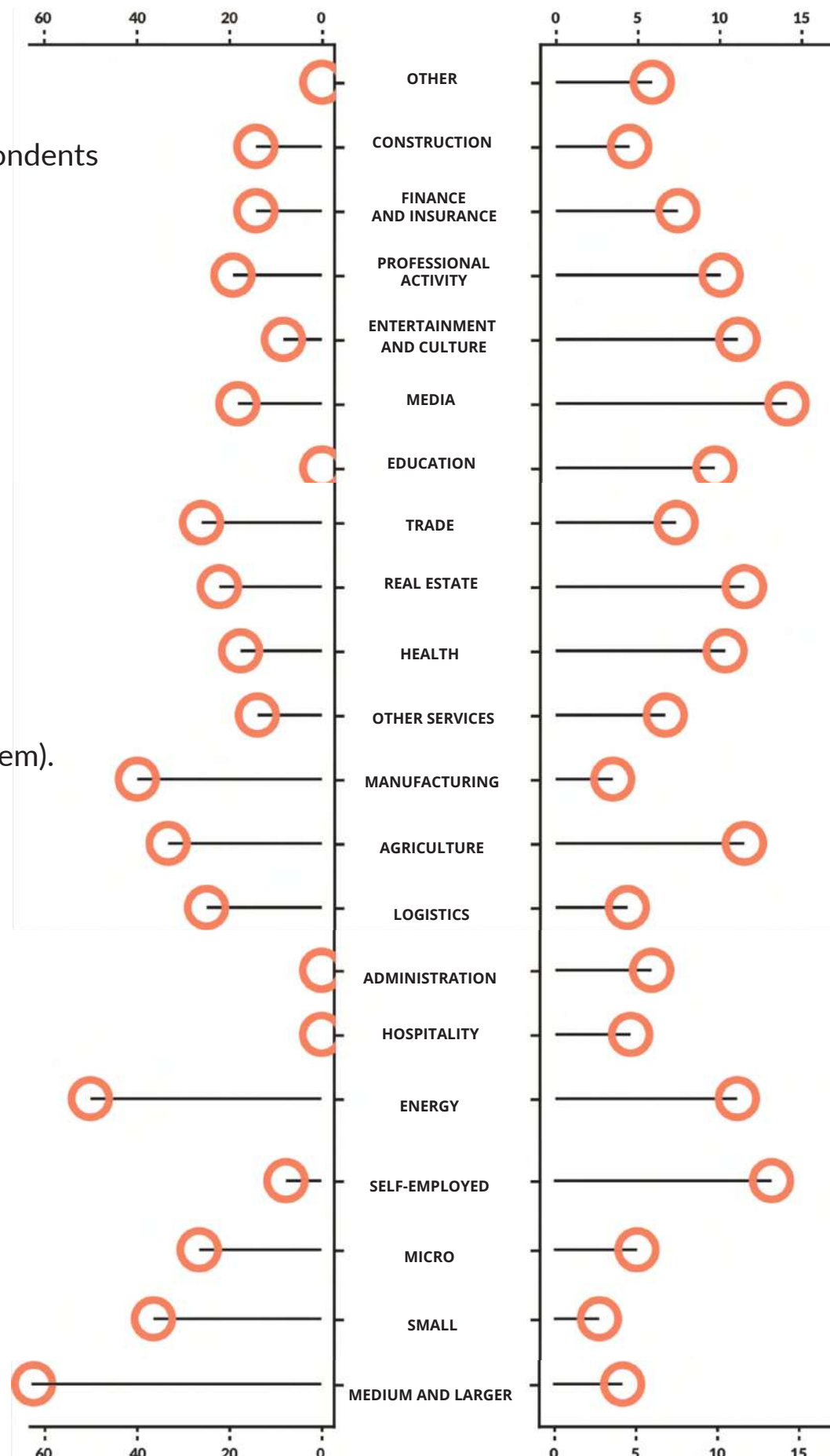
## FREQUENCY OF USING LEGAL ASSISTANCE

### Public levies

Among justiciable problems indicated by respondents as significant, **7,4% were related to taxes, social insurance contributions, and other public levies.** Within three years prior to the study, no less than 4.2% of respondents had such a problem.

This is approx. **87,000 companies.**

Most often this was related to **interpretation of tax law**, eg. amounts due, legal basis of taxation, tax exemptions, deductions (30.8% of all such problems) or with VAT in general (22.3% of them).



The most common reaction of entrepreneurs who have experienced a significant legal problem related to taxes, social insurance contributions and other public levies was **asking someone for advice (41% of the situations)**. 17.9% of entrepreneurs used the help of a lawyer. Most often such an action was undertaken in the energy sector where the help of a lawyer was used in 50% of problems and in the manufacturing industry, where such services were used in 40% of issues.



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# Public tenders and subsidies







## Public tenders and subsidies

Legal problems related to financial flows from the public sector - in the form of tenders for a public contract and public subsidies constitute the third group of official difficulties and over 4% of all justiciable problems of SMEs.

Most often, obtaining public funds, although economically attractive, turns out too complicated or laborious. **In the case of public subsidies most problems (30%) are related to applying for European funding. In the case of tenders, large group of difficulties concerns the fulfillment of requirements specified in the tender documentation (18%), ambiguities therein, and other defects of the process (23% of problems).** In this context in qualitative interviews some respondents raised doubts whether tenders are indeed conducted in a fair way, but quantitative data is too scarce to allow judgment on the prevalence of such suspicions.

Difficulties in coming to agreement with the contracting authority after winning the tender, following requests for additional work took place in less than 6% of cases mentioned by respondents. Situation in which the price in the winning bid turned out to be too low, caused 4% of problems. In 5% of cases, respondents found problematic the fact that their company did not win the tender. 13% of problematic situations did not fit into the prepared answer scheme.

Due to the rare occurrence of legal problems associated with tenders and surcharges, not much can be said about the differences in their occurrence in enterprises of different characteristics, so the data is of reference value only.

Of all categories of problems, those related to **public tenders and the acquisition of public funds most often remained unresolved or entrepreneurs were passive.** Such an outcome occurred in **19% of problems** in the discussed group.

### Manufacturer of electronic devices (I057)

*Such a topic as EU funds. I know some companies that used these funds, I also tried, but it's so complicated from the point of view of, so to speak, red tape, and so time consuming that I just concluded that I prefer not to have the money than to get into it all. At the moment I am cooperating with a company, which obtained such funding. And I had the opportunity to observe the entire process from the side: it is just beyond imagination.*

### Graphic artist (I033)

*But that is how it goes, after all, one encounters cases where tenders in the public sector, wherever services are provided for municipalities ... the likelihood of that you win in this tender is some 30% to 50%, because these things are dealt with in such a way that, just say, a privileged group receives information about the tender. The one who is to win, usually has a snitch somewhere, he knows what exactly must he write, who will evaluate that, what the priority is put on.*

## Public tenders and subsidies

The most common reaction was yet different. **It consisted of contacting the other party in a private mode (38% of cases).** Consultations with an external adviser were undertaken in every fifth situation, and attempts at unassisted, formal action involving public authority - in 12%. **Actions to challenge the legality of the procedure, in particular taken with lawyer's assistance, took place only in 5% of situations.** Case found its termination in court in 6% of justiciable problems. Altogether, legal services were used in 21% of situations.

Engineer specializing in environmental audits (I036):

*[When officials act arbitrarily] I opt for the conformist peace of mind. So I do what the clerk expects. Because I used to be in such situations where I explicitly requested [...] that the legal basis is cited. The official replied that he would leave the application without consideration. Appeal to the Local Government Appeals Council? Half a year wasted... [...] My experience here is that unfortunately most of the time you just have to put your head down, so to speak, and do as his highness clerk wishes.*

Yoga studio owner (I081)

*We were looking for [a financial intermediary - consultant who would help us in preparing the application for funding], but there are so many of them, and they take so much money just to get started. It's some 1,500 zloty for preparing the application, right? On top of that, they don't get into it too much, they don't advise. It's just that we have to say what idea do we have, and they will find something out there, they will help us collect [documents], but that's all. Deliver this etc, we must on our own. [...] We calculated that this is not a game worth the candle.*

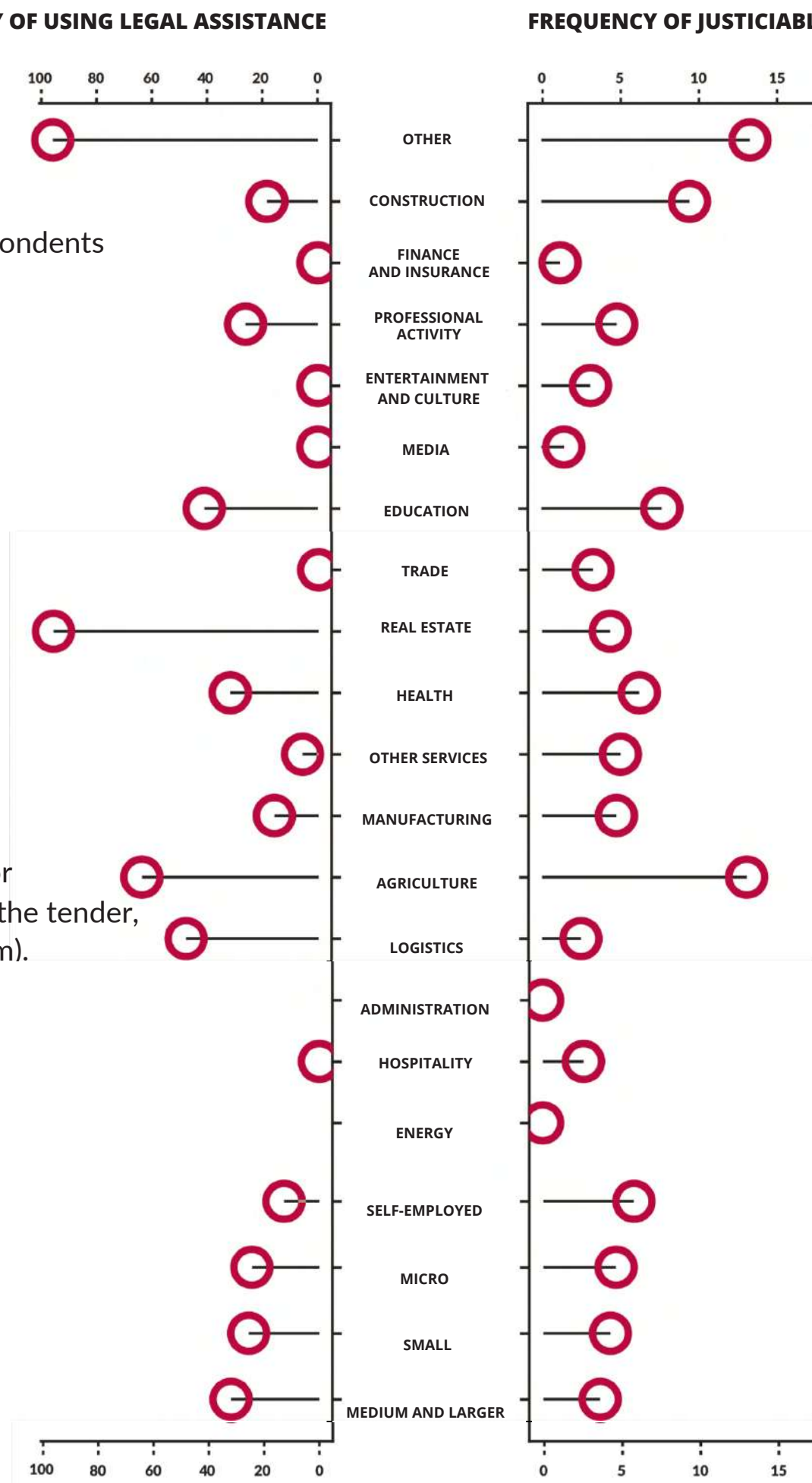
## Public tenders and subsidies

Among justiciable problems indicated by respondents as significant, 4.3% were associated with public tenders and subsidies.

Within 3 years before the study, such a problem had not less than 2.9% of respondents.

This is approx. **60,000** companies.

Most often it resulted from the fact that the respondent wanted to obtain EU funds or other subsidies, but he failed or the process turned out to be **complicated, expensive, labor intensive** (30.1% of all such problems) or because the company wanted to take part in the tender, but **the criteria were too strict** (18.2% of them).



The most common reaction of entrepreneurs, who have experienced a significant justiciable problem related to public tenders and subsidies was the **unassisted contacting the other party** (37,9% of situations). 21% of entrepreneurs used the help of a lawyer. Most often lawyers were used in **industries not included in the classification** where their help was used in 100% of problems and in the services for real estate market, where such services were used in the case of 100% of problems.



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# Employees





## Employees

Justiciable problems with employees accounted for 10% of all justiciable issues that the respondents had.

**Vast majority (72%) concerned the improper performance of duties by employees and serious discipline problems in the workplace (e.g., alcohol consumption), and about 10% - issues related to the long-term absence of the employee at work, due to sick leave or maternity leave.**

Not much less, 9% of problems, concerned the establishment or termination of the labour contracts, 4% - team relations (mobbing, discrimination, communication between employees) and 3% - accidents at work. Respondents very rarely (in less than 2% of problems in this category) or never reported difficult justiciable issues related to working time, overtime, salaries and seeking employees (although seeking employees turned out problematic in other aspects than legal). **This indicates that employers don't see employee protection as legally problematic.**

The study confirms the common sense supposition that legally significant problems with employees appear more often in those industries where economic processes require high employment and special work discipline. This type of difficulty is above average in the **hospitality sector (gastronomy and hotel industry) (28% of all legal problems in this sector), as well as in education and administration services.** Legal issues with employees are more rare in energy, media and telecommunications, in professional services and in the real estate market. Obviously, more legal problems related to employees emerge in enterprises with higher employment.

### Business advisor (I071)

*People looking for full-time employment are not looking for opportunity to work, but for opportunity to earn money at minimal effort. To put it nicely: if you are a noodge and keep nagging them, they do it. If you don't, they don't. It is a matter of mentality.*

### Owner of hair and beauty salons (I008)

*I also had a situation with an employee [...] whom I wanted to lay off, I gave her the notice and she obviously did not acknowledge receiving it. The next day at 7 am she was already on sick leave. At that time I made some consultations and called the Labour Inspection and they referred me to someone [...]. I was asking what should I do with it? They told me I needed simply to send termination notice by post, that even if termination is not delivered, a two-week [termination] period is in effect. Now I asked: "But what if she sues me?" That's when I heard: "Well, ma'am, the courts are for people." So I went ahead and I said: okay! If they are for people, I will use them.*

## — Employees

In case of legal difficulties with employees, the most popular solutions are informal and organizational. **In 44% of cases the solution is sought through informal communication with the employee.** Very frequent is also introducing organizational or technical changes in the company. Actions of an official nature and in the administration of justice are taken in approx. 5% of problems (each). On top of that, respondents relatively often undertook activities not classified in the interview (12% of issues). They used legal services in approximately 21% of justiciable problems.

The frequency of **using legal assistance depends on industry and scale of employment.** Particularly inclined to do so are larger enterprises, and those in which problems with employees may have particularly grave consequences. More frequently than on the average (and even several times than in the hospitality sector, construction or professional activity), a lawyer is used in the entertainment and culture sector and in logistics. This may be due to the special nature of relations between employees and employers in these industries.

A similar circumstance explains the more frequent use of legal services in enterprises with higher employment. In micro enterprises, relationships between employees and employers are less formal, which may encourage seeking non-legal solutions.

**A noteworthy finding is also that in the few SMEs that employ a lawyer on a permanent basis, the readiness to use legal assistance in the case of labor law disputes, is much higher than in enterprises that do not have access to such instant help. This suggests that availability of assistance encourages using it, even if one wouldn't do that in other circumstances.**

### Restaurant owner (I013)

*Both parties are adults, responsible people with full mental powers and they sign commitment to work here and to fulfill such and such duties and then they are offended. Well this is a total lack of understanding. [...] We're constantly making changes [to deal with this]. [...] First of all [we carry out] conversations. I would call it: educational conversations. So just such narratives, also motivational: to have satisfaction with what you do; to be respected and popular among employees. Because after all, someone has to clean up, someone always must get this work done. It is unacceptable, that there is a mess in a restaurant and it is dirty. So then there are conflicts because of that, so this has to be taken care of always to the end. Well this is the first basic tool. The second are bonuses. Because that's why one comes here. Although it also means a lot to people.... what do you call it? Non-financial satisfaction, or praise from customers, bosses... and a tip.*

### Cafe manager (I059)

*Work in gastronomy is such that, unfortunately, when cat's away the mice will play. And unfortunately it is so that you can quickly alienate customers by just - I don't know - unprofessional service. I don't know - cold soup that has not been warmed up well, [...] someone did not take enough care and served a beer in a dirty glass. One must supervise and point one's finger often.*



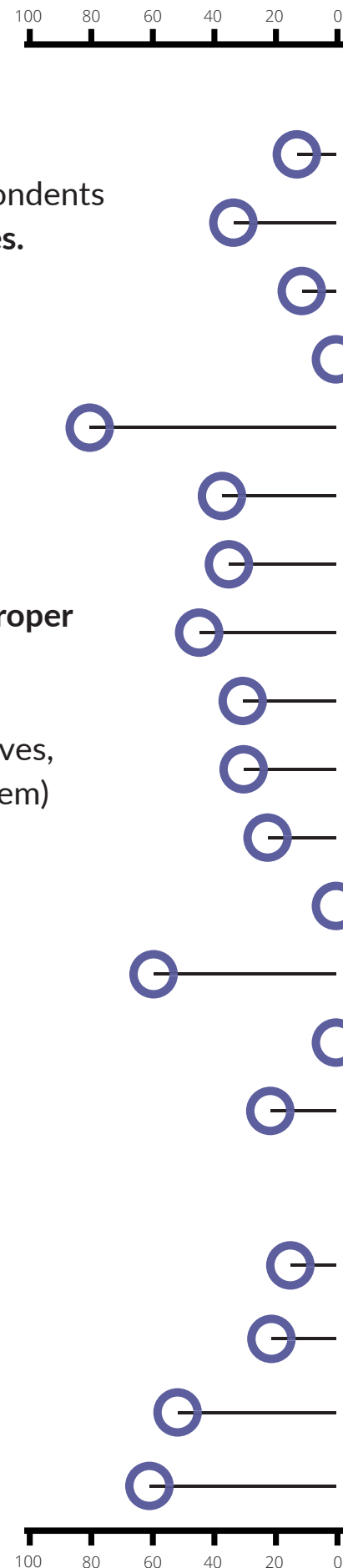
## FREQUENCY OF USING LEGAL ASSISTANCE

### Employees

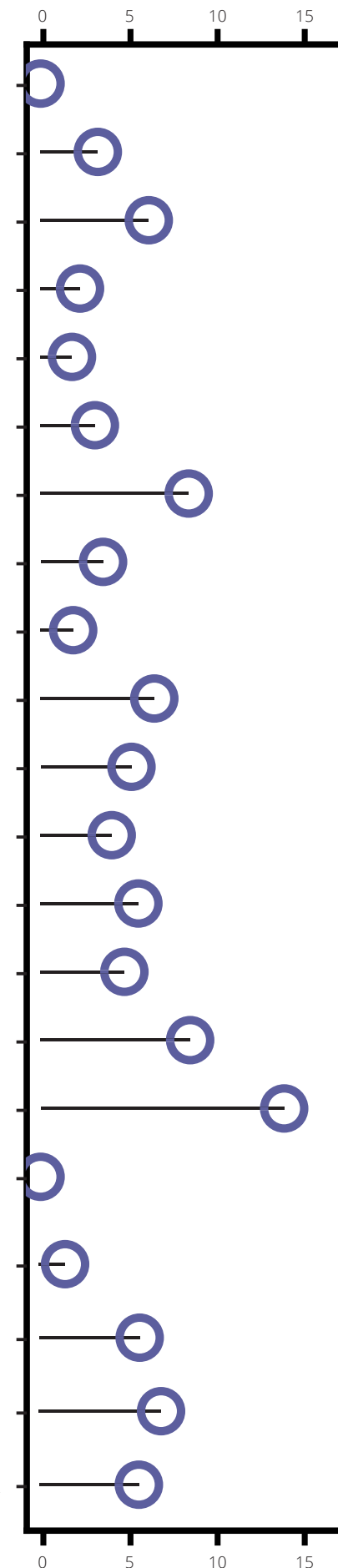
Among justiciable problems indicated by respondents as significant, **9.9% were related to employees**. Within 3 years before the study such problem had not less than 5.4% of respondents.

This is approx. **112,000** companies.

Most often these problems resulted from **improper performing of his/her duties by an employee, incompetence, unwillingness to work** (67.8% all such problems) or relates to sick leaves, maternity leaves and family leaves (9.5% of them)



## FREQUENCY OF JUSTICIABLE PROBLEMS



The most common reaction of entrepreneurs, who have experienced a significant legal problem related to employees was unassisted seeking contact with the other party (44.5% of the situations). 21.2% entrepreneurs used the help of a lawyer. Most frequently, such activity was undertaken in entertainment and culture where the help of a lawyer was used in case of 60% of problems as well as in logistics, where such services were used in 44.4% of problems.

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# Competition, market position







## Competition, market position

The difficulties associated with competition and market position generate relatively few justiciable problems. They accounted for 6.4% of all justiciable problems reported in the study. Vast majority of them concerned unfair competition (65% of cases). The remaining 35% were difficulties not included in the prepared response cafeteria.

Such difficulties were most frequently experienced by entrepreneurs in finance and insurance (15% of their legal problems were related to competition and market position) and trade (11%).

**Entrepreneurs most often (in 43% of cases) react to legal problems linked to competition by introducing changes in their businesses, so they try to deal with competition by economic methods or by looking for a market niche.**

Methods that refer to legal tools are not very popular: legal services were used in 17% of justiciable problems. Legal advice was used by entrepreneurs in less than 7% of cases. Low frequency of using law is also reflected in self-initiated judicial and administrative procedures (5% and 6% of cases, respectively).

Due to the small number of problems in this group, an attempt to establish factors encouraging entrepreneurs to take legal action may be encumbered by significant error. However, the results show that there is a strong relationship between the use of legal services and the size of the enterprise. At the same time, companies active on the market for relatively short time, those that have never been profitable or have more often produced losses than profits were more eager to use legal services.

Manufacturer of building components (I028)

*Researcher: [Is it true that] competition can afford underpricing because it uses illegal forms of work?  
Respondent: Yes, thick and fast. You know what, it can best be seen on Allegro. [Polish online auction service]. That is, on Allegro you can see clearly [...] that it all is without taxes and so on. [...] You operate without costs and do not pay taxes.*

Owner of a business providing care services (I097)

*[In care services] it is difficult to compete if someone works off the books and does not pay any taxes, no social security contributions - which I must do for my employees because I pay it all. So here this price difference will always be huge ... I think that in general it is typical in some industries: like construction or renovations... They also have such a problem.*

Owner of a business providing care services (I097)

*[in the context of the fact, that in the care market the gray economy dominates] I aim at people living abroad. Because I have (...) [good salaries] for local employees, compared to what I learned about the competition, and that with legal employment. And I just have the impression that a lot of people in Poland can't afford it, simply can't afford it.*

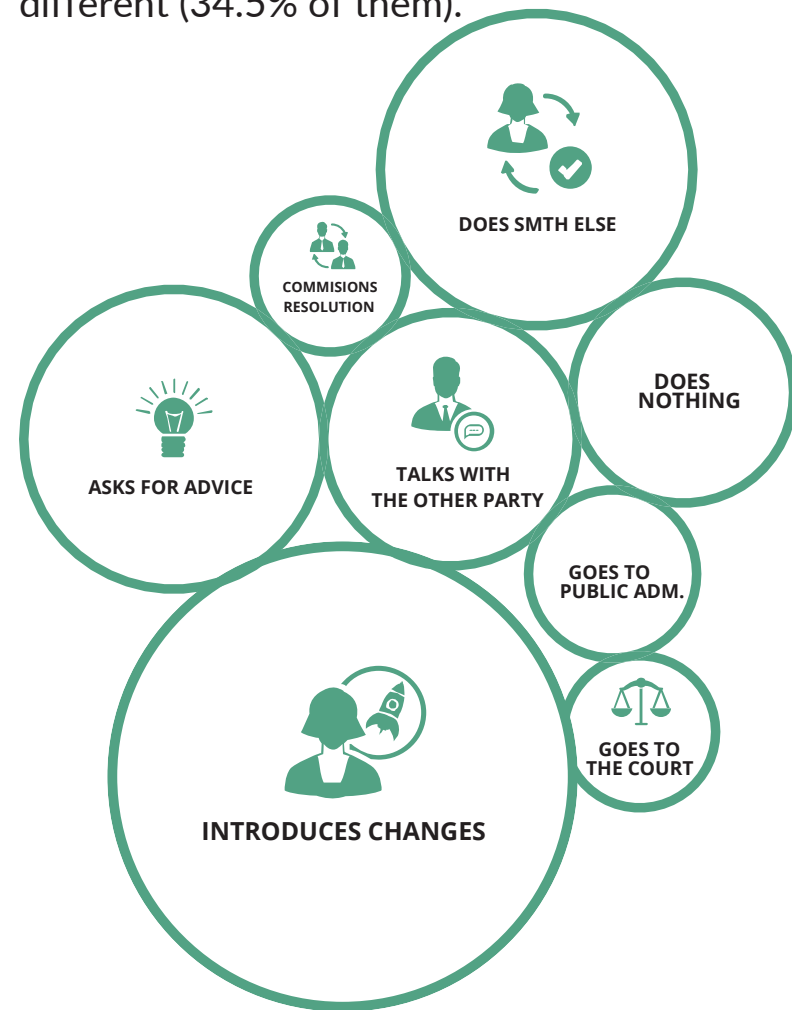


## Competition and market position

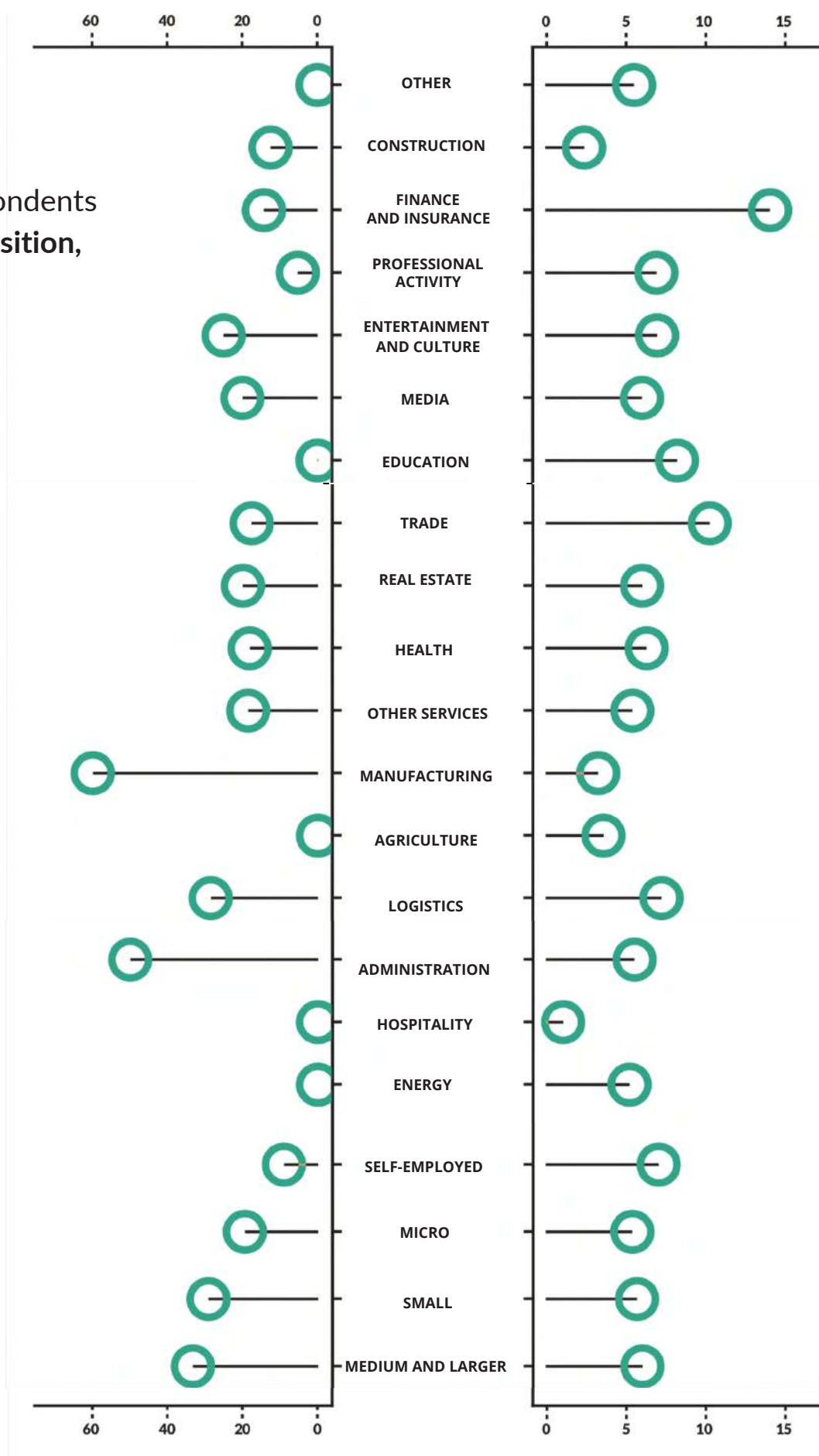
Among justiciable problems indicated by respondents as significant, **6.4% were related to market position, competition, the company's image.** Within three years prior to the study, no less than 3.5% of respondents had such a problem.

This is approx. **73,000** companies.

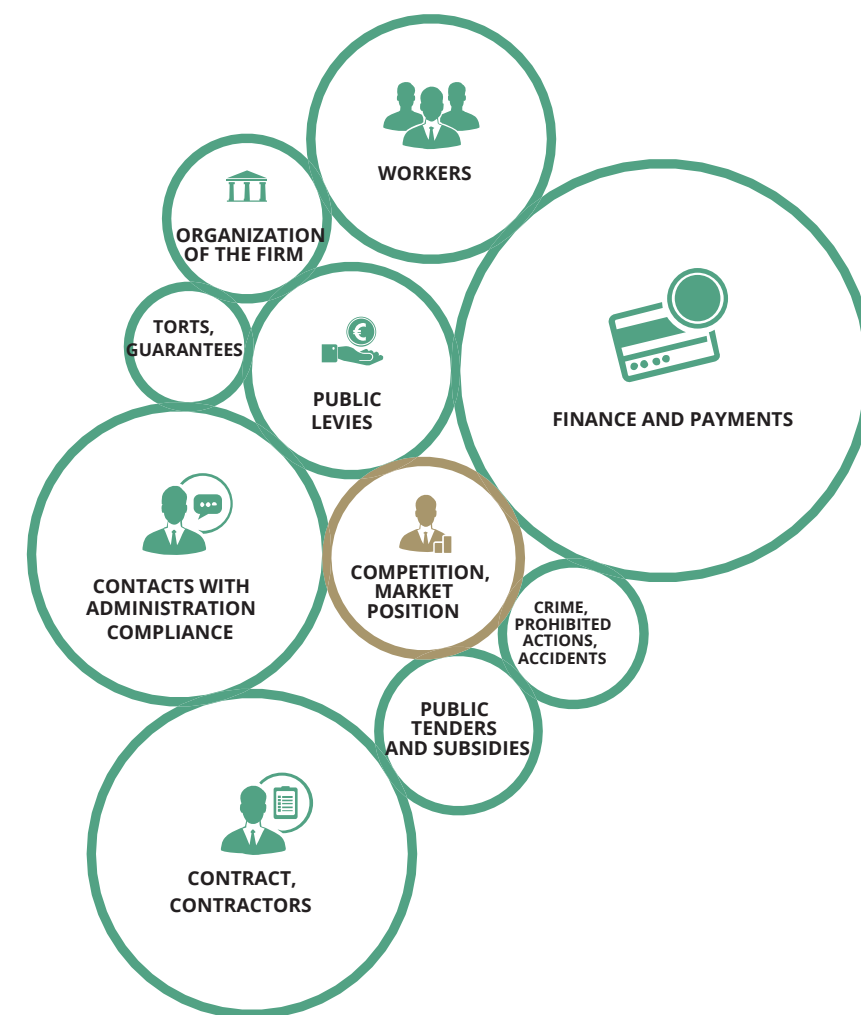
Most often it was related to the fact that **competition acted unfairly** (65.5% of all such problems) or the problem was yet different (34.5% of them).



FREQUENCY OF USING LEGAL ASSISTANCE



FREQUENCY OF JUSTICIABLE PROBLEMS



The most common reaction of entrepreneurs, who have experienced a significant legal problem related to market position, competition, the company's image was to introduce changes in the enterprise (42.6% of the situations). **17.5% of entrepreneurs used the help of a lawyer.** Such an action was most often undertaken in the manufacturing sector, where the help of a lawyer was used in 60% of justiciable problems and in administration services, where such services were used in 50% of problems.

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# Enterprise organization





## Enterprise organization

Organizational problems of a legal nature occur among SMEs relatively rarely. They accounted for only 4.4% of all justiciable problems registered in the study. This category was also not very diverse. **Over 41% of all problems of this type were due to misunderstandings between partners as to how to manage the business** and another 7% were related to the distribution of profits or losses. Further **27% concerned ownership transformations and changes in the legal form of business**, next 13% - legal issues regarding the sale of the enterprise or shares in it. 5% of difficulties were related to inheritance and succession, and another 5% - to decisions made on behalf of the owners by managers and directors. Some of the problems that can be classified as organizational comprise of a set of difficulties - e.g. succession in a business that does not have the appropriate legal form.

Due to small number of organizational problems registered in the study, data regarding their diversity in different sectors should be regarded only as illustrative. However, findings indicate that **factors affecting occurrence of such problems are the number of employees** (the more, the larger the likelihood of such a problem) and **legal form** (organizational problems are very rare among sole proprietors and more frequent in companies). Interestingly, also the structure of employment contracts appears to be relevant - **organizational problems are significantly more frequent in enterprises employing workers under mandate or service contracts than under labour contracts.**

Organizational problems are characterized by the fact that they are **relatively often solved using legal services**. This took place in 45% of such cases, and only happened more frequently in justiciable problems regarding the owner's responsibility for business' activity. Qualitative research indicates that some actions are initiated by lawyers signaling possible problems related to e.g. a specific legal form of business.

### Owner of an electrical company (I025)

*My father who had been running this business for long time suddenly died of a heart attack. It was a sole proprietorship [...] me and my brother were heirs [...] and immediately we agreed that I take over this sphere of business activity. [...] I used the advice of a lawyer only once. This concerned the signing of the contract with my brother, division of assets, separation of the company's assets and liabilities. He helped us create this contract, so that all provisions are acceptable.*

### Restaurant owner (I013)

*There is a dispute between current partners [in a civil law partnership]. Personal life got mixed up, it got complicated and it is very difficult to get along. The partner first threatened me that he terminates partnership agreement, because he doesn't want to cooperate because it is difficult for him. [...] This is really a personal problem, life has stepped in this again. [...] This is highly disadvantageous for the business and for a partner. Because [if the agreement is terminated] this civil law partnership ceases to exist, it does not bring income, because it is not like any of us can just take it and have it, but rather the company's assets must somehow be divided. [...] [This legal form] is not good.*



## Enterprise organization

**A frequent response to organizational problems was contacting the other party,** which occurred in 35% of cases. Consultations with external advisors - professional and unprofessional, including lawyers - were in total undertaken in 37% of cases. Changes in the enterprise were introduced in 24% of justiciable problems, unassisted contacts with administration were attempted in 11% of cases, and *pro se* participation in court proceedings - in 10%.

Owner of a renovation  
and construction enterprise (I005)

*Legal advisor urged me to change this legal form [sole proprietorship] but somehow it has always been difficult for me to do so and it continues to be like that until now. He kept persuading me: "Something happens, someone doesn't pay you, they'll expropriate you from everything you have, take your flat. And in the case of a limited company you are safe." I don't know, somehow I don't feel it. Besides for me the company also imposes some limitations [...] people trust companies less [...] you must have these accounts, company's own assets, you must separate that. In the case of my business it is not so easy. Construction is not an appropriate sector for this. [...] And with problems like that, like these payment problems of all sorts and financial blockages in general, this is bothersome.*

FREQUENCY OF USING LEGAL ASSISTANCE

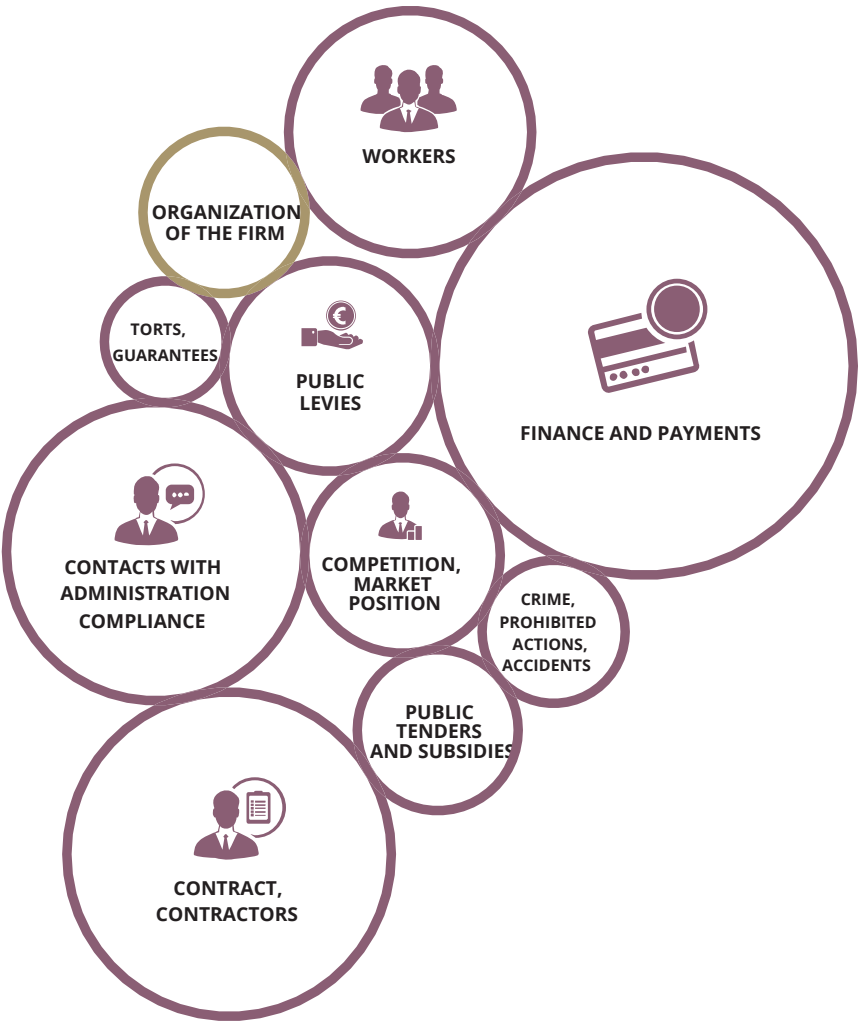
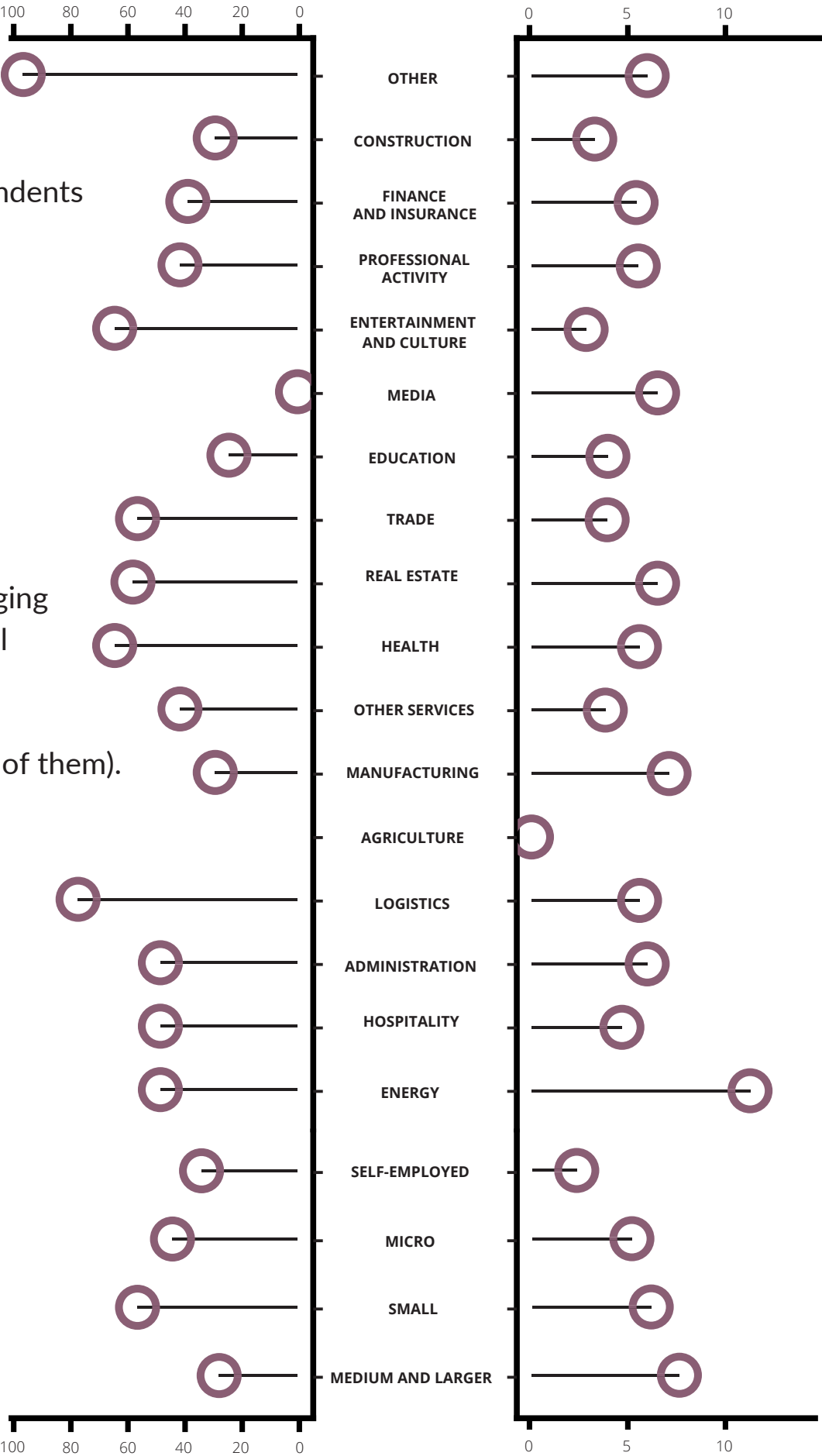
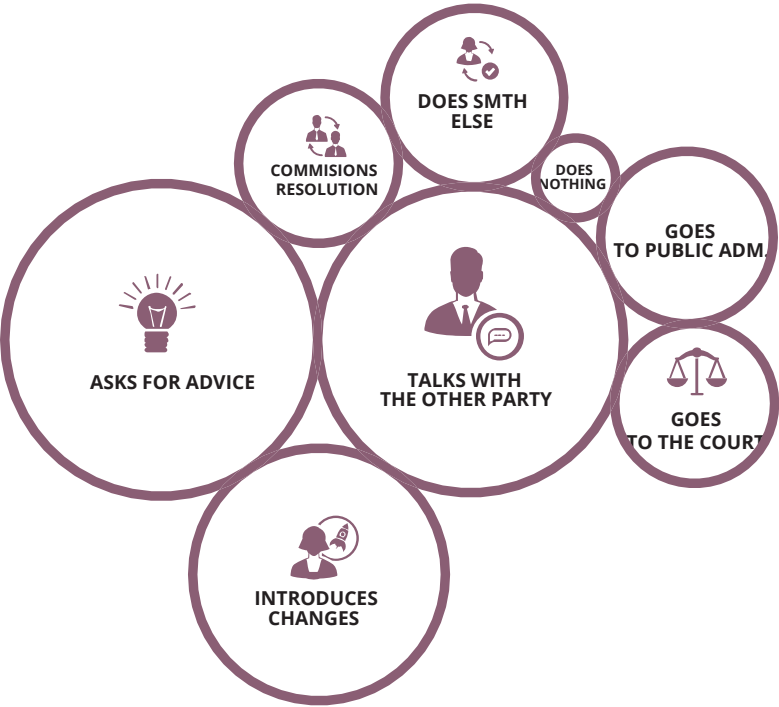
FREQUENCY OF JUSTICIABLE PROBLEMS

Enterprise organization

Among justiciable problems indicated by respondents as significant, 4.4% were related to the organization of the company, ownership transformations, inheritance. Within 3 years prior to the study, such a problem had no less than 2.4% of respondents.

This is approx. 50,000 companies.

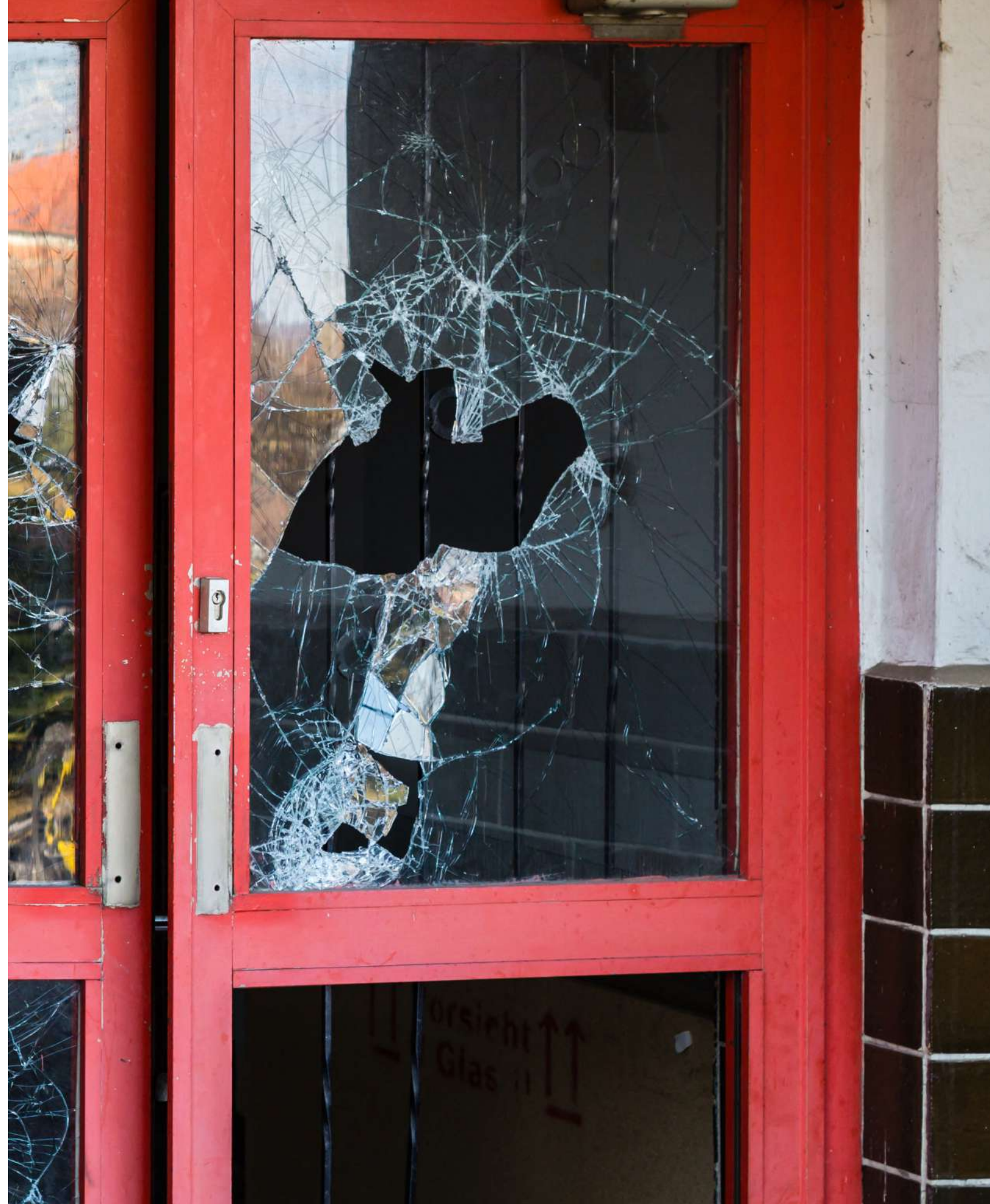
Most often this concerned disputes over managing company by its owners or partners (41.3% of all such problems) or a change in the legal form of business (e.g. transformation of sole proprietorship to a limited company) (27% of them).



The most common reaction of entrepreneurs who have experienced a significant legal problem related to the organization of the company, ownership transformations, inheritance was asking somebody for advice (36.5% of situations). 45,2% of entrepreneurs used the help of a lawyer. Most often such an action was taken in industries not included in in the classification, where lawyer was used in 100% of problems and in logistics, where such services were used in 80% of problems.

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# Prohibited acts and emergencies







## Prohibited acts and emergencies

Legal problems classified in the report as "prohibited acts and emergencies" were most varied. It included both prohibited acts as defined by the Civil Code, offenses under criminal law, and accidents. Entrepreneurs experienced such difficulties relatively rarely compared to the other categories of legal problems - the difficulties of this type accounted for 3.4% of all problems.

Most often **these were crimes against the respondents (40% of cases)**.

Another large category were **issues related to intellectual property**: 9% of difficulties stemmed from infringement of trademark, utility model or patent belonging to the respondent's enterprise, 13% - from violation of other intellectual property rights belonging to the entrepreneur, and 8% from the fact that his/her company was accused of such an infringement. Difficulties related to emergencies and accidents represented 12% of reported events in this category.

The study also recorded isolated cases of difficulties caused by criminal proceedings instigated by the prosecutor's office, the police and courts with participation of employees of the enterprise. In none of the interviews there was an indication that the company had experienced difficulties because it or its employees were charged with committing a criminal act.

Due to the limited size sample, no statistically significant differences in the incidence of problems pertaining to prohibited acts among entrepreneurs operating in various sectors were found. On the other hand, the company's profitability appears to be fair predictor of such difficulties (companies generating profit are about twice as unlikely to get into trouble of this type).

### Rare raw materials importer (I006)

*Occasional destruction of the goods happens, the destruction of entire parcels. We make sure that every parcel coming to Poland is properly foiled, marked "carefully, do not throw" and so on, but random accidents happen anyway. With this you just have to count. [...] We include this in the [costs of] activity, in the cost of transport. Yes, [we are] insured*

### Jeweler (I046)

*China is doing everything right now, but they have little idea what these things are supposed to look like. [...] The Chinese will invest millions in that, and send finished products. With the first 10,000 you make money, but later they begin stealing. They will start producing the same thing in their own way, for themselves [...]. This cannot be bypassed, it makes no sense to fight this, you just have to go further. [...] legal fight makes no sense, because you can't win. At the spot of one entity, even if you battle it, four others will arise. [...] It is better to go further, just invent new things.*

## Prohibited acts and emergencies

The most common reaction (48%) to these problems is unassisted taking action in justice institutions like the police, prosecutor's office or court. Respondents also often made attempts to reach an agreement with the other party (27% of cases) and asked someone for advice or help (21%). **In total, they used legal services in 47% of cases.** Many problems in in this category are considered by entrepreneurs as in fact insoluble. In this context they stressed difficulties related to vindication of intelectual property.

Graphic artist (I033)

*Researcher: Are you not trying to enforce these copyrights in any way? [...]*

*Respondent: If I tried to enforce it, I am immediately scratched out from any form of cooperation with this company, forever. We part.*

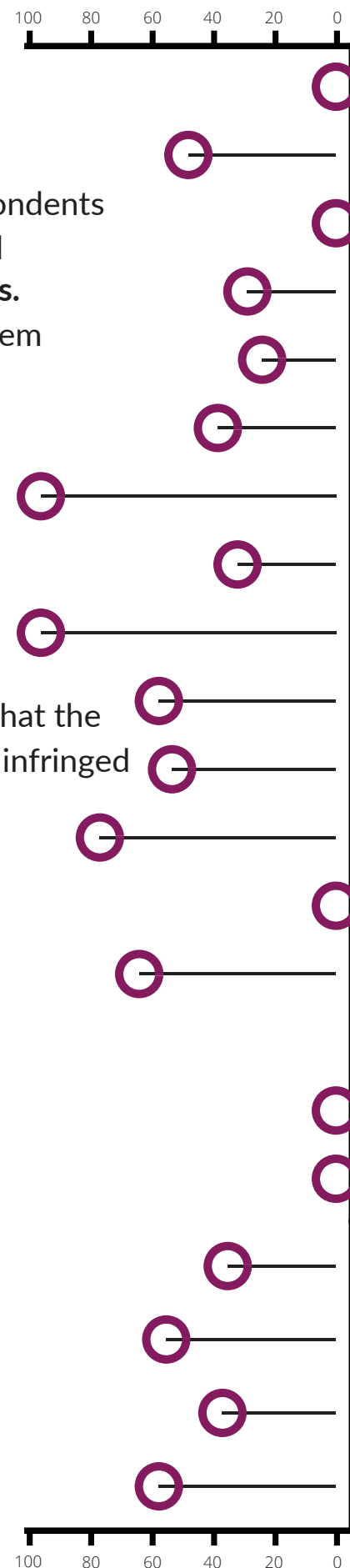
## FREQUENCY OF USING LEGAL ASSISTANCE

### Prohibited acts and emergencies

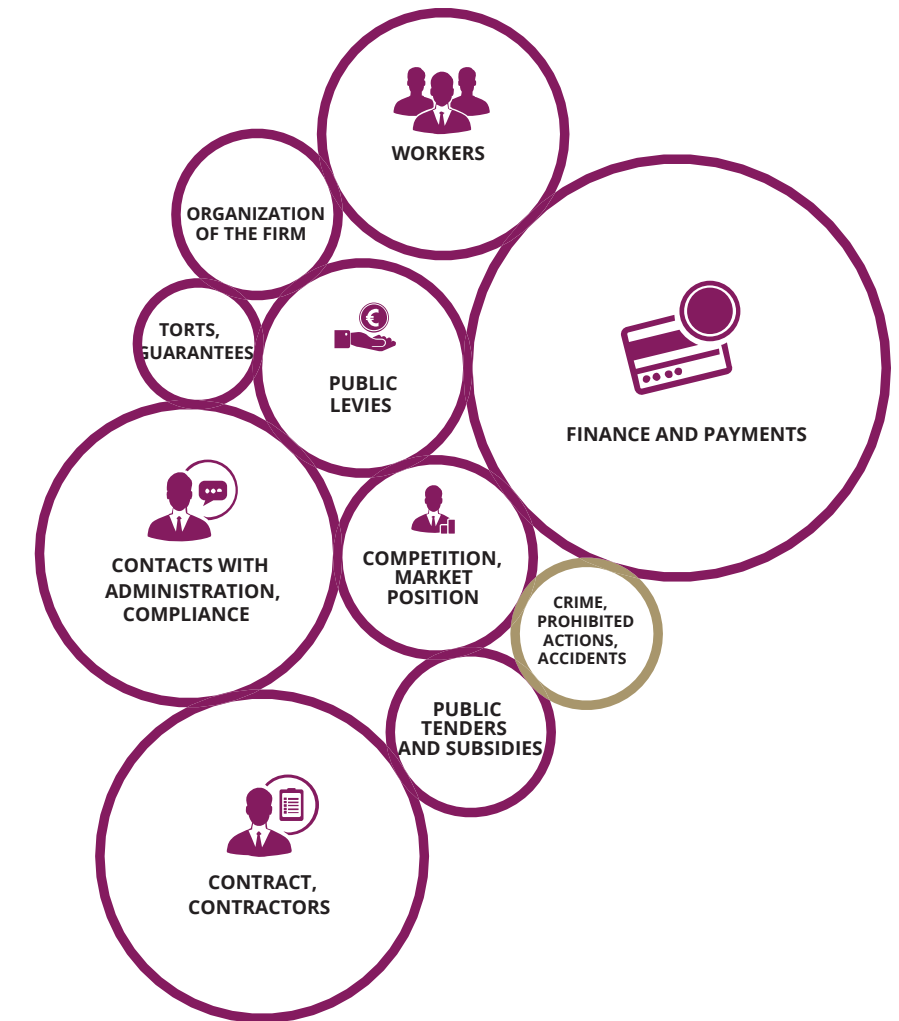
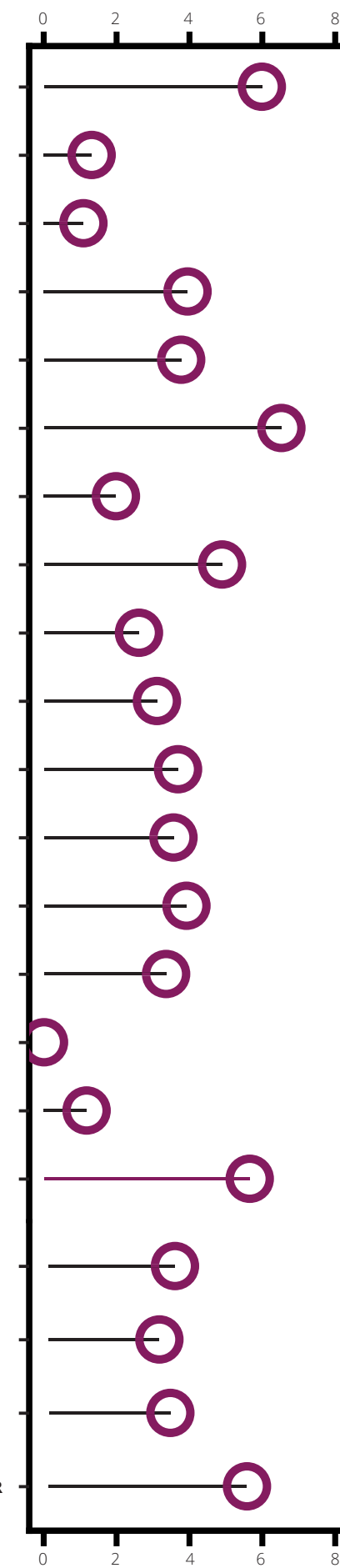
Among justiciable problems indicated by respondents as significant, **3.4% were related to prohibited acts, crimes, violations of copyright, accidents.** Within 3 years prior to the study, such a problem had no less than 1.5% of respondents.

This is approx. **31,000 companies.**

Most often it was associated with the fact that the company was a victim of a crime (39.8% of all such problems) or with the fact, that the copyright belonging to the company has been infringed (13.3% of them).



## FREQUENCY OF JUSTICIABLE PROBLEMS



The most common reaction of entrepreneurs who have experienced a significant legal problem related to criminal acts, offenses, copyright infringements, accidents were unassisted contacts with justice administration (48% of situations). 47% of entrepreneurs used the help of a lawyer. Most often such an action was taken in education, where the help of a lawyer was used in 100% of problems and in services for real estate market, where such services were also used in all problems.



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# Responsibility for business operations





## Responsibility for business operations

The category "responsibility for business operations" included bearing civil and administrative liability for lawful actions taken by the enterprise. Into this category fall **difficulties related to the fact that the company is responsible for its products or services (52% of problems)**, customer complaints about the company's operations (17%) and defective services or products it offers (15%). Another 13% of problems were related to relations with neighbors, and isolated cases in the sample - other matters.

The low number of cases in this category does not allow for comments on frequency of their occurrence by industry. It is plausible, however, that **problems of this type were more common among self-employed persons and micro-entrepreneurs, and less common in medium and larger enterprises**. An interesting finding is that more often such problems were experienced by entrepreneurs who also worked as employees, and those who were previously employed by their contractors.

**Three times more often this type of problem also occurred in entrepreneurs who ran their businesses using several legal entities, organizing activities in such a way that one of them bore the risk associated with the activities of others. It is plausible that this form of managing business difficulties stems from the awareness that the nature of the business may expose it to an increased risk of legal responsibility.**

### Manufacturer of electronic devices (I026)

*We made components [...]. They were introduced in Poland and in Norway at the same time. In Norway we had no complaints, we had 100 in Poland. The same product. [...] In Poland, manuals are not read. [...] even though the manual was half a A4 page, normal print, font 11. It read that before plugging in the second power line you need to wait 2-3 minutes.*

### Pharmacy owner (I038)

*As for the specifics of the pharmacy - we often bear penalties for mistakes that are not our own, but doctors'. A doctor is not responsible for writing the prescription improperly. Eg. when it does not specify the dosage, it is not stamped, when s/he makes a mistake. We had an example - prescription was rejected [by an authority] it was bad luck. In the personal identification number the doctor swapped 9 and 8. Instead of 98, he wrote 89. Bad luck, such a number exists. They verified that it couldn't be this patient. [...] The doctor was wrong and we have a penalty to pay.*



## — Responsibility for business operations

The dominant way of responding to justiciable problems in this category is making unassisted contacts with the other party (this was done in 68% of cases). Second frequent reaction was seeking someone else's advice (30%). **Altogether, legal advice or representation was used to address liability issues in 28% of justiciable problems, and all legal services - in 48% of cases.** The qualitative study also identified other actions feasible for entrepreneurs, such as e.g. introducing complaint forms or using the insurance.

### Manufacturer of electronic devices (I026)

*We introduced complaint forms, because we learned that in Poland especially if someone says something, then s/he says a lot, and if someone writes something, then usually writes little. This method helped us much and significantly reduced the number of complaints [...] On the phone, customers happen to say, "Oh Jesus! Nothing works." But when I send them the complaint form which asks "Have you read the manual?" And you must write "yes / no" and sign [the form], then you start reading this manual and "ahaa!". And I don't get the form anymore.*

### Owner of hair and beauty salons (I008)

*You really have to be careful with everything. Things are becoming so American here [in terms of compensation claims], one can take anything to court easily [...] I mean clients dissatisfied with the procedure [beauty treatment]. I am insured, but now everyone can come and say s/he is unhappy, that someone hurt him/her, that s/he looks bad. I had such cases and, of course, that's what insurance is for.*

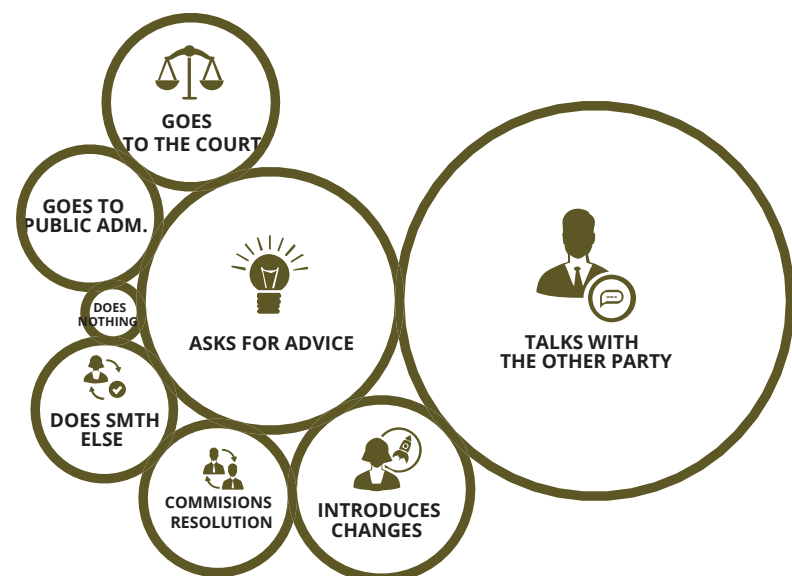


# Responsibility for business operations

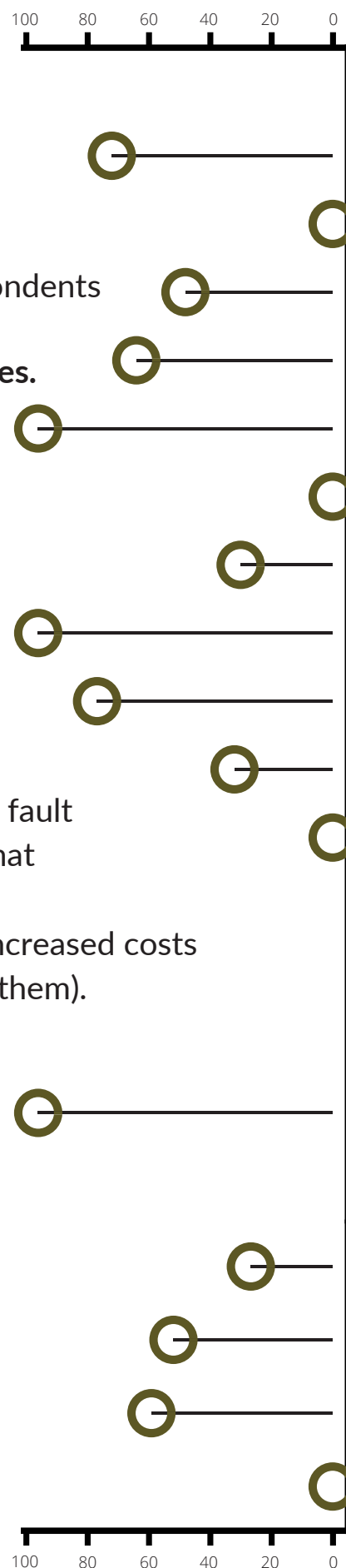
Among justiciable problems indicated by respondents as significant, **2.5% were related to liability for product or service, guarantees or warranties.** Within three years prior to the study, no less than 1.4% of respondents had such a problem.

This is approx. **29,000 companies.**

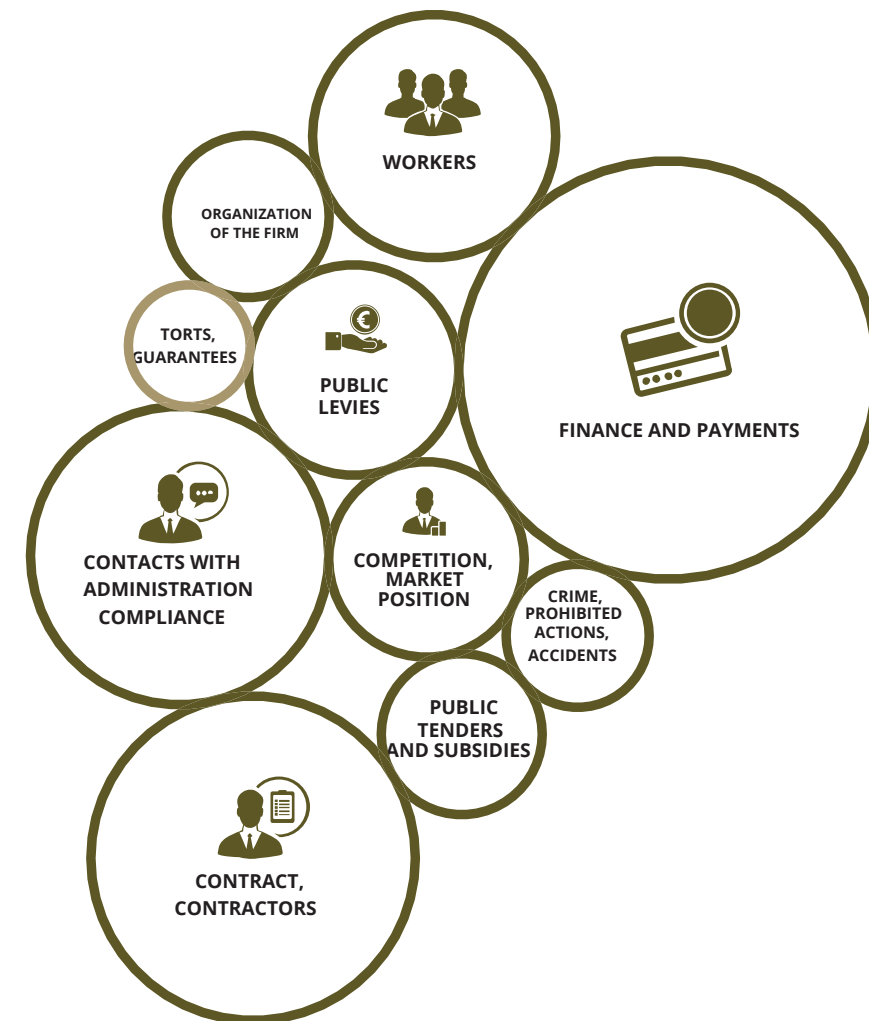
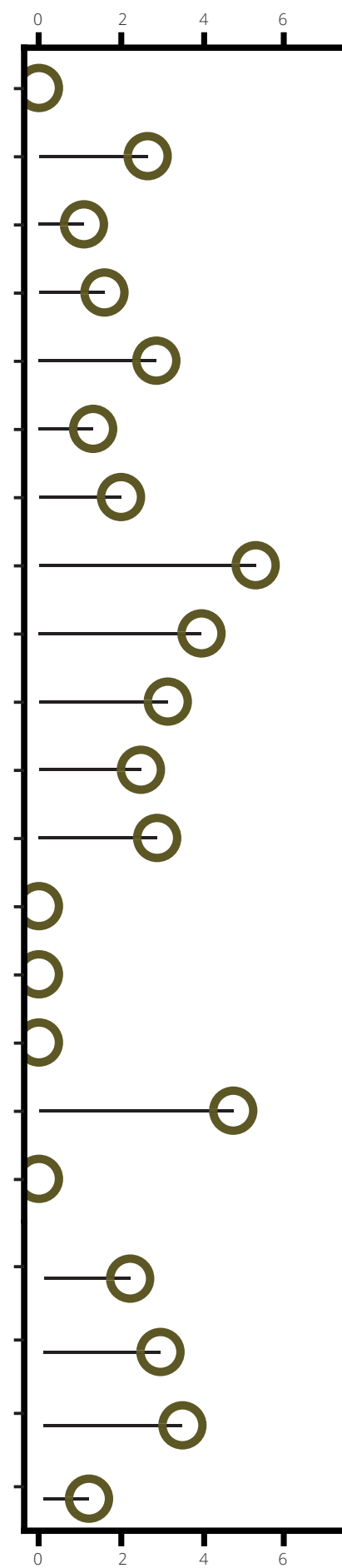
Most often it was related to the fact that the company had to bear responsibility for a product or service, although it was not at fault (52.1% of all such problems) or with the fact that customers brought unreasonable complaints about company's products or services which increased costs or caused organizational difficulties (16.9% of them).



FREQUENCY OF USING LEGAL ASSISTANCE



FREQUENCY OF JUSTICIABLE PROBLEMS



The most common reaction of entrepreneurs who have experienced a significant legal problem related to liability for product or service, guarantees or warranties was contacting the other party (67.6% of situations). **47.9% of entrepreneurs used the help of a lawyer.** Most often such an action was taken in entertainment and culture, where the help of a lawyer was used in 100% of problems and in services for the real estate market, where legal services were also used in all problems.

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# Inactive entrepreneurs







## — Inactive entrepreneurs

In addition to entrepreneurs who actively ran their businesses at the time the survey was carried out, the quantitative survey also covered such owners and managers whose business activities ended within the three years preceding the study. This group of respondents was not representative of all enterprises that have ceased operations, because reaching out to owners of dissolved incorporated companies proved impossible. For that reason the survey was conducted among entrepreneurs who in the past run a business in the form of a sole proprietorship or under a civil law partnership agreement.

This group of respondents differed from active entrepreneurs, both in terms of reported problems (including justiciable problems) and remedial actions taken. Persons who ceased to operate businesses more often than active entrepreneurs had problems with the company's position on the market and with social insurance institutions. While in the first group problems with the market position came to almost 15% of all difficulties, in the latter they constituted less than 9%. On the other hand, problems with social insurance institutions occurred almost four times more often in respondents' former enterprises than among active entrepreneurs (17.5% against 4.7%). This may indicate that problems with paying social insurance contributions are the terminal problem of failing SMEs, which determines the need to liquidate them.

Similar disparities can also be observed with regard to justiciable problems. Respondents whose enterprises ceased operations, had more problems related to taxes (9.5% compared to 5.5%), market position (9.5% compared to 6.5%), contracts (15.5% against 11%). On the other hand, issues related to employees were less frequent (5.5% against 9.5%). An important difference was also the fact that the persons belonging to this group in total indicated fewer legal problems than active entrepreneurs (29.3% compared to 47%).

Reactions to the encountered justiciable problems among inactive entrepreneurs were also distinct. They used legal services significantly less often than the whole surveyed population - only in 11% of legal problems. The most common reaction were private activities and other attempts to solve the problem without assistance. In the latter matter, the behavior of inactive entrepreneurs was not different from the respondents running enterprises at the time of the survey.

Most justiciable problems were experienced by former business owners who operated in the real estate market, in the energy sector as well as in construction. The least problems were reported by entrepreneurs from the health industry and those in manufacturing. Entrepreneurs operating in self-employment conditions reported much more problems than those who had at least one employee. At the same time, they decidedly less frequently used legal services than the owners of former small, medium and large enterprises. This suggests that in a situation of failure in business (which is the dominant reason for the liquidation of enterprises), legal services are not used because this is neither allowed by resources nor rational in the light of achievable outcomes.





## — Inactive entrepreneurs

Low frequency of using legal services and limited sample size did not allow for drawing clear conclusions about the differences in the use of legal services in different industries. In general, however, entrepreneurs who gave up doing business, used legal services almost 30% less often than those whose enterprises were still functional.

## FREQUENCY OF USING LEGAL ASSISTANCE

### Inactive entrepreneurs

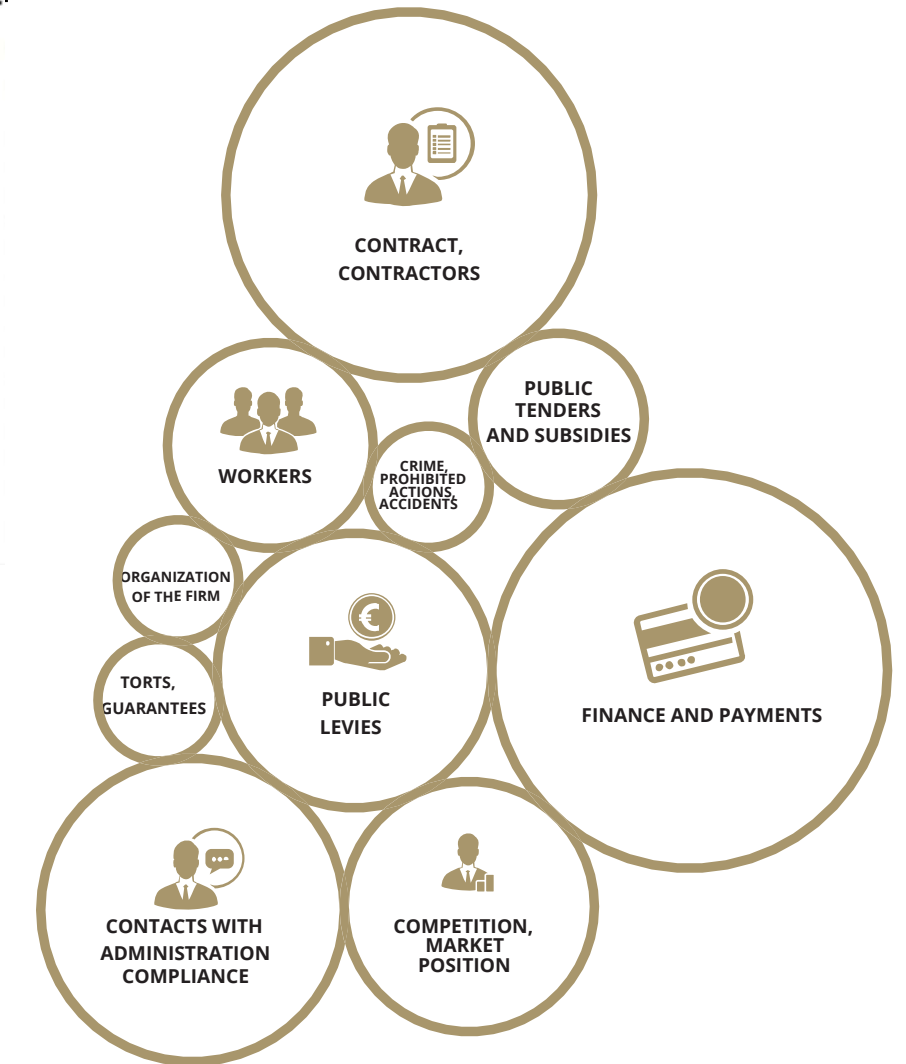
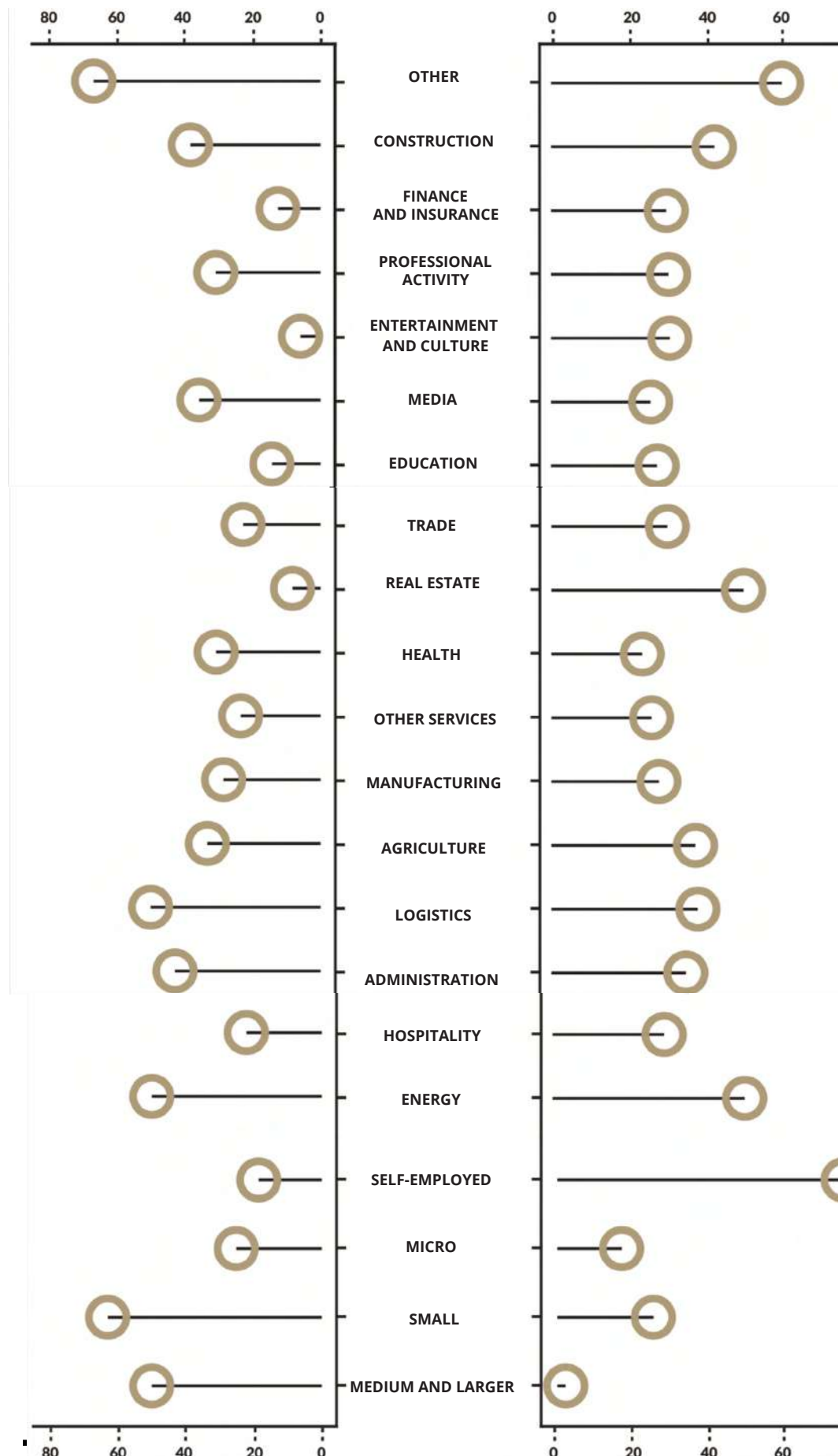
Within 3 years before the study 29.3% of respondents who stopped doing business within the 3 years prior to the study had a justiciable problem.

This is approx. **252,000** companies.

Most often it was related to finance and payments (24.6% of all such problems) or to contracts and contractors (21.1% of them).



## FREQUENCY OF JUSTICIABLE PROBLEMS



The most common reaction of entrepreneurs who have experienced a significant legal problem was to undertake unassisted contacts with the other party (41% of justiciable problems). **24.6% of entrepreneurs used the help of a lawyer.** Most often such an action was taken in industries not included in the classification, where legal assistance was used in 66.7% of problems and in logistics, where such services were used in 50% of problems.

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# Structure of the legal services market





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## Structure of the legal services market

The study examined the structure of the market of legal services for small and medium enterprises. It showed that **the market is dominated by representatives of two professional corporations: legal advisers and advocates**. Their market share can be assessed at 56% and 33%, respectively. Other service providers, in particular advisers not belonging to legal professional associations, play marginal role. However, two reservations should be made to this observation.

First of all, as has already been said, **survey results indicate that accountants enjoy a strong position in providing legal assistance to entrepreneurs experiencing legal problems**. Their services account for 17% of all situations when entrepreneurs turned to someone for help or advice. **The use of accounting services in justicable problems usually is not combined with the use of legal services, but rather is an alternative**. Only in about 6% of situations respondents turned to both lawyers and accountants.

This is related to the second reservation. Data suggests surprisingly strong position of tax advisers on the legal services market. According to the respondents' declarations, they helped entrepreneurs in 14% of cases when they sought legal assistance. Such a percentage may yet be the result of difficulties that the respondents might had to correctly classify service providers. It is possible that the term "tax advisor" was understood by some of respondents as referring to any advisors who gave advice on tax issues, regardless if they were actually representatives of a professional corporation of tax advisors or only informally fulfilled a similar function, for example when providing accounting services.

Apart from accountants, entrepreneurs often use informal assistance of friends and family members. The use of such support did not encourage respondents to seek the help of lawyers. Only in approximately 13% of cases of using a lawyer, respondents also used the advice and help of friends or family members.

The choice between a lawyer and an accountant or acquaintance was to some extent related to the importance of the problem and the nature of the issue. Insofar as accountants were usually asked for help in matters deemed to be the least important and concerning public levies and official matters, such a regularity did not exist in the case of friends. They were asked for help as often in cases rated as significant and not significant. This shows that professional legal assistance is being replaced by accounting services in the simplest cases, while solutions are sought through family and friends for both difficult and easy problems. This may indicate that the available forms of provision of legal services are not adapted to the needs of SMEs and that a significant market gap exists. It is remarkable that **in some market segments one instance of using legal services corresponds to up to four instances in which accounting services are used**.

## — Structure of the legal services market

In qualitative interviews some respondents mentioned that commissioning accounting services to specialized firms may be a form of securing the enterprise against onerous direct contacts with authorities. Officials are less likely to confront competent accountants than business owners knowing that they will have to match their expertise.

The role of friends is also reflected in the fact that respondents most often chose lawyers based on someone's recommendation (35% of instances when lawyer was used). Previous use of legal services in a company or private life is also important (respectively 29% and 18%). In a minority of cases of using legal services information about a particular lawyer was obtained from the Internet or other media. This suggests that **obtaining reliable information about the specialization and quality of services offered by a specific specialist is not easy and that ordinary market mechanisms are not fully functional.**

Most cases where lawyers were used were generated by sector of uncategorized services<sup>[8]</sup> (24% of cases in the market came from this sector), as well as trade, construction and professional services (about 15% each). Matters from the energy industry had the smallest market share, along with cases generated by administration and agriculture sectors (each of them less than 3%). Most problems reported to lawyers concerned finance and payments (20%), contracts (14%), issues related to the company's position on the market (15%) and employees (14%). The smallest share of the market belonged to problems related to the liability for services, crimes and offenses, as well as public tenders and subsidies (each of these types of problems approximately 3%). This confirms the observation that legal assistance is rarely used in problems related to public administration.

Companies employing up to 10 people generate most (52%) cases in the market of legal services for SMEs. Self-employed persons make up about 23% of the market, companies employing 10 to 50 people - about 19%, and medium and larger companies - 6%. Closer analysis, however, reveals that, compared to the number of entities on the market, **the smallest companies use legal services disproportionately rarely. Odds that a self-employed person will use such a service are about five times lower than odds for a company employing 150 people or more.** Considering the fact that self-employed workers reported fewer legal problems than medium companies, odds are three times lower.

Having decided to use the help of a lawyer, small and medium entrepreneurs use single, small or medium-sized Polish law firms. Less than 10% of respondents used the services of a law firm, which they described as a large Polish or international firm. Although relatively many respondents used legal services at a distance (via e-mail or on the telephone), these services were unlikely to be unbundled services, where lawyers only provide part of service needed to solve the problem and the rest is performed by the client.

## — Structure of the legal services market

Normally (in 77% of the situations) only one lawyer was used. In 14% of cases there were two lawyers, in about 6% of cases - three. Four or more - in about 2% of situations. Most often (36% of situations) as the reason for using services of another lawyer respondents indicated their willingness to verify whether the solution proposed by the original specialist was correct. Further reasons included: the high level of complexity of the problem (19%) and a mistake made by the lawyer who previously had advice in the past (13%).

60% of respondents who didn't use legal services indicate that they were not convinced that a lawyer could be useful. In addition, the answers to this question support the observation that accounting firms play important role in resolving justiciable problems.

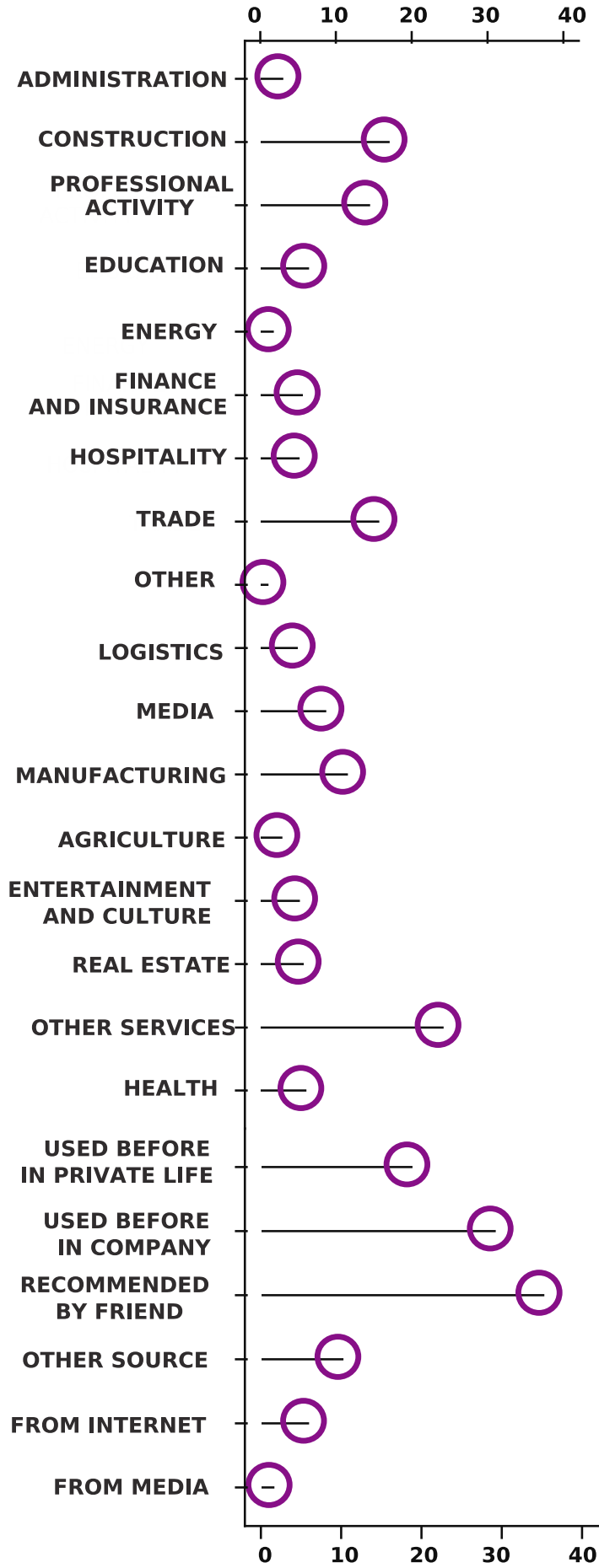
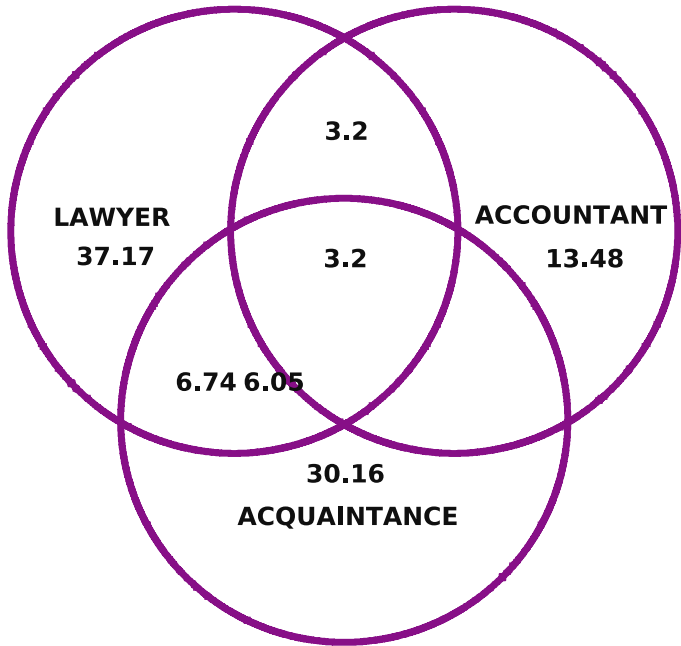
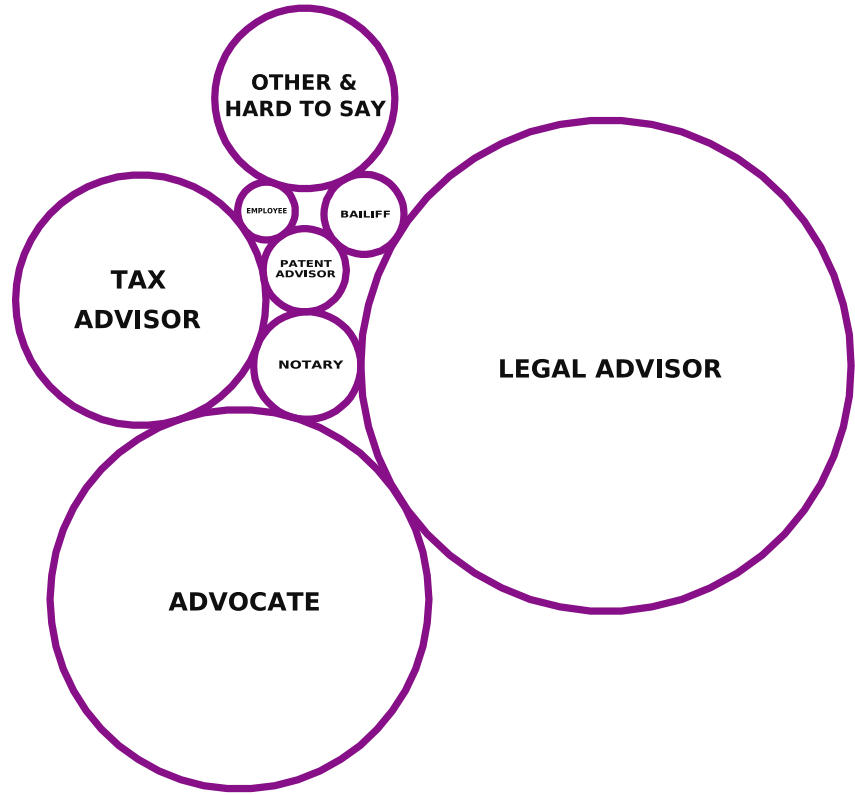
**In 27% of cases (which is just slightly less than the number of cases reported to lawyers), the respondents did not use legal services despite having a legal problem because their company stayed in touch with an accountant or accounting firm** and that satisfied their legal needs. Financial barriers, as well as those related to insufficient knowledge of places where lawyers' help can be obtained were indicated as the reason for not using legal assistance relatively rarely (respectively 18% and 4% of justiciable problems in which legal help was not used).

The most popular legal services were drafting of documents and giving advice. These types of service were used respectively by 68% and 56% of entrepreneurs who turned to lawyers. On the other hand, worth notice is rare usage of representation in proceedings pending before the public authorities. Out of respondents who used legal services, only 10% took advantage of legal representation before an administrative body. This translates into 12% of administrative matters and 2% of all cases involving entrepreneurs included in the survey.



LEGAL ASSISTANCE: MARKET SHARE BY INDUSTRY AND INTAKE PATH

Structure of the legal services market



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# Service evaluation



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## Service evaluation

### If the respondents used legal services, they evaluated them positively.

The distribution of answers to questions about the price that had to be paid for the service indicates that for SMEs who have used such services, legal services are relatively affordable. On a scale of 0-10 (where 0 meant a free service, and 10 - very expensive service), the incurred costs of lawyers' fees were estimated at 4.6 (median 5). The evaluation of quality of legal services is also decisively positive (average 3.3 on a scale of -5 to +5), as is lawyer's availability (3.2 on the same scale), and his/her ability to achieve desired outcome (2.9). This goes well with the high evaluation of probability, made by respondents, that they would recommend to a friend a lawyer whose services they had used (average evaluation 3.5).

However, these assessments were formulated in the context of specific cases and partly contradict the results obtained in the entire population of surveyed entrepreneurs. All respondents, both those using and those not using legal services and experiencing and not experiencing legal problems, were asked to express their views on the costs and quality of such services *in abstracto*, detached from specific situations. Respondents were in agreement that legal services are expensive (over 60% of respondents assessed expected cost of such a service at "3" or more on a scale of -5 to +5). At the same time, only slightly more than 10% of study participants agreed with the statement that legal services provided in Poland are of low quality.

Interestingly, the fact that legal services were used in a particular case does not change the general belief in high costs of legal services (Pearson's correlation coefficient = 0.02), and the assessment of the cost of services in a particular case is only fairly weakly and positively correlated with assessment of costs as such (Pearson correlation coefficient = 0.25). **That means that a belief that prices of legal services are high does not change significantly under the influence of positive experience with such services.** While respondents may evaluate services they used as fairly affordable, they are still convinced that, as a rule, such services are expensive.

**This observation provides another argument in favor of the claim that providers of legal services targeted at small and medium-sized entrepreneurs should to a greater extent use marketing and public communication tools to influence the target group's beliefs on the availability of legal services.**



## — Service evaluation

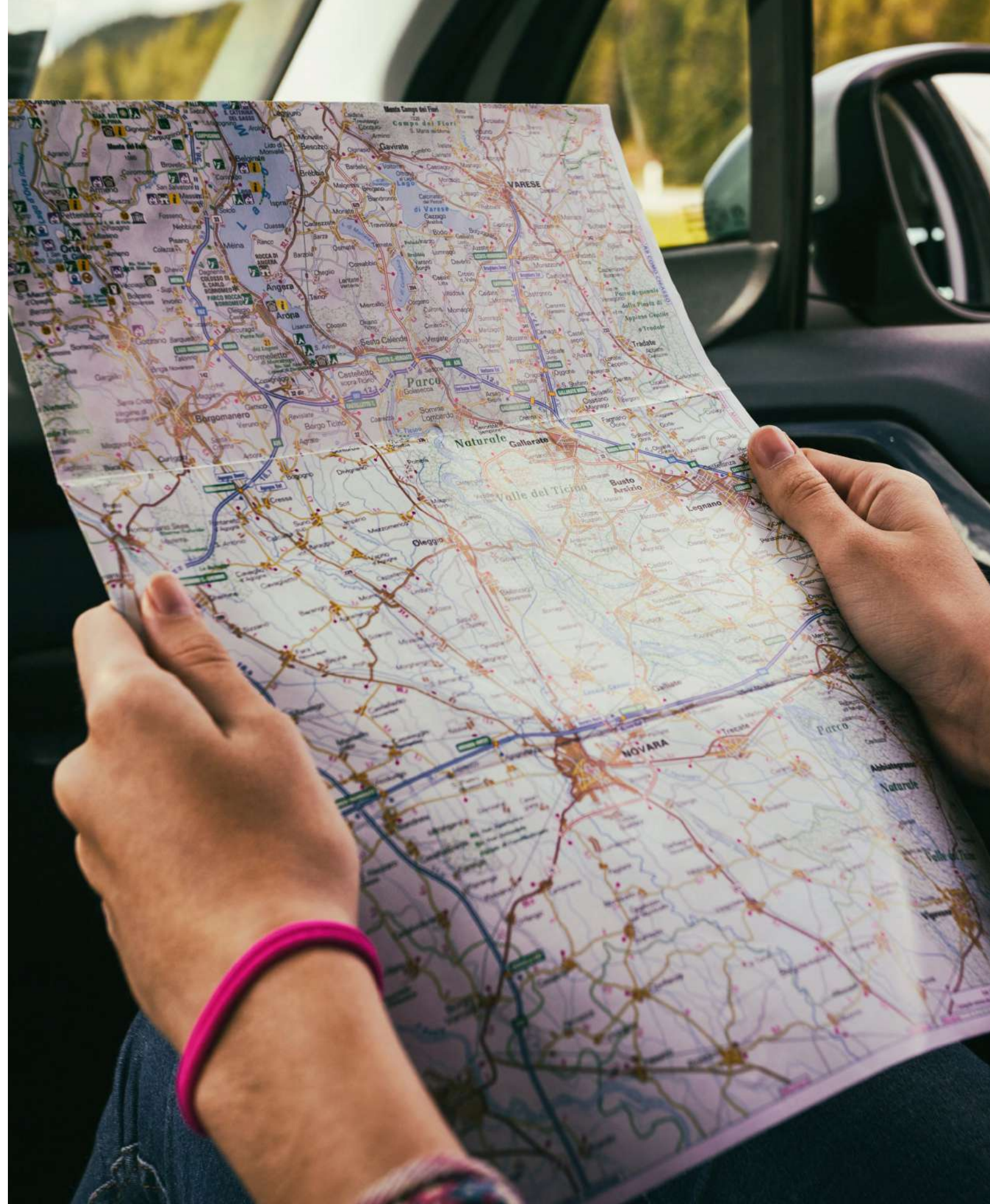
However, regardless of the opinions expressed by the respondents, **the assessment of the practical implications of using legal services based on data obtained in the study is not favorable.** Expenditure necessary to cope with a legal problem in situations where a lawyer was involved and when he was not, is very similar.

For that reason, one can not conclude that using legal services relieves the respondents of having to work or saves them other costs.

Comparison of cases in which legal services were used and those in which this didn't happen leads to the conclusion that labor required to solve the problem was assessed in both groups as significant, but higher in these cases, where legal services were used than in those where they were not used (the average rating on a scale of 0 to 10 was 7.2 and 6.1, respectively). A similar conclusion applies to the financial costs of handling cases (average scores on the same scale of 5.5 and 4.0, respectively) and estimations of expenditures other than financial and own work (4.8 and 3). In addition, an assessment of whether the resolution of a problem was beneficial or not does not depend on whether or not legal services had been used in the case. These conclusions are not changed if the analysis takes into account the respondent's assessment of the significance of the case (spendings did not differ regardless of presence of a lawyer, and whether the case was relevant to the respondent or not).

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# Conclusions





## Conclusions

The empirical results presented in the report give reasons to be moderately **concerned about the state of Polish small and medium enterprises, the functioning of the legal system and the market of legal services. Businesses are experiencing large number of serious legal problems.** Although they rarely remain passive, they usually try to deal with such problems unassisted: without the help of professional lawyers and without appeal to legal institutions. Such actions are sometimes effective, but often ignoring the legal aspects of difficulties leads to further problems. In particular, it is puzzling that in small business using legal services in order to deal with legal problems is only slightly more frequent than in private life. Entrepreneurs are responsible for their actions before many entities and are forced by regulations and the administrative business environment to systematically organize their activities in a formal way. Still, with many types of recurring problems, respondents **chose extralegal adjustment strategies or applied informal solutions**, such as attempting to negotiate with or put pressure on the other party (nothing in the findings indicates that illegal or corrupt activities are being undertaken). The scope of application of formal instruments is very much limited. This also applies to alternative dispute resolution methods, like mediation or arbitration, which in fact play no role in business practice of small and medium-sized enterprises.

The informal and reactive nature of dealing with problems is well illustrated by two types of common justiciable problems described in in-depth interviews.

The first is recurring payment problems that entrepreneurs are trying to deal with by ineffective reminders or expensive individual adaptation strategies, such as revolving loans or using owner's private funds to support business' liquidity. The second typical situation are issues with arbitrary public administration. Entrepreneurs often react to that by withdrawing from the intended ventures or by passively accepting officials' decisions.

Owner of a temporary employment agency (I019)

*If any of the clients is in default, then I must know that. If s/he is delayed and I'm not sure, for example, that the payment will be made next day, I need to secure some funds for possible paying off liabilities that are due in those days.*

Owner of a renovation and construction enterprise (I005)

*[When someone does not pay] if this is the a small amount, one will manage somehow, one will survive it. But if it's a large amount, that's a problem. You have to take a loan. I recently had such a situation that someone did not pay me more than 100 thousand, and I had to take a loan - a regular bank loan of 100 thousand - to cover this loss. Eventually they started paying and I am paying it back, but there are bank costs, interest...*

Business advisor (I071)

*The problem is that most entrepreneurs shoot themselves in the knee at the outset. They go to a meeting with an official without a legal advisor, they say nonsense, do not read small print, sign without reading, they just take the attitude of "gosh, he's a clerk, o Jesus, red stamp" and so on. This is the problem. The more you stay silent, the better, figuratively speaking. Officials use it passionately and tell you many silly things because the taxpayer is stupid and will pay, and if not, then we will charge that to his account.*



## — Conclusions

Low propensity to use the law in Polish society, demonstrated also in other studies<sup>[9]</sup>, traditionally found two explanations: economic circumstances and limited legal awareness or poor legal culture<sup>[10]</sup>. Our study shows that **financial standing of enterprises, respondents' knowledge and attitudes regarding law and lawyers do not affect the use of legal services**. It is not so that using the law is hampered by ignorance or prejudice.

There are, however, two exceptions. First, specific barriers of access to law are faced by self-employed and micro-entrepreneurs having low revenues whose patterns of using the law are very similar to those of natural persons. Problems experienced by such entrepreneurs are often a mix of private life problems and business problems (e.g. marriage conflicts affect the economic situation of an enterprise run by a spouse). Consequently, such persons often solve problems in business using private resources and private problems - by treating their enterprises as an extension of private life. Particularly conducive to that is forced self-employment resulting from difficulties in finding conventional employment or the necessity of running business operations in cooperation with the entity in which one had previously worked.

The interpenetration of private sphere and business sphere as well as the common incongruence between legal form of the smallest businesses and their real economic meaning, should be reflected by increased possibilities of using the legal infrastructure available to natural persons. **Specifically, access to free legal assistance in the existing system of free legal aid should also be provided to self-employed persons and micro-entrepreneurs having low revenues** (determining eligibility criteria requires an in-depth analysis).

## Conclusions

Such a policy will not adversely affect the paid legal services market, but rather in the long run will contribute to popularity of paid legal services. Currently self-employed persons and micro-entrepreneurs rarely decide to use lawyers to solve minor justiciable problems anyway. Granting them eligibility to use free legal advice could thus stimulate using paid legal assistance.

Doing so would be beneficial for entrepreneurs, because it would give them an additional tool to organize their businesses but would also serve implementation of the ideals of the rule of law and rationality of collective life in Poland. This is also supported by the finding that the use of a lawyer by one party strongly affects the propensity to use legal services of the other party. For that reason free legal assistance could work as catalyst helping overcome socially and economically unfavorable segmentation of the legal services market, where in some types of problems legal assistance is not used at all.

The second important exception is that respondents believe that their access to legal information is limited. This applies in particular to the availability of model documents and templates (forms, contract templates, summons etc.), and compliance information, especially regarding changes in regulations and technical standards used in manufacturing and some services. Entrepreneurs obtain such information in a non-systematic way - from internet, friends, media, accountants. In rare cases, they use expensive commercial solutions.

This is illustrated by qualitative findings. The moment of the study coincided with the entry into force of the general regulation on data protection (GDPR) and provisions on a uniform control file in VAT payments. Entrepreneurs had to confront much information noise about their new responsibilities, generated by companies intending to do business on training services, and the representatives of administration failing to clearly communicate policy objectives (e.g. suggesting that the penalties for violation of new provisions will not be imposed on entrepreneurs).

### Online store owner (I054)

*I also watched the meeting of the minister of digitization [about GDPR]. And he was explaining, in such a cool way, that there is such a big buzz now about that threat of these penalties, and so on. But in fact, if things go astray, some mistake is made, something happens, it's not like that the entrepreneur gets a penalty right away. Right? And he just explained this [...] that this is a big buzz, but there is no reason to get so nervous.*

## — Conclusions

In connection to this, **better integration and better coordination of existing channels of legal information is needed so that a coherent system is created. To this end IT tools and best standards in methods of legal information communication should be used.** Whilst we recognize the activities of public administration in this area (e.g. expert system on biznes.gov.pl or forms on websites of ministries), we believe they should be improved and intensified. In particular, current solutions seem to be overly oriented at streamlining administration (by clients providing it with better quality applications and forms), and not necessarily at facilitating the functioning of entrepreneurs.

On the other hand, research indicates that good financial standing, awareness of the legal aspects of one's problems, legalism, and positive attitudes towards lawyers do not play a fundamental role in decisions to make use of the law. This leads to the observation that the phenomenon of low use of legal services for solving business problems **stems not from low demand for legal services, but from supply characteristics. This, in turn, substantiates the main conclusion of the report, that the existing legal services market is not adapted to the needs of entrepreneurs.** Maladjustment is primarily the result of lack of profiled, specialized and accessible services meeting the needs of SMEs.

In our opinion, the main ailment of the Polish legal services market is the dominant service delivery model. It is well described by the phrase "comprehensive legal service", sometimes used as a marketing slogan to stress all-round competence of the service provider, but also describing the method of service delivery. **Polish market of legal services for SMEs is dominated by comprehensive services - aimed at holistic solving of the problem by a lawyer.** Respondents find this traditional model of legal services disadvantageous



## Conclusions

First, even if financial considerations are not a barrier to using law, comprehensive service leads to significant increase in costs. Often this cancels economic reasons for using such services. **Oftentimes entrepreneurs only expect support, advice or orientation rather than being substituted in the process of solving the problem.**

Qualitative findings indicate that repondets appreciate unbundled services i.e. services where lawyers only provide only part of the service needed to resolve the problem and clients deal with the remaining part on their own.

A good example is drafting of a general contract template for a specific company or providing limited legal advice on how to act in a specific situation.

Popularity of accounting and tax webportals providing information on tax changes, entry into force of new regulations, and advice on business optimalization, also testifies of market potential of unbundled services.

Secondly, the comprehensive service delivery model is based on taking over the process of solving a problem by the lawyer. Interviews indicate that entrepreneurs believe, that **focusing solely on legal aspects of the problem and ignoring the economic dimension is unfavorable.** Lawyers often suggest safer solutions from a compliance point of view but not necessarily optimal when considering the possible economic risks and costs. On top of that, taking over the process of solving a problem may can trigger the perception **that lawyers do not understand the needs of the entrepreneur** because for him/her law is but an element of the problem. In many interviews a view was expressed that lawyers tend to "juridize" problems by ignoring their multidimensionality.

An additional issue are channels of access to legal services. Findings suggest that SMEs use lawyers based rather on previous experience, than comprehensive market enquiries. Whilst legal services are well rated by these entrepreneurs who have used them, the study also indicates that in many situations they don't use legal services because they do not think they can obtain in the market a service that strictly (in terms of service scope, quality and price) meets their needs.

Owner of a company designing websites (I042)

*We commissioned [the lawyer] to write such a draft contract and we continue to use it. And also on a regular basis we consult. But these are very informal consultations. We do not have permanent legal service that would draft a motion for us - there has never been such a need. Several times we had to enforce payments, but we were able to do it at our own. Only limited support of a lawyer, such that we told him: "ok, we have a problem with this customer and in case something happens, I would like you to know that and be prepared to react".*

Owner of a small network of medical clinics (I029)

*When the company is separated out, a schedule of asset division needs to be published. So like 6 weeks in advance this must be published somewhere, and there are two options. Either Court and Economic Monitor or company website. The law firm very much insisted on publishing it in the Monitor, and as we calculated with the counselor, it would come to more than 30 thousand for publishing it, so we had the choice: 30 some thousand just because they have such idea, because theoretically this is safe and [publishing it] on the website, which complies with regulations and costs zero - the choice is clear, right? [...] if I trusted only this law firm, I would probably end up paying, right? And because I collaborated with this counselor of mine and we verified, among other things, such issues, this cost has been avoided. While running a business I am unable to know everything, and especially about operations that I'm unlikely to conduct again in my life.*

## Conclusions

Thirdly, the comprehensive nature of legal services often coincides with limited specialization. **Entrepreneurs observe that law firms specializing in narrow issues of specific industries are virtually non-existent in the market.**

Fourthly, **the misalignment between legal services market and the needs of SMEs fuels development of alternative methods of dealing with justiciable problems.**

An example is that businesses cope with delayed payments not by using legal assistance but by taking loans to improve liquidity. Accounting services also play a role here, as they sometimes become competition for legal services.

Qualitative research suggests even that in minor issues **crowding out legal services by accounting services takes place.** It is more likely that an entrepreneur experiencing problems with tax audit, social insurance institutions, and compliance meets an accountant than a lawyer.

The popularity of accountants in solving problems at the borderline of accounting and legal issues can be associated with greater flexibility and diversity of their services. Accounting firms are capable of operating in a very limited scope, e.g. make simple notifications to social insurance institutions and the tax office, where all contact is by phone or email. Yet some accounting firms provide full accounting and legal services including drafting of contracts, accept responsibility for negative effects of the official audits, participate in the creation of business strategies, facilitate searching for funding and even take over the compliance risks. Qualitative research revealed some surprising cases where accountants took part in complex administrative proceedings or urged respondents to start them by advising "from behind the scenes" while the respondents did not even consider using legal services.

### English language tutor (I018)

*The lawyer knows the issue from a legal perspective, because he learned about it while studying, he did it while preparing for the profession. However, a question remains whether he has experience in running a business. Most often, he doesn't. Unfortunately, the clash of perspectives of a businessperson and a lawyer, where we have real life experience here, and we have an interpretation of the law there, very often it is difficult to find something in between. [...] And while the lawyer is able to deal with the issue from the legal perspective, as far as his life experience is concerned, what it all looks like in reality, very often is for him way beyond comprehension.*

### Architectural firm manager (I056)

*We use the services of a lawyer and we have spent a lot of time trying to find a lawyer who has a clue about the investment process, architectural design, who had represented construction companies, worked in the field of preparation of tenders on the investors side and also works for companies like us, architectural firms, whose job is to carry the process through.*

## — Conclusions

Of course, lawyers face many ethical, formal and practical restrictions of structuring their services in a similar way (e.g. related to the ban on advertising). However, it is puzzling that many respondents who had **recurring legal problems and were ready to pay for legal assistance couldn't find the right services in the market**. Since the value of goods and services strongly depends on legal matters (e.g. in relation to real estate, financial instruments, products saturated with intellectual property, consulting based on contacts with administration), more active offering to potential clients legal services better suited to their expectations is desirable. This is linked to the central recommendation of the report, which calls for a change in thinking about the legal services market. Lawyers should stop looking at their services as reactive to the needs of their clients. **Legal services will only appeal to customers when they are proactively modified, adapted and tested on the market**. For this to be achieved, a new cycle of service development must be implemented.

In this light, an observation common in public discourse that barriers to the use of law are largely economic and stem from limited legal awareness appears to be false. As our study and other studies demonstrate<sup>[11]</sup>, this is empirically unfounded. Two perspectives on improving access to justice are associated with this. The first is that the law in Poland largely serves the rich because the barriers to using the law are predominantly economic. The solution would therefore be to reduce the cost of legal services or providing free services. The second perspective emphasizes low legal awareness and cultural issues.

In it, not using the law to resolve business problems results from insufficient knowledge and irrational aversion to do so, and advised solution consists in educating the public about legal issues.



## — Conclusions

Both these perspectives relate to the demand side of legal services, attributing barriers of access to clients of legal services. In doing so they ignore the supply side - activity and characteristics of service providers on the legal services market, quality of the legal information system and the functioning of legal institutions. In contrast to this, our study finds that none of these lives up to social and market needs. Consequently, both recommendations are counterproductive, leading to strenuous attempts to influence customers at the expense of reforms on the supply side.

Whilst it is desirable that small and medium entrepreneurs and other citizens are wealthy and well educated, in reality both income and knowledge about law are unequally distributed in society. For this reason, stressing **economic and mental barriers of access to justice instead of promoting reforms in service and institutions plays an ideological rather than a practical role**. It serves as a distraction and results in the privatization of public problems of a deeply structural character.

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# Recommendations



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# Recommendations

Based on the findings, we recommend the following actions to improve access to justice among Polish small and medium entrepreneurs.

## I. In the scope of activity of public authorities

### 1. **Providing access to free legal assistance for self-employed persons and micro-entrepreneurs achieving low revenues.**

Free legal assistance will provide the most legally excluded entrepreneurs with more effective tools to cope with legal problems. In the long run, it will help also expand the market for paid legal services.

Currently, pursuant to the Act of 5 August 2015 on free legal aid, free citizens' advice and public legal education eligible for receiving such assistance in Poland are persons who declare that they are not able to cover the costs of paid legal services. However, cases related to running a business are not eligible. This limitation should be repealed, replaced with the caps of income and employment so that eligibility is limited to self-employed persons and micro-enterprises (employing up to 10 people) whose revenues are limited.

At present neither the legal services market nor public institutions provide the entrepreneurs with sufficient support in solving the simplest cases. Granting free legal assistance to selected groups of small entrepreneurs will reduce access barriers resulting from the structural unprofitability of legal services in small matters.

Services should include legal advice and mediation. In the event of further reform of the free legal aid system so that it includes free representation before public administration bodies and courts (or introduction of co-payment schemes), also self-employed persons and micro-entrepreneurs should be eligible<sup>[12]</sup>.

The Ministry of Justice in cooperation with the Ministry of Entrepreneurship and Technology should be tasked with extending access to free legal assistance.



### 2. **Creating a public system of legal information for entrepreneurs.**

IT tools, hotlines and internet portals are popular tools for obtaining information about law, increasing the ability of entrepreneurs to solve justiciable problems on their own. Also in Poland they are widely used by entrepreneurs, but the commercial services may be expensive, and information available free of charge is often incomplete. Due to the limited availability of legal services in simple matters, the ineffectiveness of public services and the popularity of unassisted attempts at resolving one's problems, a public system of legal information should be created, focused on the needs of small and medium entrepreneurs.

Such a system should provide information about the content of applicable law, and above all, should allow to determine how to solve common justiciable problems. It should also provide the necessary forms, model letters and information on how to find help in non-standard problems. On top of that it should deliver information on compliance obligations in specific industries and for companies operating in a specific legal form, with the option of sending prompts and updates.

Currently, similar information is available on websites of some ministries and government agencies (e.g. [biznes.gov.pl](https://biznes.gov.pl), websites of the Ministry of Finance or social insurance institutions). However, these information channels are neither integrated nor consistent in informing about compliance duties in specific sectors. It is also unclear whether the new solutions are tested for usability in terms of interface convenience and information presentation (UX) as well as the efficiency of providing information to users. Such initiatives should be assessed for the needs of SMEs and the effects of problem solving, and not for efficiency of public administration or its convenience.

Our findings suggest that the availability of information systems to be used by unassisted entrepreneurs does not reduce, but increases the usage of paid legal advice. Being well-informed, entrepreneurs are more aware of the legal aspects of their businesses, which motivates them to use legal services.

Estimating the demand for legal information and designing the functionality of the legal information system should be a task of a public administration body that does not exercise power over entrepreneurs, for example the Ombudsman for Small and Medium-sized Enterprises or the Polish Agency for Enterprise Development, in cooperation with stakeholders. The implementation, updating and maintenance of the system should be a joint task of the Ministry of Justice and the Ministry of Entrepreneurship and Technology. Ensuring adequacy of the information provided should consist of the participation of citizens and the use of academic knowledge.

### **3. Supporting the diversity of legal services and products as well as providing institutional support for unbundled and outreach legal services**

Due to the fact that entrepreneurs experience different barriers in access to justice depending on the situation and properties of the company, the primary goal of public policies in the field should be to maximize the diversity of channels through which such access is provided. This increases the chances that an SME experiencing a legal problem uses free legal services or refers to legal institutions, and eventually solves his/her problem. Public policies should therefore not be targeted at centralization of providing legal assistance, but at its maximum decentralization. An example is institutional support for unbundled services (e.g. through support for services providing model letters and forms), and outreach services (providing legal assistance outside the office). Such activities could take the form of providing specialized legal assistance in places where SMEs experience the most problems, and where they turn for help. For example, free legal assistance office could be placed in the tax office, city hall, or local branch of social insurance institution. The support for unbundled and outreach legal services should be provided by the Ministry of Justice in cooperation with the Polish Agency for Enterprise Development, local government units and lawyers' professional governments.

### **4. Promoting out-of-court mediation and mediation in the opt-out procedure**

Compared to court proceedings, mediation can be a cheap, fast and effective instrument for resolving conflicts, allowing one to keep the case private. Given the propensity of Polish entrepreneurs to solve their justiciable problems informally it should also be widely used. Yet, despite the legal possibilities, mediation is utilised only rarely, calling for fresh measures to promote it. Currently, mediation takes place on the basis of a contract concluded by the parties or a court order, which makes using it in a consensual mode difficult.

In this regard, we postulate two solutions. The first is to introduce mediation as the default form of dispute resolution in some categories of business cases - e.g. conflicts between partners of a company, cases concerning infringement of intellectual property, unfair competition and improper performance of obligations between entrepreneurs. Mediation would be used automatically in civil proceedings as part of the procedure, but each of the parties could opt-out at any time.

## Recommendations

The second solution concerns the promotion of out-of-court mediation. For this to be possible, the parties must be aware of such possibility even before the start of court procedure. For this reason all attempts at promoting mediation in the place or time where parties meet while being already antagonized (for example in court) are doomed to be ineffective. Instead, mediation should be promoted in cooperation with providers of other services for SMEs, in particular accounting firms. This will allow reaching the parties of conflict before they take formal action which usually forces them to assume rigid positions and undermines trust necessary for an effective mediation attempt. Trusted service providers who actively help entrepreneurs when they encounter legal problems, may act as opinion leaders.

Information on the need and expediency of mediation should also be more widely distributed by lawyers providing services to entrepreneurs.

The task of designing appropriate amendments to the Code of Civil Procedure should be undertaken by the Ministry of Justice in cooperation with the relevant codification committee. Professional associations of mediators and lawyers should be tasked with promotion of mediation in cooperation with providers of other services for SMEs, preferably using public funds.

### 5. **Creating conditions for the development of the legal protection insurance market**

Legal protection insurance is an instrument that allows for reduction of costs of necessary legal assistance by distributing such risk in a wider group of entities. It is widely used in some European countries and provides access to legal infrastructure also to less affluent entrepreneurs, thus contributing to equalization of opportunities and increased efficiency of justice.

In Poland, the market for legal protection insurance is limited, as evidenced by the fact that the issue was never mentioned by participants in qualitative study. Development of market for such insurance is possible when appropriate scale of the insurance market is reached. This requires creating conditions under which sales of such insurance generate profits. For this to happen, legal services must be regulated in such a way that costs of proceedings are predictable for insurance companies. This may require the reform in court fees and litigation costs, and certainly involves conducting analytical work outside the scope of this report. A partial solution may also be introducing compulsory legal costs insurance in some in some areas of business activity. This may especially apply to those industries in which the survey identified above-average occurrence of justiciable problems. Mandatory insurance should yet only be introduced when the former condition is met.

Analytical work and possible reform of court fees and litigation costs should be carried out by the Ministry of Justice in dialogue with stakeholders.



### **6. Reviewing of the civil procedure and consideration of new solutions to accelerate and simplify court proceedings in which SMEs participate**

Numerous problems of small and medium-sized enterprises remain unsolved due to ineffectiveness of justice system making the use of law uneconomic. An example are common problems with payments. Findings indicate that within three years prior to the study over half a million enterprises have experienced a justiciable problem related to prolonged payments. The scale of the phenomenon justifies special solutions (e.g. procedures simpler even than current proceedings by writ of payment, introduction of special courts for minor business cases and changes in the proceedings by writ of payment), Yet other solutions could use existing IT infrastructure, e.g. developed for the purposes of a uniform control file in VAT payments and accounting.

In addition to that, litigation costs should be reformed so that hitherto flat-rate fee for the entire proceedings is replaced by payments for individual acts of an attorney. Such regulations of litigation costs are known in other jurisdictions resulting in an obligation to reimburse the expenses of the other party in the amount closer to the actual expenditure. At the same time, the prospect of paying fees for each attorney's act prompts the parties to be concise in formulating their positions before the court.

Analytical work and possible changes should be carried out by the Ministry of Justice in dialogue with stakeholders and participation of the relevant codification committee, grouping recognized experts in the field of procedural law and specialists in social sciences, in particular economics and sociology of law. Additional research, especially field research should also be carried out. The economic effects of regulation should be calculated in microeconomic terms (profitability of using legal institutions for SMEs).

### **7. Reviewing of model documents and official forms to verify the expediency of collecting information from SMEs and to improve linguistic accessibility.**

Economic activity requires that entrepreneurs submit numerous reports to public authorities to document their activities. Doing this is troublesome and takes a lot of time. A general audit of forms and documents used for this purpose should be carried out. It should take into account the readability of documents and suggest improvements to their graphic form. It must also include an in-depth analysis of whether the collected information is needed at all. Reports should definitely be delivered using IT tools. Information already available from public sources should not be collected.

These tasks should be carried out by the Ministry of Entrepreneurship and Technology in cooperation with public administration bodies, responsible for the form and content of such documents. Expert knowledge in linguistics, social sciences and graphic design should be used.

### **8. Intensification of actions aimed at systemic resolution of sector, industry or repetitive problems**

This postulate is of a general nature and will be further developed in our planned report on compliance issues. We recommend that public policies are implemented to solve commonly occurring legal problems systematically. This requires constant monitoring of problems encountered by SMEs and conducting in-depth regulatory impact assessments.

An example of a systemic solution is provided by the act adopted in July 2018 on the successive directorate in sole proprietorships. While our findings do not allow to opine on the quality of the act, it undoubtedly aimed to resolve a widely occurring problem of maintaining continuity of business by heirs of sole proprietors.

Repetitive and systemic problems frequently occur in the field of administrative law. An illustration is provided by the obligation to pay VAT on products and services even if contractors are in default. This causes negative economic effects, but also forces the entrepreneur to seek redress in court so that losses incurred could be included in operating expenses after ineffective enforcement of due payment (i.e. even when it is known in advance that the attempts to recover the dues will be ineffective). As increased surveillance of economic activity is being implemented using, among other tools, uniform control files (JPK), this difficulty can be addressed without opening the possibility of tax frauds.

## — Recommendations

Another important area of legal problems experienced by SMEs are issues related to public procurement laws, which in practice often legalizes discrimination of small businesses and producers of high quality goods and services. The systematic barrier here are the limited possibilities of documenting the required experience in performing specific works by companies participating in the realization of public contracts as subcontractors. Another issue is insufficient quality of tender specifications. In this regard, we suggest that at central level advisory bodies - consultative boards - are created, which would prepare model non-binding tender specifications for specific types of works and purchases, based on the best knowledge in individual fields and open deliberation.

The task of identifying further sectoral problems should be undertaken by the Ministry of Enterprise and Technology, which should then develop specific solutions in cooperation with other ministries or government agencies. This task should be coordinated with the extension of the free legal aid system to include selected groups of SMEs. This will allow for easier identification of problems based on the information on the problems SMEs tried to resolve in the legal aid system.

## II. In the field of activity of self-governments of legal professions<sup>[13]</sup>

### 1. Repealing or restricting advertising ban for lawyers

Amendments in regulation of advertising legal services will allow lawyers to better reach potential clients with information about their services and products. In particular, repealing the advertising ban could help overcome market segmentation of legal services and insufficient supply of services in minor matters. As the comprehensive model of legal services dominates, effective provision of services on a mass scale, necessary to generate profit from minor matters, requires advertising.

### 2. Lifting of the ban on collecting success fee in case of clients who are professional entities

Although economic barriers do not play a key role in the availability of legal services for SMEs, the way of financing them has some relevance. An important psychological barrier is often the uncertainty about final costs of legal service. Such a barrier could be mitigated by the lifting of the ban on charging solely the success fee from clients being professional entities.

As far as natural persons are concerned, this method of financing litigation raises justified doubts, e.g. related to the potential abuse of information asymmetry by lawyers, but in case of professional entities the risk is lower. This is justified by the finding that the use of legal services is for SMEs a matter of economic calculation and risk estimation.



### 3. Introduction of a non-binding tariff system of attorney fees

Self-governments of legal professions should support partial standardization of prices for standard legal services, e.g. through introduction of a non-binding tariff system. This should not be aimed at imposing service prices, but rather at creation of a reference for the market and development of services supplementing commercial legal assistance. In particular, this should serve the legal protection insurance, which in some jurisdictions (the Netherlands, Germany, Austria or Sweden) is an important channel for improving access to justice. This may also lead to expanding the market of legal services because the insured persons may in principle be more eager to use legal services when at least part of the cost is covered by insurance.

Non-binding tariffication of attorney fees is justified in a fact that important factor influencing the development of the legal expenses insurance market is the standardization of prices of legal services. Most often this is done through a relatively rigid tariffs, which is the case of e.g. Germany. Thanks to price uniformity insurers can predict their costs and offer adequate insurance products. In Poland doing so is difficult due to large discrepancies in the prices of services. However, to achieve better predictability, tariffs would not have to be binding, i.e. aimed at regulating the prices of legal services. It could provide guidelines aimed at relative standardization of costs to facilitate the creation of additional products and services related to legal services.

### 4. Supporting the diversity of legal services and products as well as institutional support for the provision of unbundled and outreach legal services

Because entrepreneurs experience different barriers of access to justice, the primary goal of public policies in the field should be maximum differentiation of access channels. This should increase the chances of a person experiencing a legal problem to use the legal system. Lawyers' self-governments should support such initiatives of its members and cooperate in this respect with public administration.

### 5. Implementation of vocational training in legal issues of SMEs

Whilst the research does not allow to deliver detailed judgments on quality of legal services provided in the Polish market, the mismatch in demand and supply prompts us to recommend that the specialization of legal advisers and advocates in the field of legal problems of small and medium-sized enterprises is promoted. This requires professional training organized by lawyers' self-governments. Lecturers should be persons having practical experience in legal services for SMEs, specialized in specific problem areas or cooperating with specific industries.

### 6. Modification of legal advisors' and advocates' bar training programs

A similar recommendation applies to legal advisor and advocates' bar training programs.

### 7. Cooperation with accounting associations

The phenomenon of seeking legal assistance in minor cases in accounting firms suggests that closer cooperation between the professional self-governments of lawyers and professional associations of accountants should be established. In particular, accounting firms can become gatekeepers providing information on specialized legal services, tailored to the needs of SMEs and simply cooperate more closely with legal advisors and advocates.

## III. In the scope of activities of other entities

### 1. Extending the curricula of legal studies with elements of economics and management

One of the reasons for insufficient adjustment of legal services to the legal needs of SMEs may be poor understanding of the specificity of such activity among lawyers providing services in the sector. Obtaining better understanding of the legal needs of entrepreneurs requires practical experience. It should not be overlooked, however, that currently most law studies curricula do not include any courses in the field micro and macroeconomics and business management. Extending study programs to these subjects, even if only as part of selected education tracks would allow in the long term to improve the alignment between the supply of legal services and demand due to better sensitivity of service providers to the ins and outs of economic processes.

**2. Cooperation of employers' and entrepreneurs' organizations with lawyers' self-governments and public administration regarding the implementation of postulates in sections I and II**

Postulates regarding the improvement of access to legal services in SMEs, collective forms of funding such services and legal information will be easier to implement if employers' and business organizations associating SMEs become more involved in these tasks. The key issue for these services is to reach a critical number of users, which allows the prices of services to be reduced without detriment to quality through economies of scale. To mobilize SME activity in seeking legal services, including cooperation between SMEs in various sectors, is the role of organizations of such enterprises.



## References

- [1] We would like to thank the following persons (in alphabetical order) for their comments to the preliminary version of this report: Monika Gebel, Krzysztof Paczkowski, Mikołaj Skowronek, Michał Stambulski, Wiesław Staśkiewicz and Grzegorz Wiaderek. All errors and oversights are borne by the authors.
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- [3] Statistics Poland, 'Activity of non-financial enterprises in 2017' (Warsaw: GUS, 2019), 14.
- [4] A number of elements of the interview questionnaire contribute to this effect. These include linguistic issues linked to how the key term „difficulty” is understood in common Polish, the problem of respondent's reluctance to reveal that they had experienced a problem, the issue of minute problems not being reported because of respondents not thinking they are grave enough to be mentioned in the interview, and the forgetting problem, wherein the respondents are likely to recall about difficult (hence more rare) issues and to forget more quickly about less acute (and more common) ones. Interpretation of all results of the study should take these limitations into account.
- [5] Similar results (with multiple reservations related to limited possibilities of doing cross-national comparisons), suggesting that in the majority of legal problems SMEs do not use legal advice are brought e.g. by the Dutch study Marnix T. Croes, 'Companies on Their Paths to Justice. How Small and Medium-Sized Enterprises in the Netherlands Deal with Potential Legal Problems', *Utrecht Law Review* 8 (1)/2012, 69. A significant variation in findings in different jurisdictions, possibly partially due to methodological differences between individual studies, should yet be noted. British studies of 2013 and 2015 find that each year approximately 1 in 6 owner-managers deals with legal problem by using legal advice. Robert Blackburn, George Saridakis, and John Kitching, *The Legal Needs of Small Businesses: An Analysis of Small Businesses' Experience of Legal Problems, Capacity and Attitudes* (London: Legal Services Board, 2015), 49. A similar result was obtained in a 2017 LSB study reported by Kieran Larkin et al., 'The Legal Needs of Small Businesses 2013-2017' (Birmingham: BMG Research, 2018). At the opposite end of the spectrum is an Australian survey, which finds that legal advice is used in 70% of business problems of SMEs: Nigel Balmer and Pascoe Pleasence, 'In Need of Advice: How Business Owners Respond to Legal Problems', *Updating Justice* 54/2017, 3. It should be noted that Polish study discussed here is strongly biased towards the most acute problems, which doesn't seem to be an issue in the Dutch and English studies.

## References

- [6] According to research carried out in 2015, 31% of respondents who experienced a legal problem used legal services. See Jan Winczorek, *Dostęp do prawa...*, 174.
- [7] All results relating to agriculture pertain to enterprises that identified agriculture or related industries as an area of their activity, not to individual farms. These were not included in the study.
- [8] Section S in the Polish Classification of Activities, that is, the activities of member organizations, repairs of computers and personal and household goods and other service activities otherwise not classified.
- [9] See Jan Winczorek, , *Dostęp do prawa...* chapter 5.
- [10] Paradigmatic presentation of this view can be found in Jacek Kurczewski's many notable works. See e.g. Jacek Kurczewski and Małgorzata Fuszara, 'Disputes and Courts in Poland 25 Years Later' *Societas/Communitas* 7(1)/2009; Jacek Kurczewski and Małgorzata Fuszara, 'Patterns of Preference for Dispute Resolution in Poland' *Polish Sociological Review* 200(4)/2017; Jacek Kurczewski and Paweł Orzechowski 'Dispute Settlement Patterns in Public Opinion – Four Local Studies of Transformation' *Societas/Communitas* 22(2)/2016.;
- [11] See Jan Winczorek, *Dostęp do prawa...*, 201-206.
- [12] Currently, free representation before courts is provided to persons of limited means by court decision. Number of cases where such service is awarded is limited and the system remains unconnected to out-of-court legal advice system that has been in operation since 2016.
- [13] For historical reasons two bar associations exist in Poland: advocates and legal advisers. Their professional duties and privileges, including representation privilege, are very similar. The only practical difference relevant for the SME legal services market is that in- house legal advisers may be hired on employment contracts.



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