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STATE REGULATION AND SELF-REGULATION IN CONSTRUCTION

Abstract. Issues of self-regulation in the field of construction industry are considered. The necessity of ensuring and controlling the construction production, which is closely connected not only with economic but also social factors in terms of ensuring safe conditions for living or work, minimizing technical and technological risks, shaping a transparent system of pricing and investment in the construction industry has been updated. Feasibility of introducing a self-regulation system in Ukraine, which has a number of advantages over the existing hierarchical structure of state regulation in construction, are determined, as follows: exemption of state authorities from performing unusual for them functions, application of a liberal approach to openness in the construction market, ensuring high quality regulation and supervision, possibility of combining the efforts of government and society with the aim of achieving a brand new level of functioning of the construction industry. In Ukraine, there are significant prerequisites for the development of a self-regulating system of the construction industry caused by liberalization of the economy, the European vector of integration and processes of power decentralization.

The international experience is analyzed, on the basis of what priority directions of cooperation with the leading international organizations providing

technical supervision and rendering the advisory help are defined. The role of self-regulation of the technical component of construction in conditions of decentralization of power in Ukraine is defined as symbiosis of a mutually agreed system of cooperation of government-business-consumers, where the first set “rules of the game” by establishing an effective legal framework, the second ensure the quality of finished construction products, and the third — carry out “natural selection” of quality products, ensuring competitiveness of only socially responsible business.

Keywords: self-regulation, technical supervision, technical audit, state regulation, deregulation, decentralization, engineering, construction industry.

ДЕРЖАВНЕ РЕГУЛЮВАННЯ І САМОРЕГУЛЮВАННЯ У БУДІВНИЦТВІ

Анотація. Розглядаються питання саморегулювання у будівельній галузі. Актуалізовано необхідність забезпечення та контролю якості будівельного виробництва, що тісно пов'язано не лише з економічними, а й соціальними факторами щодо створення безпечних умов для проживання чи роботи людей, мінімізації технічних та технологічних ризиків, формування прозорої системи ціноутворення та залучення інвестицій у галузь будівництва. Доведено доцільність впровадження в Україні системи саморегулювання, що має низку переваг над існуючою ієрархічною структурою державного регулювання у будівництві, серед яких: звільнення органів державної влади від невластивих для них функцій, застосування ліберальних підходів до відкритості будівельного ринку, забезпечення високої якості регулювання і нагляду, можливість об'єднання зусиль влади та суспільства з метою забезпечення якісно нового рівня функціонування будівельної галузі. Встановлено, що в Україні є суттєві передумови для розвитку системи саморегулювання будівельної галузі, викликані лібералізацією економіки, європейським вектором інтеграції та процесами децентралізації влади. Проаналізовано міжнародний досвід, на основі чого визначено пріоритетні напрями співпраці з провідними міжнародними організаціями, що забезпечують технічний нагляд та надають консультативну допомогу. Визначено роль саморегулювання технічної складової будівництва в умовах децентралізації влади в Україні як симбіоз взаємоузгодженої системи співпраці влади — бізнесу — споживачів, де перші встановлюють “правила гри” шляхом створення ефективної законодавчої бази, другі — забезпечують якість готової будівельної продукції, треті — здійснюють “природний відбір” якісної продукції, забезпечуючи конкурентоздатність лише соціально відповідальному бізнесу.

Ключові слова: саморегулювання, технічний нагляд, технічний аудит, державне регулювання, дерегуляція, децентралізація, інжиніринг, будівельна галузь.

ГОСУДАРСТВЕННОЕ РЕГУЛИРОВАНИЕ И САМОРЕГУЛИРОВАНИЕ В СТРОИТЕЛЬСТВЕ

Аннотация. Рассматриваются вопросы саморегулирования в строительной отрасли. Актуализирована необходимость обеспечения и контроля каче-

ства строительного производства, которая тесно связана не только с экономическими, но и социальными факторами по созданию безопасных условий для проживания или работы людей, минимизации технических и технологических рисков, формирования прозрачной системы ценообразования и привлечения инвестиций в отрасль строительства. Доказана целесообразность внедрения в Украине системы саморегулирования, имеющая ряд преимуществ перед существующей, иерархической структурой государственного регулирования в строительстве среди которых: освобождение органов государственной власти от несвойственных для них функций, применение либеральных подходов к открытости строительного рынка, обеспечение высокого качества регулирования и надзора, возможность объединения усилий власти и общества с целью обеспечения качественно нового уровня функционирования строительной отрасли. Установлено, что в Украине есть существенные предпосылки для развития системы саморегулирования строительной отрасли, вызванные либерализацией экономики, европейским вектором интеграции и процессами децентрализации власти. Проанализирован международный опыт, на основе чего определены приоритетные направления сотрудничества с ведущими международными организациями, обеспечивающими технический надзор и оказывающими консультативную помощь. Определена роль саморегулирования технической составляющей строительства в условиях децентрализации власти в Украине как симбиоз взаимосогласованной системы сотрудничества власти – бизнеса – потребителей, где первые устанавливают “правила игры” путем создания эффективной законодательной базы, вторые – обеспечивают качество готовой строительной продукции, третьи – осуществляют “естественный отбор” качественной продукции, обеспечивая конкурентоспособность только социально ответственному бизнесу.

Ключевые слова: саморегулирование, технический надзор, технический аудит, государственное регулирование, дерегуляция, децентрализация, инжиниринг, строительная отрасль.

Target setting. The modern development of the Ukrainian economy is closely linked with the revision of mechanisms of ensuring the functions of regulation and control in order to improve the efficiency of management activities in different areas of business. Administrative economic system assumed a clear hierarchical structure for providing technical and financial control of production activities, which is

possible only under the command management. Transition to market-based development vectors requires from the state to search for new forms of providing regulatory mechanisms that would meet the requirements of the state for quality control, cancel out the corruption or bureaucracy element at different stages of project implementation, provide professional and impartial audit of technical and financial scope of

its implementation. One of the most effective ways to ensure the implementation of these requirements is the process of self-regulation of economic and professional activities by applying the expertise of international organizations and forming their own agencies which could, through adopting the best international experience, ensure the functioning of such self-regulatory system within the framework of the Ukrainian economy. Ensuring and controlling the construction production requires special attention, it is closely connected not only with economic but also social factors in terms of creating safe conditions for living or work, minimizing technical and technological risks, shaping a transparent system of pricing and investment in the construction industry.

Recent research and publications analysis. A number of authors have dedicated their works to issues of self-regulation as a mechanism of innovative market regulation in various sectors of the economy, in particular A. R. Serykh [1], I. Aronov, V. Versan, A. Terkel [2], N. Sliusarevskiy [3], V. T. Tolstoukhov, N. T. Honcharuk [4], O. Nepomnyashchyy [6], I. Lavrynenko, K. Feychak [5].

Thus, the purpose of this article is to find ways of introducing effective system of control and construction supervision through the mechanisms of state deregulation and implementation of approaches of self-regulation of the industry.

According to the purpose, a number of tasks have been outlined as follows:

- to overview background of deregulation in the construction industry in Ukraine;

- to analyze international experience of applying self-regulatory mechanisms in the construction industry;

- to identify the benefits of deregulation for the national construction industry;

- to identify the legislative basis for ensuring the processes of self-regulation in the construction industry.

Presentation of the basic material.

Transition of the national economy to an open market has identified priorities that will contribute to the development of various industries and economic systems in particular. One of the main problems of transition to a market economy was the change of conditions of ensuring public administration in the area of monitoring and auditing the technical, economic, financial, environmental and other aspects of functioning of the construction industry. The bureaucracy of regulatory authorities, the congestion of document management in business reporting and verification of its capability to execute projects and the quality of the net result, corruption schemes, lobbying of particular enterprises result in low efficiency of state regulatory policy in the sphere of ensuring quality and safety of construction products, as well as adversely affect the pricing policy of construction companies, forcing them to consider inappropriate expenses in the cost of construction products. The result of this situation is postponing the implementation of construction projects [1, p. 20].

Introducing an efficient self-regulating system through the involvement of civil society resources and expertise of the international institutions is one of the ways out of the crisis.

Regulation system in the field of construction seeks to ensure that the interests of different range of stakeholders – can be represented in the form of a diagram – Fig. 1.

Under intensification of globalization processes, internationalization of production and “elimination” of the boundaries for business the absence of effective regulatory mechanisms in the construction industry becomes the obstacle for the entry of construction companies into the international market. The European vector of reforming the Ukrainian economy determines the necessity to implement European norms and quality standards, as well as regulatory mechanisms of their securing which are generally accepted by the global economic community. In a free global market only the effectiveness of regulatory policy can provide Ukrainian enterprises with competitive strengths. In turn, the processes of economic integration contribute to

unification of efforts of enterprises for the production of high quality competitive products. Integration of the Ukrainian enterprises in the European space of globalization is impossible without ensuring transparent and open business environment, including rational regulatory policy in relation to companies and stakeholders of the construction market. In turn, integration contributes to changing the traditional hierarchical relations of subordination (inherent in administrative economy) on the horizontal ties that harmonise and operate with additional synergies by establishing their clear interaction [2].

Using achievements of technological advances and applying innovative technologies is impossible without the exchange of technological expertise with other countries. The development of the construction industry is characterized by the intensification of scientific research, use of new construction materials, development of innovative

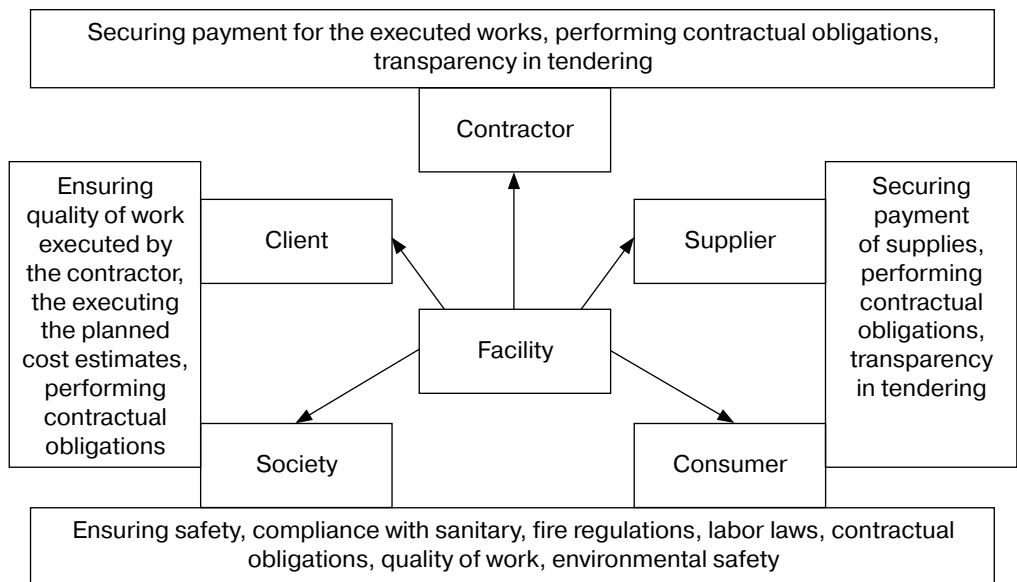


Fig. 1. Interests of stakeholders in the regulatory process of the construction industry

technical solutions and technological innovations, which are aimed at securing a number of factors [3–4]:

- improving the quality of construction products,
- providing flexible pricing policy,
- automation of labor processes,
- reducing labor costs by minimizing manual labor,
- durability and reliability of construction products,
- rationalizing resources,
- energy efficiency of construction,
- environmental safety during construction works.

It is reasonable to associate powerful intellectual and scientific and technical potential of the Ukrainian construction market with the European standard effective regulatory systems which, on the one hand, create the conditions for intellectual creativity, break boundaries of research cooperation and provide opportunities for scientific research, and on the other hand, make bureaucracy and corruption risks impossible.

An important element of construction operations is namely provision of a high level of intellectual potential of the construction industry related to the complexity of the construction operations, which covers a set of functions, each of which has its own specifics and requires certain competencies. Therefore, there are objective economic and social reasons for the privatization process of the regulation of the construction activities [1, p. 21, 22].

Public authorities are not always able to provide a competent evaluation of the process of construction operations, and it is related to its complexity. The specificity of the construction industry requires from individuals, who

can conduct the examination, technical and financial audit, relevant knowledge and skills in construction, engineering, elements of financial literacy, knowledge on design, tendering, contract management etc. That is why the experience of the European countries indicates the effectiveness of involvement of specialized organizations with the appropriate professionals, not only for the evaluation and audit procedures, but also to participate in the regulation of relevant markets at the level of voluntary nonprofit associations of such organizations or professionals. These organizations can act as an association of private companies, international organizations with offices and branches in the country, and NGOs that can also provide specialized consultations and advice regarding the organization of regulatory mechanisms in the field of construction, adopt from the state regulatory functions traditionally belonging to it.

Thus, the main reasons that make actual an issue of changing the state regulatory policy in the field of construction are as follows – Fig. 2.

This background which affects the deregulation processes in construction can provide a significant impulse for brand new changes in the field of construction which, in particular, was observed in countries that have adopted international experience and applied deregulatory policy.

International experience demonstrates the effectiveness of transferring functions of regulation and supervision to private entities, which provides for a number of advantages:

- exemption of state authorities from performing unusual for them functions,

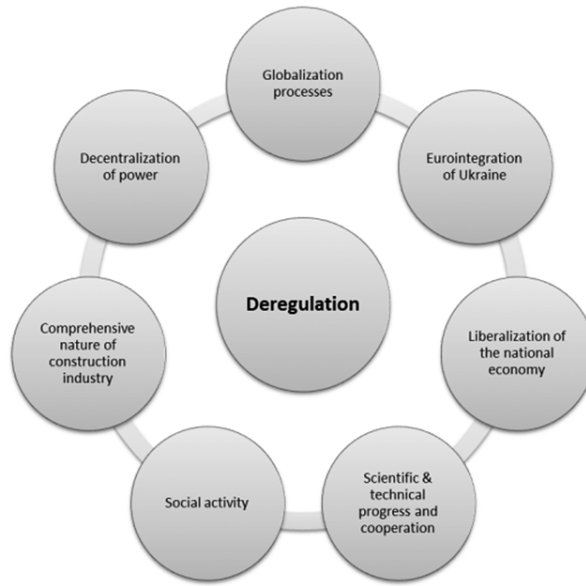


Fig. 2. Deregulation background in the construction industry

- application of a liberal approach to openness in the construction market,
- ensuring high quality regulation and supervision,
- possibility of combining the efforts of government and society with the aim of achieving a brand new level of functioning of the construction industry.

Therefore, for instance, the system of technical audit of construction projects in the United States of America is aimed at ensuring the needs and interests of consumers-clients-contractors. The state regulation of the system is reduced to coordinating the client and contractor, and representing the interests of consumers (society). The interests of society are in the heart of the system and satisfaction of social needs of consumers is the most important task as the ultimate goal of the construction project.

The European Union countries actively use the mechanisms of self-regulation in the construction industry.

For example, there are professional self-government organizations of civil engineers, architects, designers, urbanists in Europe (e. g., the Bavarian Chamber of Civil Engineers and the Bavarian Chamber of Architects, the Berlin Chamber of Architects and Builders, Polish Chamber of Civil Engineers, the National Chamber of Polish Architects, the Chamber of Urban Planners, Poland etc.). Such organizations have been entrusted with the regulation of activities related to construction, carrying out professional certification of architects, design engineers, engineers of construction supervision and experts, the access of these categories of experts to the market and so on. That is, the organizations of professional self-government are endowed with a certain amount of power, which as a rule are included in the scope of the exclusive state powers.

External institutions, which are aimed at regulation in construction, are normally represented by interna-

tional non-governmental organizations and non-governmental standardization bodies, such as ICC, ASCE, NFPA, and the like. The state reserves the right to develop “rules of the game” – legislative and legal acts, with which facilities must comply, and development of technical documents and regulations, while performance of supervision over their implementation rests with non-governmental agencies and organizations. The dual interaction of public administration and non-governmental bodies has a significant effect.

International experience indicates a high efficiency of self-regulation in the construction industry. For the Ukrainian construction market, we can identify several advantages of using such approaches to ensure state regulatory policy in construction, namely [6]:

- formation of an effective regulatory system by involving highly qualified specialists to the processes of evaluation and audit;

- unloading state and local authorities to allow reorientation of public policy from regulation and control to the sphere of ensuring strategic growth of the industry;

- application of the principles of subsidiarity and taking account of the possibilities of decentralization of power to provide additional conditions for the development of the construction industry;

- improving the quality of construction works, efficiency of construction operations;

- integration of the construction industry of Ukraine in the international economic space;

- ensuring European standards of construction;

- increasing the responsibility of all participants of the construction market, such as construction companies and stakeholders;

- ensuring the balance of interests of participants of the construction market: client-contractor-supplier-consumer.

Ukraine begins to adopt the best international practice. Today there are 20 organizations in Ukraine that are officially recognized as self-regulating in five types of activities. In general, the formation of self-regulatory organizations is allowed in 15 types of activities, and the regulatory framework in this area comprises of 39 by-laws of different judicial force [5, p. 8]. Therewith, 4 self-regulatory organizations were created in the construction industry, which will contribute, in particular, to:

- distributing the application of European construction standards, which will allow to take the construction market in Ukraine to a qualitatively new level and ensure the European vector of development;

- improving the quality of construction products by means of application of rules and standards of professional activities and internationally recognised indemnification mechanisms;

- solving technological problems in the construction industry: compliance with sanitary and fire regulations, occupational safety rules, safety regulations;

- complying with business code of ethics.

An issue of providing a self-regulating system of the construction industry becomes especially relevant in the context of carrying out power decentralization processes in Ukraine. In the framework of decentralization, the authorities are trying to combine the

relations of government, business and society in self-regulation. Schematically this model of interaction can be presented through outlining directions of power decentralization in Ukraine – Fig. 3 [7].

One of the priority directions for the development of decentralization and the introduction of self-regulating mechanisms to replace the hierarchical public administration is to conduct inventory, analysis and revision of legislation in urban planning in order to determine prospective directions of further development of construction as a driving force of development of other sectors of the economy.

Conclusions from this study and perspectives for further research in this direction. To sum it up, we can draw some conclusions. In Ukraine, there are significant prerequisites for the development of a self-regulating system of the construction industry caused by liberalization of the economy, the European vector of integration and processes of power decentralisation.

International experience of the leading countries testifies to the effectiveness of a self-regulating system in construction, determining the self-regulation not in terms of a deregulation of public administration, but as symbiosis of a mutually agreed system of cooperation of government-business-consumers, where the first set “rules of the game” by establishing an effective legal framework, the second ensure the quality of finished construction products, and the third – carry out “natural selection” of quality products, ensuring competitiveness of only socially responsible business. Therefore, the system of self-regulation in the construction industry is a mechanism of taking the construction market to a qualitatively new level that will correspond to the European norms and standards.

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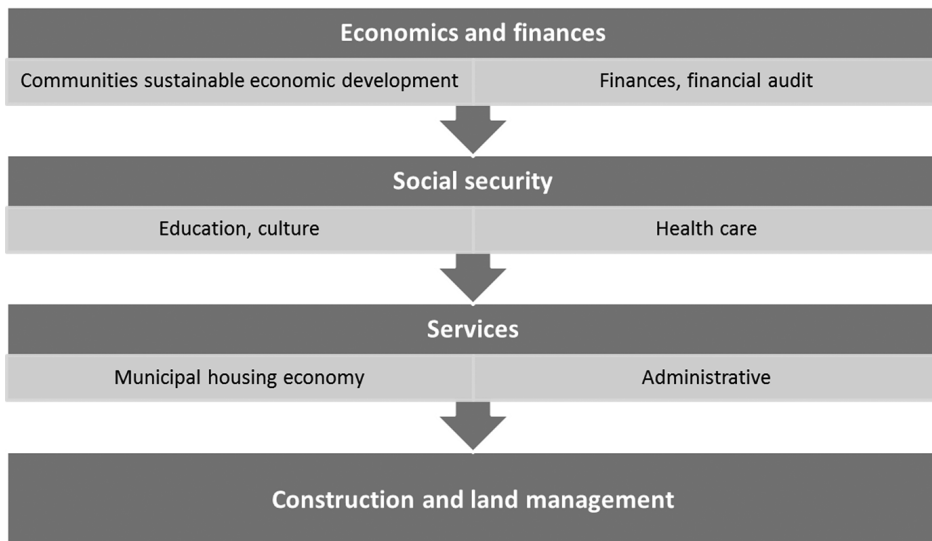


Fig. 3. Main areas of power decentralization in Ukraine [7]

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